



**ZONING BOARD of APPEALS**  
City Hall, Room 303  
133 William Street,  
New Bedford, MA 02740  
(508) 979-1488  
[www.newbedford-ma.gov](http://www.newbedford-ma.gov)

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2020 MAY -4 P 12: 14

CITY CLERK

**CITY OF NEW BEDFORD**  
JONATHAN F. MITCHELL, MAYOR

## NOTICE OF DECISION

Case Number:	#4408			
Request Type:	Variance			
Address:	1238 Kempton Street			
Zoning:	Mixed Use Business (MUB) Zoned District			
Recorded Owner:	Charter Dartmouth II LLC, C/O Charter Realty & Development Corp.			
Owner Address:	75 Holly Hill Lane, Suite 305, Greenwich, CT 06830			
Applicant:	Mechanics Cooperative Bank, C/O John McMahon			
Applicant Address:	PO Box 552, Taunton, MA 02780			
Application Submittal Date	Public Hearing Date	Decision Date		
January 14, 2020	April 23, 2020	April 23, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
54	6	7638	22	

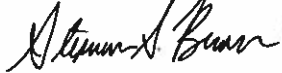
A Variance under Chapter 9 Comprehensive Zoning Sections 3200 (sign regulations), 3201 (purpose), 3210 (general regulations), 3250 (regulation governing particular types of signs), 3255 (area restrictions for ground signs-in Mixed Use Business districts, no ground sign shall exceed one square foot in 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); 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.

**Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the Conditions as described therein.**

A copy of this Decision was filed with the City Clerk of the City of New Bedford on May 4, 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.

May 4, 2020

Date



Stephen Brown, Clerk of the Zoning Board of Appeals

### **APPLICATION SUMMARY**

The petitioner is 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, which requires 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); relative to property located at **1238 Kempton Street**, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] zoned district.

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

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

- Plan set, drawn by Site Engineering Inc. (SEI), dated December 5, 2019, date stamped received by City Clerk's Office January 14, 2020, including:
  - SP-1 Existing Conditions (Proposed Sign Replacement)
  - SP-2 Proposed Conditions (Proposed Sign Replacement)
- Plan set, drawn by Metro Sign & Awning, dated January 3, 2020, date stamped received by City Clerk's Office January 14, 2020, including:
  - 19-1487-1 Double Face Pylon Sign
  - 19-1487-2 Double Face Pylon Sign
  - 19-1487-2A Double Face Pylon Sign
  - 19-1487-3 Double Face Wayfinding Sign
  - 19-1487-4r1 Single Face Pan Sign
  - 19-1487-5 Entrance Door Graphics
  - 19-1487-6r1 Single Face illuminated Sign
  - 19-1487-7r1 Non-Illuminated Flat Panel Sign
  - 19-1487-8 Drive-up Window Vinyl Panels
  - 19-1487-9 Single Face Pan Sign
  - 19-1487-10 Single Face Post & Panel Sign

- REVISED Plan set, drawn by Metro Sign & Awning, dated January 3, 2020, date stamped received by City Clerk's Office March 16, 2020, including:
  - 19-1487-1A Double Face Pylon Sign
  - 19-1487-1D Double Face Pylon Sign
  - 19-1487-2 Double Face Pylon Sign
  - 19-1487-2A Double Face Pylon Sign
  - 19-1487-3 Double face Wayfinding Sign
  - 19-1487-4r1 Single Face Pan Sign
  - 19-1487-5 Entrance Door Graphics
  - 19-1487-6r1 Single Face illuminated Sign
  - 19-1487-7r1 Non-Illuminated Flat Panel Sign
  - 19-1487-8 Drive-up Window Vinyl Panels
  - 19-1487-9 Single Face Pan Sign
  - 19-1487-10 Single Face Post & Panel Sign
  - 19-1487-11 Sign Location Map

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

- Completed Petition for a Variance Form, stamped received by City Clerk's Office January 14, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 27, 2020.
- Revised Staff Comments to the ZBA from the Office of the City Planner, dated April 6, 2020.

#### **2.) DISCUSSION**

On the evening of the April 23, 2020 meeting, board members Leo Schick, Stephen Brown, Allen Decker, Robert Schilling 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 #4408 and Case #4409 Clerk Brown made a motion, seconded by Mr. Schilling to hold the public hearings concurrently as they both were in regard to the same project at 1238 Kempton Street. With all in favor, the motion carried.

In regards to Case #4408, Clerk Brown made a motion, seconded by Mrs. Paleologos to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 27, 2020; staff comments from the Department of City Planning, dated April 6, 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: Joe Baptista, Mechanics Cooperative Bank (PO Box 552, Taunton, MA 02780) presented the case at the hearing representing the applicant, Mechanics Cooperative Bank. Mr. Baptista began

the presentation by stating the proposal requires two separate reliefs from the Zoning Board of Appeals; a Variance and an Administrative Appeal.

**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 Revised proposal is (1) new ground sign totaling 64.6 SF with a height of 17'.10" 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.**

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.**

The petitioners revised proposal is to install an electronic message board to a new free-standing ground sign which measures 64.6 SF, 10' to the bottom, 17'.10" to the top of the sign, and within 6' of the front lot line per plans filed.

Mr. Baptista proceeded by stating that the proposal also required Site Plan Review (Case 20-05) and a Ground Sign Site Plan (Case 20-06) 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. The relief was granted on March 11<sup>th</sup> with the following revised Dimensions. The revised proposal is (1) new ground sign totaling 64.6 SF with a height of 17'.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. Any conditions imposed by the Planning Board decision shall also be conditions of this Variance and Administrative Appeal.

Mr. Baptista concluded his presentation by engaging the Board with any questions in regard to both petitions.

In response to inquiries from board member Decker relative to messages that would be displayed on the electronic message board and branch location, Mr. Baptista replied during bank office hours messages relating to community activities and bank products would be displayed. During non-business hours the electronic message board would display time, date and temperature. Additionally, Mr. Baptista replied yes, this would be the first Mechanics Cooperate Bank in the City. Mr. Decker expressed approval of the reuse of the site.

Chairperson Schick inquired regarding the timing of the digital movement of the messages, Mr. Baptista replied the messages would operate in accordance with the moving, flashing, intermittent City

regulations. Mr. Baptista stated the proposed electronic message board would be readable without being a distraction to passersby/traffic.

Board member Brown expressed his approval of both petitions. Mr. Brown stated he is familiar with other branch locations and the Brand.

Following the petitioner's testimony, Chairperson Schick invited to the podium anyone wishing to speak in favor or be recorded in favor of the petition of the application. Ward 5, Councilor Scott J. Lima (City Hall, 133 William Street, New Bedford) spoke in favor of the proposal. Councilor Lima stated he is in favor of the proposal, as long as the petitioner follows any recommendation imposed by the Board. Councilor Lima also requested that his letter in favor of the proposal be read into the record.

In regard to Case #4408 and #4409, Clerk Brown made a motion, seconded by Mrs. Paleologos to receive and place on file the communication from Councilor Lima in favor of the petition. With all in favor, the motion carried. The letter was read into the record by Clerk Brown.

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

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

With no further discussion, Chairperson Schick closed the hearing.

The board had a brief discussion. Clerk Brown briefly discussed the impact of visibility issues and the possibility of interference with electric lines, therefore causing a hardship.

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;*

The Board found that the new proposed location is the only viable location for clearance from electrical lines; in addition to solving poor visibility issues.

The Board found that if the city were to literally enforce the Zoning Ordinance due to circumstances unique to this land or structure, it would mean a substantial hardship to the petitioner. In this case, without the relief it would cause a substantial hardship for the economic reuse of the property. In order to be economically viable, proper signage and branding is crucial for a new business.

- b.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that 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;*

The board found relief may be granted without substantial detriment to the public good.

#### **4.) RELIEF**

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth in Section 6.

The Board grants the applicant's request for relief from 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); relative to property located at **1238 Kempton Street**, Assessors' map 54 lot 6 in a Mixed Use Business [MUB] 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 **GRANTS, WITH CONDITIONS,** the requested variance.

A motion to approve was made by Clerk Brown and seconded by Mr. Schilling as follows:

In regard to Case #4408 **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); 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 64.6 SF, 10' to the bottom, 17'.10" to the top of the sign, and within 6' of the front lot line per plans filed, which requires 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). Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning sections as cited; the board finds that in respect to these sections the application has made sufficient arguments.

In addition to the foregoing section this petition has been found to be in accordance with Massachusetts General Law Chapter 40A section 10 relative to the granting of variances because the board found:

- 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 satisfactorily meets the basis of the requested relief.

Specific Conditions on this decision shall include:

- This proposal required Site Plan Review by the Planning Board. Any conditions imposed by the Planning Board decisions shall also be conditions of this variance.

Conditions on this decision shall include:

- That the project be set forth according to the plans submitted with the application.

- That the applicant shall ensure a copy of the Notice of Decision bearing the certification of the city of New Bedford City Clerk's Office be recorded at the Registry of Deeds.
- The rights authorized by the granted variance must be exercised by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or the approval will lapse.

On a motion by S. Brown seconded by R. Schilling to grant the requested Variance, the vote carried 5-0-0 with members A. Decker, S. Brown, C. Paleologos, Robert Schilling and L. Schick voting in the affirmative; no members voting in the negative or abstaining. (Tally 5-0-0).

Filed with the City Clerk:



Stephen Brown  
Clerk of the Zoning Board of Appeals

May 4, 2020

Date