



ZONING BOARD of APPEALS

City Hall, Room 303
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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:	#4410			
Request Type:	Variance			
Address:	138-142 Arnold Street			
Zoning:	Mixed Use Business (MUB) Zoned District			
Recorded Owner:	Ian Shields			
Owner Address:	PO Box 51204, Boston, MA 02205			
Applicant:	Ian Shields			
Applicant Address:	PO Box 51204, Boston, MA 02205			
Application Submittal Date		Public Hearing Date		Decision Date
January 17, 2020		April 23, 2020		April 23, 2020
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
45	212	11079	179	

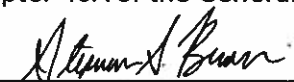
A Variance under Chapter 9 Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability), 3130 (table of parking loading requirements-Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building & construction contractors, equipment & supplies on premises); relative to property located at **138-142 Arnold Street**, Assessors' map 45 lot 212 in a Mixed Use Business [MUB] zoned district. The petitioner is proposing to operate a grocery store, with no parking per plans submitted.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the Conditions as described in the attached decision. (See Attachment)

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 operate a grocery store, with no parking per plans submitted, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability), 3130 (table of parking loading requirements-Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building & construction contractors, equipment & supplies on premises); relative to property located at **138-142 Arnold Street**, Assessors' map 45 lot 212 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 Red House, dated January 16, 2020, date stamped January 17, 2020 by City Clerk's Office.
 - A-0.10 Site Plan – Existing & Proposed Conditions
 - A-0.11 Map
 - A-0.12 Existing Photos

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office January 17, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 27, 2020.
- Staff Comments to the ZBA from the Office of the City Planner, dated February 3, 2020.

2.) DISCUSSION

On the evening of the March 19, 2020 meeting, board members: Leo Schick, Stephen Brown, Robert Schilling, Celeste Paleologos and Allen Decker 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 regards to Case #4410 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 January 27, 2020; staff comments from the Department of City Planning, dated February 3, 2020; Letter in opposition by Mary McMahon, dated February 11, 2020; Letter revoking the previous opposition letter and now in favor of the proposal by Mary McMahon, dated March 2, 2020; Letter in support by Ward 5, Councilor Lima, dated April 23, 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: Ian Shields, proprietor of Coastal Provisions (138-142 Arnold Street, New Bedford) presented the case at the hearing.

Before Mr. Shields began his presentation. Ward 5, Councilor Scott Lima, (City Hall, New Bedford) requested permission from the Board to speak out of order to speak in favor of the petition, due to a conflicting City Council meeting. Councilor Lima stated he met with the petitioner and discussed the proposal. Councilor Lima expressed his familiarity of the neighborhood and noted the proposal would create a positive impact.

Mr. Shields began his presentation by giving a brief background of the subject property. Mr. Shields stated he purchased the building (138-142 Arnold Street) approximately 5 years ago. The store front was vacant at the time of purchase. The building currently hosts two commercial units on the first level, Raquel's Beauty Salon and a 1,062± SF vacant commercial unit. The upper level hosts three (3) one-bedroom residential units.

The proposal is to operate a grocery store, with no parking per plans filed. The proposed grocery store "Coastal Provisions" would occupy the vacant commercial unit located west of Raquel's Beauty Salon.

Mr. Shields continued his presentation noting his education and work experience in a grocery store setting. Mr. Shields entailed his vision of an upscale grocery and provisions store with affordable pricing that would cater to the needs of the neighborhood.

The application states the proposal would offer the basic necessities, unusual gourmet food items, fine wines and craft beers. The retail store front is approximately 1,100± SF composed of two rooms would house shelving and displays of staple dry goods, provisions, wine and beer. Refrigeration units would house other beverages, cheeses and meats. Flowers, gifts and home items will also be offered.

Mr. Shields proceeded with his presentation stating the relief he is seeking is for a variance for parking and loading.

The proposed use requires (21) twenty-one off-street parking spaces. The petitioner proposes no on-site parking. The operation of a grocery store with no parking would not comply with parking and loading requirements, therefore, requires a Variance.

Mr. Shields concluded the presentation briefly summarizing the criteria necessary to grant the variance; noting the shape of the lot and configuration of the structure. Mr. Shields explains the subject structure was built in 1927, and the building occupies the entire footprint of the lot, hindering the availability to provide off street parking. Additionally, resulting in more foot traffic in the neighborhood historically. Mr. Shields also noted the substantial hardship without the relief the existing building would have to be altered or demolished to create on-site parking. Lastly, Mr. Shields states the proposal would not negatively impact the neighborhood. The proposal would not include the sale of tobacco or lottery products and the majority of patrons would be local neighbors walking to the store; anticipating occasional 1-2 vehicles of customers shopping at any given time.

Chairperson Schick stated he is familiar with the surrounding neighborhood, recounting previous and current establishments in the surrounding neighborhood with high traffic foot patrons. Mr. Schick

affirmed he is in accordance with the petitioners' statement that the majority of patrons would be walking patrons, therefore not negatively impacting parking.

In a response from an inquiry from Board member Mrs. Paleologos related to the upper level of the building, Mr. Shields replied there are (3) three exiting one bedroom residential units.

Upon inquiries from Board member Decker related to alcohol sales, deliveries and competing with existing convenience stores in the surrounding neighborhood, Mr. Shields replied he is trying to secure a liquor license to offer beer and wine; and deliveries would be approximately scheduled between the hours of 9am-4pm. Additionally, Mr. Shields also noted he is trying to reach a different market in the area, something similar to "Farm Coast Market" in Padanaram, Dartmouth. Board member Decker stated he is in full support of the project.

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. 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.

With no further questions, Chairperson Schick closed the hearing.

The board had a brief discussion. Board member Brown stated he concurred with Board members Schick and Decker in favor of the project. Stating the proposal would be a positive impact to the surrounding neighborhood.

With no further questions. 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 due to the existing building size, configuration, location and coverage there does not allow for any off-street parking on the parcel.

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, the petitioner in order to be in compliance with the current parking requirements, the structure would require a substantial modification.

- 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 3100 (parking and loading), 3110 (applicability), 3130 (table of parking loading requirements-Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building & construction contractors, equipment & supplies on premises); relative to property located at **138-142 Arnold Street**, Assessors' map 45 lot 212 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 Mr. Brown and seconded by Mr. Schilling as follows:

In regard to Case #4410: **Ian Shields**, (PO Box 51204, Boston, MA, 02205); relative to property located at **138-142 Arnold Street**, Assessors' map 45 lot 212 in a Mixed Use Business [MUB] zoned district. The petitioner is proposing to operate a grocery store, with no parking per plans submitted, which requires a **Variance** under Chapter 9 Comprehensive Zoning Sections 3100 (parking and loading), 3110 (applicability), 3130 (table of parking loading requirements-Appendix C, business engaged in retail sale of goods and services, not elsewhere enumerated herein, business engaged in the warehousing and distribution of goods and materials including building & construction contractors, equipment & supplies on premises). 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.

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 S. Brown, R. Schilling, C. Paleologos, A. Decker and L. Schick voting in the affirmative; with no members voting in the negative; and no one abstaining. (Tally 5-0-0).

Filed with the City Clerk:



May 4, 2020

Stephen Brown
Clerk of the Zoning Board of Appeals

Date