



ZONING BOARD of APPEALS

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CLERK'S OFFICE
Registry of Deeds/City Clerk Use Only:
NEW BEDFORD, MA

2020 MAY -4 P 12: 24

CITY CLERK

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4411			
Request Type:	Administrative Appeal			
Address:	906 Hathaway Road			
Zoning:	Mixed Use Business (MUB) Zoned District			
Recorded Owner:	NB Practice Realty, LLC			
Owner Address:	906 Hathaway Road, New Bedford, MA 02740			
Applicant:	Marc R. Deshaies, Esq.			
Applicant Address:	115 Orchard Street, New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
February 4, 2020	April 23, 2020	April 23, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
120	16 & 130	12584	262	-

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 **906 Hathaway Road**, Assessors' map 120 lot 16 & 130 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to replace the existing non-illuminated ground mounted monument sign with a double-sided LED illuminated sign of greater dimensions per plans filed.

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 petitioners are proposing to replace the existing non-illuminated ground mounted monument sign with a double-sided LED illuminated sign of greater dimensions per plans filed, which requires 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 906 Hathaway Road, Assessors' map 120 lot 16 & 130 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 Fast Signs, dated December 9, 2019, date stamped received by City Clerk's Office February 4, 2020, including:
 - Site Plan – Existing Conditions
 - Site Plan – Proposed Conditions/Sign
 - Monument Sign
 - Sign Elevations

Other Documents & Supporting Material

- Completed Petition for an Administrative Appeal Form, stamped received by City Clerk's Office February 4, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated February 24, 2020.
- Staff Comments to the ZBA from the Department of City Planning, dated March 6, 2020.

2.) DISCUSSION

On the evening of the April 23, 2020 meeting, board members: Leo Schick, Stephen Brown, 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.

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 February 24, 2020; staff comments from the Department of City Planning, dated March 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: Marc R. Deshaies, Esq. (115 Orchard Street, New Bedford) presented the case at the hearing representing the proprietor, NB Practice Realty, LLC (906 Hathaway Road, New Bedford). Mr. Deshaies began his presentation by stating the applicant is seeking relief for an Administrative Appeal to replace the existing non illuminated ground mounted monument style sign with a double-sided LED illuminated sign of greater dimensions per plans filed.

The petitioner has filed an Administrative Appeal of the Determination of the 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.

Mr. Deshaies gave a brief background of the subject property stating the site was previously a Dental Practice owned by Dr. Bonnie Brower, DDS. Mr. Deshaies stated the property was purchased in 2018, by NB Practice Realty, LLC and currently hosts a Dental Practice known as Clear Coast Dental, managed by Dr. William Herr, DDS and Dr. Andrew Luccio, DMD.

Mr. Deshaies continued his presentation noting with the new ownership, interior and exterior renovations had occurred at the subject site located at 906 Hathaway Road. In collaboration with the renovations, the petitioner contracted FastSigns, (70 Quincy Ave., Quincy MA) to mount a new ground sign with an LED component.

The new proposed double-sided LED illuminated monument sign would be relocated slightly northwest, 15±' along the site frontage on Hathaway Road. The overall proposed sign area is 27.37 SF, with an overall height of 6.58' and width of 4.16'. The electronic message center (EMC) as proposed will be 6.19 SF. The height from the ground to the base of the sign (electronic message board) will be 2' with an overall height of 6.58' from grade to the top of the sign.

There is an existing 52.5"x 62" (22.60 SF) non illuminated monument sign in the front elevation of the property located northwest.

The proposal also required New Ground Sign Site Plan Review from the Planning Board. (Case 20-10) The proposal was granted, with conditions on March 11, 2020.

Mr. Deshaies concluded his presentation by briefly summarizing the Planning Board hearing, including sign details, sign messages, hours of sign illumination, and concerns from an abutting neighbor on the Dartmouth line.

Dr. William Herr, DDS (906 Hathaway Road) proceeded with the presentation by explaining the purpose and necessity of the new proposed double-sided LED illuminated sign. Dr. Herr states the sign would offer subtle messages that could be easily manipulated without substantial alterations. The messages would read hours of operation, accepting new patients and public service announcements.

Dr. Herr also mentions the frequency of the LED message board is not likely to change throughout the day, the messages would be relatively static. Dr. Herr concluded his presentation by stating the proposed new sign would align with a modern high tech dental practice.

Following the petitioner's testimony, Chairperson Schick invited to the podium anyone wishing to speak in favor 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 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, Mr. Brown states that the proposal prepared by Attorney Deshaies was easily to follow and very informative package. Mr. Brown expresses he is in favor of the petition. Board Member Schilling also expressed his approval of the proposal.

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

3.) FINDINGS

Having reviewed this petition in accordance with the City of New Bedford Code of Ordinances under Chapter 9 Sections 5220 and 5223, and under the provisions of M.G.L.A. c. 40A, §§ 7, 8 and 15 the board found the following facts:

- The proposed LED message board would not materially affect the surrounding neighborhood.
- The proposed LED message board would not contribute to light pollution.

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), 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 **906 Hathaway Road**, Assessors' map 120 lot 16 & 130 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to replace the existing non-illuminated ground mounted monument sign with a double-sided LED illuminated sign of greater dimensions per plans filed.

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 Administrative Appeal.

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

In regard to Case #4411 for: **NB Practice Realty, LLC**, (906 Hathaway Road, New Bedford, MA 02740) and **Marc R. Deshaies, Esq.**, (115 Orchard Street, New Bedford, MA 02740); relative to property located at **906 Hathaway Road**, Assessors' map 120 lot 16& 130 in a Mixed Use Business [MUB] zoned district. The petitioners are proposing to replace the existing non-illuminated ground mounted monument sign with a double-sided LED illuminated sign of greater dimensions per plans filed, which requires 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). 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 board finds in regard to the criteria as follows:

This determination included consideration of each of the following:

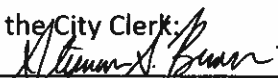
In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning 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 Administrative Appeal 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 Administrative Appeal, the vote carried 4-0-0 with members S. Brown, C. Paleologos, R. Schilling and L. Schick, voting in the affirmative; with no members voting in the negative or abstaining. (Tally 4-0-0).

Filed with the City Clerk:



Stephen Brown

Clerk of the Zoning Board of Appeals

May 4, 2020

Date