



## ZONING BOARD of APPEALS

City Hall, Room 303  
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New Bedford, MA 02740  
(508) 979-1488  
[www.newbedford-ma.gov](http://www.newbedford-ma.gov)

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CITY OF NEW BEDFORD  
JONATHAN F. MITCHELL, MAYOR

## NOTICE OF DECISION

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2020 JAN 30 A 9:16  
CITY CLERK

RRK  
A 9:16  
J. F. A.

Case Number:	#4405			
Request Type:	Variance			
Address:	115, 117, 121, 127-129 Union Street & 7 N. Second Street			
Zoning:	Mixed Use Business (MUB), Waterfront Historic District & Downtown Business Overlay District (DBOD)			
Recorded Owner:	117 Union Street, LLC			
Owner Address:	128 Union Street, Suite 400, New Bedford, MA 02740			
Applicant:	117 Union Street, LLC			
Applicant Address:	128 Union Street, Suite 400, New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
November 14, 2019	January 16, 2020	January 16, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
53	40,41,215,216,146	12830	27	

A Variance under Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, minimum lot size SF, lot coverage by building %, side yard-Ft. & rear yard-Ft.), 2750 (yards in residence district), 2753 (rear yard), 2755 (side yard), 3100 (parking & loading), 3110 (applicability), 3130 (table of parking & loading requirements-Appendix C, multifamily (3) or more per structure & places of assembly); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40, 41, 215, 216, 146 in a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district. The petitioner is proposing to subdivide the lot into two nonconforming lots, which requires parking and dimensional variances.

**Action:** DENIED, for the reasons set forth in the attached decision.

A copy of this Decision was filed with the City Clerk of the City of New Bedford on January 30, 2020. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

1-30-2020  
Date

  
Leo Schlick, Chairperson of the Zoning Board of Appeals

## **APPLICATION SUMMARY**

The petitioner is proposing to subdivide the lot into two nonconforming lots, which requires a parking and dimensional variance under Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, minimum lot size SF, lot coverage by building %, side yard-Ft. & rear yard-Ft.), 2750 (yards in residence district), 2753 (rear yard), 2755 (side yard), 3100 (parking & loading), 3110 (applicability), 3130 (table of parking & loading requirements-Appendix C, multifamily (3) or more per structure & places of assembly); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40, 41, 215, 216, 146 in a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district.

## **1.) MATERIALS REVIEWED BY THE BOARD**

### **Plans Considered to be Part of the Application**

- Plan set, drawn by Prime Engineering Inc., Stantec & Kit Wise Architect dated November 4, 2019, December 11, 2019 date stamped November 14, 2019 & December 20, 2019 by City Clerk's Office.
  - C-1 Existing Conditions
  - C-2 Demolition Plan
  - C-3 Handicap Accessibility Plan
  - C-4 Site Layout & Utilities Plan
  - C-5 & 6 Site Details
  - A-100-105 Basement Floor Plan & Level 1,2,3,4,5
  - A-106 Roof Plan
  - A-201 Elevations - North & South
  - A-202 Elevations – East & West
  - A-211 Building Sections
  - A-1.1, 1.2, 1.3, 1.4 Existing Conditions Basement, First Floor, Second Floor & Third Floor Plan
  - A-1.5 Existing Conditions Elevations
  - A-2.1, 2.2, 2.3, 2.4 Demolition Basement, First Floor, Second Floor & Third Floor Plan
  - A-3.1, 3.2, 3.3, 3.4 Proposed Basement, First Floor, Second Floor & Third Floor Plan
  - A-3.5 Proposed Roof Plan
  - A-3.6, 3.7 Proposed South & North Elevation
  - A-4.1, 4.2 Proposed Window Type A & B
  - A-4.3 Proposed Store front
  - A-4.4 Proposed Detail Window Type C
  - A-4.5 Proposed Schedules
  - A-5.1 Sight Line Study

### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office November 14, 2019.

- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated December 23, 2019.
- Staff Comments to the ZBA from the Office of the City Planner, dated January 3, 2020.

## **2.) DISCUSSION**

On the evening of the January 16, 2020 meeting, board members: Leo Schick, Stephen Brown, Robert Schilling, Allen Decker and Celeste Paleologos were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Angela Goncalves (Assistant Project Manager) were present during proceedings for the subject case review.

In regard to Case #4405 and Case #4406 Clerk Brown made a motion, seconded by Mr. Decker to hold the public hearings concurrently as they both were in regard to the same project at 115, 117, 121, 127-129 Union Street & 7 N. Second Street. With all in favor, the motion carried.

In regards to Case #4405 Clerk Brown made a motion, seconded by Mr. Schilling to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated December 23, 2019; staff comments from the Department of City Planning, dated January 3, 2020; the appeal packet as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. With all in favor, the motion carried.

Chairperson Schick then declared the hearing open.

The petitioner: Michael Galasso, Executive Director, New Bedford Development Corporation (128 Union Street) presented the case at the hearing representing the applicant 117 Union Street, LLC. Mr. Galasso began the presentation by introducing the affiliates of the subject project; Steven Beauregard, President of New Bedford Development Corporation, Richard Rheume, Civil Engineer, Prime Engineering, Inc. and Daniel Perry, Attorney, Perry Hicks, LLC. Mr. Galasso gave an overview of the project, stating several meetings have been held with the Historical Commission, Planning Board and City Staff to revise plans submitted. Mr. Galasso stated the proposal is to consolidate the number of lots for financing purposes. Mr. Galasso emphasizes the necessity for separate funding sources for the new construction and rehabilitation of the Moby Dick building.

The proposal is a mixed use/mixed income project situated at the intersection of Union Street and North Second Street on a 12,479± SF parcel. The project site is comprised of five lots with five buildings and a parking lot; all under the same ownership.

The petitioner is proposing to subdivide the lot into two nonconforming lots, which requires a parking and dimensional variance. Additionally, the petitioner is proposing to raze the five existing one-story buildings at the corners of Union Street, N. Second Street and Barkers Lane to construct a five-story commercial/residential building; and to renovate the three-story Moby Dick Building at 127-129 Union Street for a combined total of 51 residential units and 2 commercial units (retail/restaurant) per plans filed.

The proposal consists of the new construction of a five (5) story building on the east side of the site, the rehabilitation and conversion of the three-story portion of the Moby Dick Building, and the new construction of a single story building with a shared party wall with and behind the Moby Dick Building. A shared entry vestibule off Barkers Lane connects all three building. On-site parking is not provided except for one handicapped parking space proposed in the northwest corner of the site off Barker's Lane.

Mr. Galasso proceeded by explaining the project will require numerous complex funding sources including different types of grants for the Moby Dick rehabilitation versus constructing a new five-story building; creating the necessity to separate the lots in order to obtain collateral from separate funding sources for each development. Depicted on plans submitted, Mr. Galasso notes Lot #1 117 Union Street would have forty-three (43) residential units; including a work/live space on the lower level; Twenty-two (22) units would offer an affordable component. Lot #2 "Moby Dick Building" would host eight (8) market rate residential units.

Mr. Richard Rheume, Civil Engineer, Prime Engineering, Inc. (P.O. Box 1088, Lakeville, MA) continued the presentation by demonstrating the aerial view, floor plans and existing and proposed conditions of the subject property depicted on the site plan. Additionally, Mr. Rheume described a proposed cafe, handicap parking, handicap accessible units, bicycle storage and trash receptacles.

Mr. Rheume continued the presentation by summarizing the dimensional requirements required for each lot; including lot area, density, side yard, lot coverage, green space, and parking and loading.

In response to an inquiry from board member Brown relative to existing and proposed parking, Mr. Rheume replied there are currently five (5) existing parking spaces on the site and they are proposing one (1) handicap space for Lot #1, eliminating four (4) of the existing parking spaces; no parking is proposed for Lot #2. Additionally, Mr. Rheume notes there are two parking garages in the immediate vicinity that offer long term rental rates, the Zeiterion Parking Garage to the south of the site and Elm Street Parking Garage to the north. Mr. Galasso states the proposal does not offer onsite parking, other than the one proposed handicap space, but will offer alternative transportation.

Mr. Rheume concluded the presentation by briefly explaining the required criteria to allow for the granting of a Variance and Special Permit. Mr. Rheume asserts that demolishing unsightly dilapidated buildings and providing high quality housing in the downtown would be beneficial to the public good and would stimulate further improvements to the surrounding neighborhood. Additionally, Mr. Rheume states the proposal would increase the property value as well as create new jobs and services for the city and provide a significant positive economic benefit in the neighborhood and the City.

***The project site is located in the Downtown Business Overlay District (DBOD) and requires a special permit. The (DBOD) allows residential uses on upper floors, variation from dimensional requirements, and increased density by granting a special permit. The applicant seeks relief for the construction of new dwellings and the rehabilitation of an existing dwelling for residential use.***

***Additionally, the applicant seeks a Variance to subdivide the lot into two nonconforming lots, which requires a parking and dimensional variance.***

Board members Brown, Schilling and Schick inquired as to the timeline of the project, difference in funding sources and rental components. Mr. Galasso replied ZBA approval to separate the lots is necessary to acquire separate funding sources for each lot. Mr. Galasso notes the rehabilitation of Lot #2 (Moby Dick) would commence first, through historical, CPC grants. The new construction for Lot #1 (117 Union Street) would be funded through affordable component funding sources. Mr. Galasso stated Lot #2 Moby Dick building would be 100% market rate and Lot #1 117 Union Street would be 50% affordable. Mr. Galasso notes all units offered are rentals, as there are no funding sources available for ownership of residential units.

In response to inquiries from Board Member Schilling relative to height of the new proposed building, parking and safety concerns, Mr. Galasso replied there is ample parking in the area, referencing a city parking study in the downtown district. Additionally, Mr. Galasso notes possible lease agreements with privately owned parking lots in the area, referring to Santander Bank. Mr. Galasso addresses security concerns by providing on-site management and security personnel. Mr. Galasso concluded by stating the height of the building is necessary to accommodate the number of units needed for the funding of the proposal.

Board members Schilling and Schick asked about the need for affordable housing in the downtown. Mr. Galasso replied there is an upward trend for mixed housing in downtown areas. Mr. Galasso asserted that redevelopment for mixed housing is necessary for the revitalization of downtown New Bedford.

Following the petitioner's testimony, Chairperson Schick invited to the podium anyone wishing to speak or be recorded in favor of the petition. There was no response to Chairperson Schick's invitation to speak or be recorded in favor.

Chairperson Schick invited to the podium anyone wishing to speak in opposition of the petition. There was no response to Chairperson Schick's invitation to speak or be recorded in opposition.

Chairperson Schick asked the Board if there were any further questions. With no further questions, Chairperson Schick closed the hearing.

The board had a brief discussion, board members Schick and Schilling expressed concerns about the proposed number of residential units (51), parking, safety, height of the building and the need for affordable housing in the downtown area. Board member Brown expressed that the petitioners have demonstrated sufficient criteria for him to approve the proposal. Board member Decker reminded the Board that the petitioners were approved for 43 units by the ZBA in April and are now proposing to separate the lots and add (8) units to the Moby Dick building.

With no further discussion, the board indicated their readiness to vote.

### **3.) FINDINGS**

### **Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)**

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height, and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*
- b.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*
- c.) *That desirable relief may be granted without substantial detriment to the public good;*

### **4.) RELIEF**

The Board **DENIED** the applicant's request for relief from Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-Appendix B, minimum lot size SF, lot coverage by building %, side yard-Ft. & rear yard-Ft.), 2750 (yards in residence district), 2753 (rear yard), 2755 (side yard), 3100 (parking & loading), 3110 (applicability), 3130 (table of parking & loading requirements-Appendix C, multifamily (3) or more per structure & places of assembly); relative to property located at 115, 117, 121, 127-129 Union Street & 7 North Second Street, Assessors' map 53 lot 40, 41, 215, 216, 146 in a Mixed Use Business [MUB], Waterfront Historic District & Downtown Business Overlay District [DBOD] zoned district.

### **5.) DECISION**

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **DENIED** the requested variance.

This petition has not been found to be in accordance with Massachusetts General Law Chapter 40A section 10 relative to the granting of variances because the board did not find:

- That there are circumstances relating to the soil conditions, shape or topography especially affecting the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located;
- And due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;
- And that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance or Bylaw;
- And that desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition does not satisfactorily meet the basis of the requested relief.

On a motion by S. Brown seconded by C. Paleologos to grant the requested Variance, the vote **failed** 3-2-0 with members S. Brown, C. Paleologos and A. Decker voting in the affirmative; with member L. Schick and R. Schilling voting in the negative; and no one abstaining. (Tally 3-2-0).

Filed with the City Clerk:

  
\_\_\_\_\_  
Leo Schick  
Chairperson of the Zoning Board of Appeals

1-30-2020  
\_\_\_\_\_  
Date