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ZONING BOARD OF APPEALS

STAFF REPORT

ZONING BOARD OF APPEALS MEETING

MEETING DATE: February 13, 2020

REVISED STAFF REPORT: March 6, 2020

Case #4408: Variance

Case #4409: Administrative Appeal

1238 Kempton Street
Map: 54, Lot: 6

Owner: Charter Dartmouth II, LLC
C/O Charter Realty &
Development Corp.
75 Holly Hill Lane, Suite 305
Greenwich, CT 06830

Applicant: Mechanics Cooperative Bank
C/O John McMahon
PO BOX 552
Taunton, MA 02780



1238 Kempton Street
Looking southeast from Kempton Street

Overview of Request: The petitioner has submitted applications for both a **Variance** and an **Administrative Appeal** relative to the subject property located within a Mixed Use Business [MUB] zoning district. Notice is given of a public hearing on the petition of: **Charter Dartmouth II, LLC, C/O Charter Realty & Development Corp.** (75 Holly Hill Lane, Suite 305, Greenwich, CT 06830) and **Mechanics Cooperative Bank, C/O John McMahon** (PO BOX 552, Taunton, MA 02780) for a **Variance** under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3210 (general regulations), 3250 (regulation governing particular types of signs), 3255 (area restrictions for ground signs-in Mixed Use Business districts, no ground sign shall exceed one square foot in area for each linear foot of street frontage of the lot upon which it is erected, but in no event shall such sign exceed twenty-five (25) SF in area, nor shall there be a distance of more than ten (10) Ft. from the ground to the bottom of the sign and more than fifteen (15) Ft. from the ground to the top of the sign) and 3256 (location restrictions. No ground sign shall project over a public way, nor shall a ground sign be located closer than six (6) Ft. from a lot line. Only one ground sign shall be permitted per lot in a Mixed Use Business district); and for an **Administrative Appeal** under Chapter 9, Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3220 (prohibited signs), 3222 (any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and

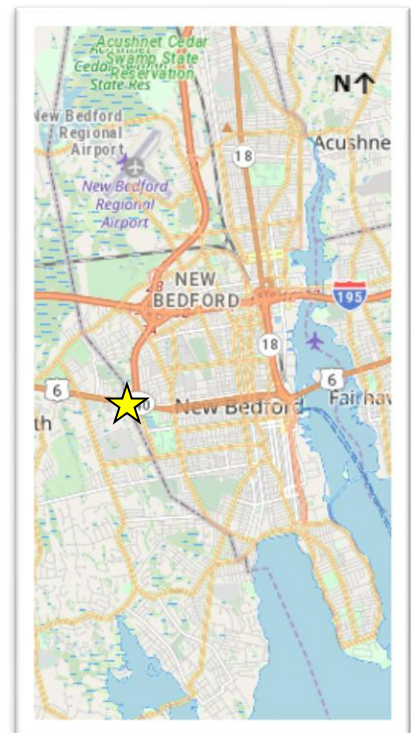
temperature), 5220 (powers) and 5223 (to hear and decide appeals taken by any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer under the provisions of M.G.L.A. c. 40A, §§ 7, 8 and 15); relative to property located at **1238 Kempton Street**, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to install an electronic message board to a new free-standing ground sign which measures 121.4 SF, 10' to the bottom, 22'.3" to the top of the sign, and within 6' of the front lot line per plans filed.

NOTE: The dimensions of the sign were reduced at the request of the Planning Board on February 12, 2020. The revised proposal is (1) new ground sign totaling 73 SF with a height of 18'.10" from the ground to the top of the sign and the ground sign located 2' from the front lot line. Nonetheless the proposal requires an Administrative Appeal and Variance from the Zoning Board of Appeals.

The applicant is seeking relief regarding the size and location of a new free standing ground sign. Under the zoning ordinance (sign regulations): A ground sign shall not exceed 25 SF in area, nor more than 15' from the ground to the top of the sign and shall not be located closer than 6' from the lot line. The proposal is (1) new ground sign totaling 121.4 SF with a height of 22'.3" from the ground to the top of the sign and the ground sign located 2' from the front lot line, therefore requiring a variance from the requirement.

As with all **Variances**, the board must find:

- a) There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located.
- b) If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner.
- c) The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good.



Additionally, the petitioner has filed an Administrative Appeal of the determination of Zoning Enforcement Officer that the digital display is a prohibited sign.

The zoning ordinance prohibits “Any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature” under Chapter 9 Section 3222 concerning prohibited signs, therefore the petitioner is seeking an administrative appeal.

Existing Conditions: The project site is an 8,254 SF, corner lot, located at the northeast corner of US State Highway (Route 6). The site has frontage on two streets: 73.8'± on Kempton Street and 194.93'± on Commonwealth Avenue. The property is located on Kempton Street within the city's high traffic commercial area abutting the Dartmouth Town line in a Mixed Use Business zone.

A single-story brick bank building is located in the southeast corner of the site. On the southern side of the building is a two lane drive-thru with canopy. The drive-thru lanes are separated by a concrete island. The

lane closest to the building was used for a drive-up window teller service, and the second lane was used for a drive-up ATM.

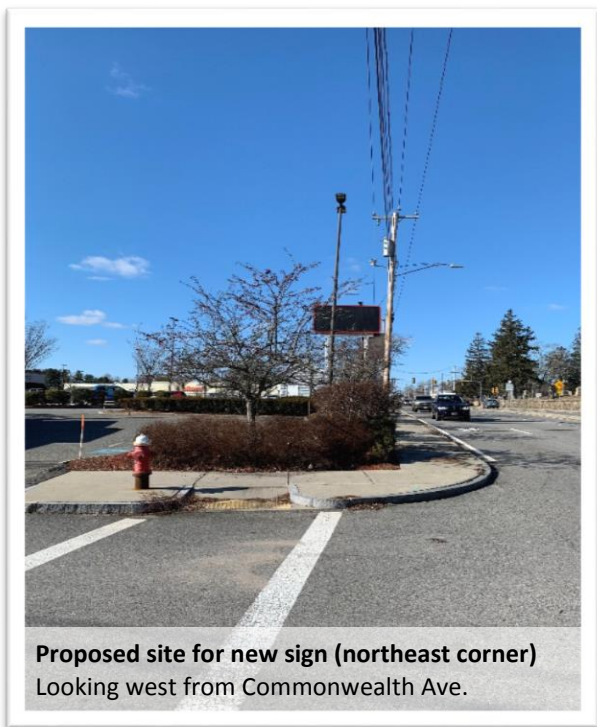
Site circulation is a two-way. Vehicles can enter and exit the site at Commonwealth Avenue and travel counterclockwise around the building for the drive up services offered. The parcel connects to surrounding business via accessways in the side and rear of the site located northeast.

Parking is provided along the northern half of the site. There are five (5) parking spaces, including one handicapped accessible parking space. There are six (6) parking spaces designated for employees located south of the site exiting at Metropolitan Street.

The subject property previously hosted Santander Bank, with an existing non-conforming freestanding ground sign located on the west front property line. The site is currently vacant. Therefore, there is no activity on site at this time.

The neighborhood is comprised of commercial, retail and fast food restaurant uses. Directly abutting this property to the east is a Shopping Plaza hosting; Zully's Wine & Spirits, Cozy Nail Salon, Bush Cleaners, Pizza Hut Restaurant and Sprint a telecommunication store, further east is Shaw's Supermarket. Directly abutting northly in the rear is a public utility building. Directly across Commonwealth Avenue west is Wash World, further northwest is Buttonwood Park. Directly south of the site is US Highway Route 6.

Proposal: The petitioners are proposing to install an electronic message board to a new free-standing ground sign which measures 121.4 SF, 10' to the bottom, 22'3" to the top of the sign, and within 6' of the front lot line per plans filed. The sign has been revised from the initial proposal submitted to the Planning Board. The new revised free-standing ground sign measure 73 SF, 10' to the bottom, 18'10" to the top of the sign, and within 6' of the front lot line per plans filed. The proposed free-standing ground sign is proposed to be located on the front northeast side of the property line on the corner of Kempton Street and Commonwealth Avenue. The revised proposed sign has an overall sign area of 73 SF, with an overall height 18.10", 10' to the bottom, and 2' from the front lot line. The electronic message center (EMC) as proposed will be 35 SF. Depicted on plans submitted the existing ground sign located on the front northwest side of the property line would be removed.



The applicant proposes to provide five (5) off street parking spaces. As shown on plans submitted, the applicant proposes all five on the north side of the site. Additionally, there is six (6) parking spaces designated for employees located south of the site exiting at Metropolitan Street. A loading space is not proposed.

The proposed number of customers is 30 per day, with an estimate of 4 employees. The proposed hours of operation are 7:30am-6pm, Monday-Saturday, closed on Sunday with weekly deliveries.

The proposal to install a new free standing ground sign with a digital message center requires a Variance and an Administrative Appeal from the Zoning Board of Appeals: **a Variance for the size and location of the free standing ground sign** totaling 73 SF with a height of 18'.10" from the ground to the top of the sign and the ground sign located 2' from the front lot line; and an **Administrative Appeal for the electronic message center component**.

NOTE: The proposal requires Site Plan Review from the Planning Board. The initial hearing was held on February 12, 2020. Per request of the Planning Board the hearing was continued to Wednesday, March 11, 2020 to allow the petitioner to submit revised plans. Any conditions imposed by the Planning Board decision shall also be conditions of this Variance and Administrative Appeal.

For consideration: In considering each of the criteria necessary to grant the **Variance** appeal, staff offers the following for the board's consideration:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located. The petitioner states due to poor visibility of the existing sign location and the configuration of the front property line; the new proposed location is the only viable location for clearance from electric lines and poor visibility issues. The petitioner explains the parcel has a front property line that follows the angle of Kempton Street creating a triangular shaped landscape bed along the lot frontage. The existing sign is located on the west side and the new sign is proposed on the east side of the front property line. Electrical lines run overhead parallel to the Kempton Street sidewalk along the property frontage; limiting the space available to relocate the sign and not impact parking. Therefore, creating a hardship for the economic reuse of the property and branding of a new business in New Bedford market. The petitioner mentions per the sign package plans, the new proposed sign, requires the ground sign to be set back 2' from the lot line. Additionally, the new **revised** ground sign is proposed to contain 73 SF with a height to the top of the sign of 18'.10". The petitioner also notes the electronic message center to accompany the sign will help support branding efforts and will match other Mechanics Cooperative Bank branch locations. Staff acknowledges the parcel is located at the northeast corner of US State Highway (Route 6), with an existing non-conforming free standing ground sign located on the west front property line.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner. The petitioner states the literal enforcement of the Zoning Ordinance would cause a substantial hardship for the economic reuse of the property and branding of a new business in New Bedford market. The petitioner notes in order to be economically viable, proper signage and branding is critical for a new business. Signage is necessary to establish visibility and to attract customers to its site. Staff acknowledges the presence of existing nonconforming signage in the surrounding neighborhood.
- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good. The petitioner states that granting relief will not substantially derogate or nullify the intent of the zoning by-law or pose a detriment to the public good. The application states the proposed new sign in the new location will be more

visible and easier to read therefore eliminating distraction to drivers. The petitioner notes if the relief is granted it would create a more visible site that will directly impact the success of the establishment in New Bedford, while supporting the local community. Additionally, the petitioner notes the existing ground sign at the subject location does not conform to current city guidelines in regard to size and location. The petitioner states that the requested relief may be granted without substantial detriment to the public good because the proposed signage is in keeping with the commercial, retail, fast food use nature of the immediate neighborhood and the requested relief would ensure the economic viability of the property. Staff acknowledges the surrounding area is predominantly comprised of fast food restaurants, retail and commercial uses.

In considering the **Administrative Appeal**, staff offers the following for the board's consideration:

- The board must determine if the electronic message sign is a prohibited sign type under the following definition: "Any sign which incorporates moving, flashing, animated or intermittent lighting, excluding public service signs such as those that display time and temperature." The applicant petitions that the sign will have a positive impact on the community and will not be detrimental in any way. The application states Mechanics Cooperative Bank currently operates four (4) of the electronic message centers/signs in adjacent communities and the message centers have proven to be a valuable resource. The electronic message centers will display bank information, community events, school activities, student recognitions, and local sport team events; creating a sense of community and commitment to be an exceptional bank to the citizenry of New Bedford. The petitioner notes as a community bank, they are heavily involved in supporting local nonprofit organizations through donations, volunteer work and acting as advocates/ambassadors for local projects. The proposed electronic message board would be added to a new pylon sign. The proposal is located on Kempton Street within the city's high traffic commercial area of US Highway Route 6 in a Mixed Use Business zone; predominately comprised of fast food restaurants, retail and commercial uses. Therefore, the location would not negatively impact the health, safety and welfare of the public. The petitioner mentions the proposed electronic message board would greatly impact the property's ability to attract customers by using timely messages that describe the establishment, community and special events. The application states Mechanics Cooperative Bank agrees to operate the sign in accordance with the City's preference to limit moving, flashing, animated or intermittent lighting. Additionally, the petitioner mentions several area establishments already have similar electronic message boards in use. The board must consider whether the determination of the Zoning Enforcement Officer should stand or whether the applicant's petition should prevail.

1238 Kempton Street Map: 54, Lot: 6

NOTE: Property line is approximate; for discussion purposes, only.

