



## City of New Bedford Department of City Planning

133 William Street • Room 303 • New Bedford, Massachusetts 02740  
Telephone: (508) 979.1488 • Facsimile: (508) 979.1576

MAYOR  
JON MITCHELL  
PLANNING DIRECTOR  
TABITHA HARKIN

### ZONING BOARD OF APPEALS

ZONING BOARD OF APPEALS  
VIRTUAL MEETING  
Thursday, May 28, 2020

#### MINUTES

**PRESENT:** Leo Schick, (*Chairperson*)  
Stephen Brown, (*Clerk*)  
Allen Decker  
Robert Schilling  
Celeste Paleologos

**ABSENT:** None

**STAFF:** Angela Goncalves, *Assistant Project Manager*  
Danny Romanowicz, *Commissioner of Buildings and Inspectional Services*

Petitioners were then confirmed as present by Ms. Goncalves, who provided participants with remote meeting guidelines and protocols.

#### **1. CALL TO ORDER**

Chairperson Schick called the meeting of the City of New Bedford Zoning Board to order at 6:09 p.m. Chairperson Schick then explained the meeting process and protocols.

#### **2. PUBLIC HEARINGS:**

##### **ITEM 1 – CASE #4415/#4417**

A motion was made (SB) and seconded (RS) to hold the public hearing on Cases #4415/#4417 concurrently, as they regard the same project.

Motion passed unopposed.

A motion was made (SB) and seconded (CP) to receive and place on file the communication from the Commissioner of Buildings and Inspectional Services dated 4/1/20 and 5/4/20; staff comments from the Office of City Planning dated 5/8/20; the appeal package as submitted; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by this board

*Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>*

to be the lots affected; and the action of the clerk in giving notice of the hearing as stated be and hereby is ratified.

Motion passed unopposed.

The public hearing was open.

Att. Brian Grossman, on behalf of Yearly Grind II Realty, LLC, provided an overview of the project, addressing both the special permit and the appeal for the signage. He provided property and location details, noting a current building on the site which will be removed and replaced. Mr. Grossman discussed the lot boundary along with the mixed use zoning district. He then discussed the use, as well as the other area businesses. He noted proposed fencing, screening, curb cut elimination, deliveries issues, and addressed the necessary criteria as well.

Att. Grossman discussed the zoning issues, mixed use vs nearby residential, and buffering. He noted the owners' interest in investing in this dilapidated and unused property as an investment in New Bedford, as well as creating new jobs.

Jim Bernardino, Bohler Engineering, further discussed project details, including circulation, entrance/egress and dedicated lanes. He further discussed the proposed Dunkin Restaurant with a drive-thru project detail. Mr. Bernardino also addressed parcel boundary lines. He discussed the menu board/ordering speakers and distances to the property line.

Att. Grossman further addressed the noise data. He invited questions.

In response to Chairperson Schick Att. Grossman noted hours of operation as 4:00 a.m. – 9:00 p.m.

Board Member Paleologos confirmed the applicant's 28 parking spaces, with discussion on interior seating capacity.

Board Member Decker inquired as to the results of site plan review with the Planning Board. Att. Grossman noted they are scheduled to appear before them on June 10, 2020. Board Member Decker then discussed the ordering speaker/menu board use in a residential neighborhood with such hours of operation.

Tom Dailey stated that within reason they are open to shutting off speakers at certain hours but rely on drive-thru business.

There was no response to Chairperson Schick's invitation to speak or be recorded in favor.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Att. Nicholas Gomes on behalf of Peter Gomes, 254 Maryland Street, stated his client is a long-standing resident, not in total opposition. He requests, with substantial opposition of the neighborhood, that if the project goes forward he would like his concerns addressed with plan changes; noting the number of Dunkin drive-thru in the city, the fence layout/height, noise/lighting buffers, signage, deliveries, traffic, et cetera. He displayed an item showing previous use of the property and its boundaries. He again discussed approval criteria.

*Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>*

Board Member Decker noted issues raised, such as the fence/screening height, that may not be within the board's purview. The board consulted Commissioner Romanowicz on the issues. Att. Gomes further discussed the issue. Commissioner Romanowicz clarified the jurisdiction of Att. Gomes' most current remarks as the Planning Board review.

Jim Bernardino was denied further comment.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Laurie Sousa, 260 Jarry St. expressed lighting concerns, traffic, and drive-thru ingress/egress, noise and hours of operation.

Board Member Decker discussed previous traffic issues with Ms. Sousa.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Ms. Trembly, Ohio St., a 50 year resident, expressed concern over traffic accidents.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Dolores Couto, 261 Maryland St., abutter, expressed concerns about noise and traffic, as well as car lights intruding, expanding the fencing area.

Speaking in opposition, Jonathan St. Clair, Maryland St., stated he is against the proposal. He stated concerns about noise and traffic, including school foot traffic.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Peter Gomes represented by Att. Gomes, stated there should be no impact to this area, such as electric light boards.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Ward 1 Councilor Brad Markey reiterated the concerns and issues expressed, including traffic and noise.

In response to Chairperson Schick's invitation to speak or be recorded in opposition Laurie Sousa added concerns.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Constance Preston, 260 and 250 Jarry St., long time property owner, noted a neighborhood petition due to traffic, noise, and congestion concerns, confirmed by Ms. Sousa.

Ms. Goncalves gave instruction on forwarding the petition.

In response to Chairperson Schick's invitation to speak or be recorded in opposition, Peter Gomes 254 Maryland St., expressed confusion on the process due to the Corona Virus.

By way of rebuttal there were comments on the company and franchisees. Petitioner's representative noted the proposed community investment. He addressed traffic, speaker noise, signage, the alleyway, and fencing/screening. Jim Bernardino addressed rear property enhancements, including a masonry wall versus arborvitaes/evergreens, headlight impacts.

*Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>*

Att. Gomes requested the decision be held off until the petition is filed.

The public hearing was closed.

After extensive board discussion related to opposition concerns and comments, including the submitted traffic report, the petition submission, a motion was made (AD) and seconded (RS) to accept this evening's submitted petition to be placed on file and in record.

Motion passed 4-1

After further discussion on the motion and voting, along with the petition submission, a motion was made (SB) and seconded (CP) to grant the special permit under provisions of the City Code of New Bedford relative to property located at 888 Ashley Blvd. Assessors Map 127C, Lot 134 in a mixed use business zoned district, to allow the petitioner to operate a Dunkin Restaurant with a drive-thru per plans filled, which requires a special permit under Chapter 9, Comprehensive Zoning Sections 2200, 2210, 2230 – Appendix A, 2300 and 5300-5380 and 5360 – 5390. In accordance with the City of New Bedford Code of Ordinances Chapter 9, Section 5320, the benefit to the city and the neighborhood outweighs the adverse effect of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. Including consideration of the following: social, economic and community needs which are served by the proposal, traffic flow and safety, including parking and loading, adequacy of utilities and other public services, neighborhood character and social structure, and impact on the natural environment.

The general conditions are as follows: 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 certification from the City Clerk's Office be recorded at the Registry of Deeds; and that the rights authorized by the granting of the special permit 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 they will lapse.

Brian Grossman raised a point of order on the motion, addressing recipients.

**ROLL CALL VOTE:**

Board Member Schick - No

Board Member Paleologos - Yes

Board Member Brown - Yes

Board Member Schilling - No

Board Member Decker - No

Motion failed 2-3

A motion was made (SB) and seconded (CP) to grant Administrative Appeal #4417, under provisions of the City Code of New Bedford relative to property located at 888 Ashley Blvd., Assessors Map 127C, Lot 134 in a mixed use business zoned district, to grant the petitioner's installation of electronic message menu board per plans filed. Motion to approve the administrative appeal and that the appeal be granted per administrative appeals under provisions Chapter 9, Comprehensive Zoning Sections 3200, 3201, 3220, 3222, 5220, 5223. Having reviewed this petition in light of the City of New Bedford's Code of Ordinances under Chapter 9, Sections 5220 and 5223, M.G. L. 40A, §7, 8 and 15, the board finds the following facts:

*Note: These are minutes only. A complete copy of the meeting audio is available on the City of New Bedford website at: <http://www.newbedford-ma.gov/cable-access/government-access-channel-18/program-schedule/>*

- The proposed placement and screening for the electronic menu message board was found to be insufficient. The signage was proposed to be situated in a manner that the visual/electronic components would not be directed towards the street right of way.
- Due to the high volume of opposition for the sign and site conditions from the abutters, the appeal was denied.

**ROLL CALL VOTE:**

Board Member Schick - No  
Board Member Brown - Yes  
Board Member Decker - No

Board Member Paleologos - Yes  
Board Member Schilling - No

Motion failed 2-3

**ITEM 2 CASE #4394**

A motion was made (SB) and seconded (RS) to receive and place on file the communication letter requesting a continuance to June 18, 2020 by Att. Russell Whynacht dated 4/28/20. Board Member Brown read the reasons into the record.

Motion passed unopposed.

**ITEM 3 CASE #4412**

A motion was made (SB) and seconded (RS) to receive and place on file the communication letter requesting a continuance to June 18, 2020 by Steve Gioiosia dated 5/8/20. Board Member Brown read the reasons into the record.

Motion passed unopposed.

**3. ACCEPTANCE OF MINUTES:**

A motion was made (AD) and seconded (RS) to approve the minutes of the 4/23/20 meeting, consisting of Cases 4407, 4408, 4409, 4410, 4411 and 4413

Motion passed unopposed.

**4. ADJOURNMENT**

The meeting was adjourned at 7:51p.m.

**NEXT MEETING IS SCHEDULED FOR JUNE 18, 2020.**



Stephen Brown, Clerk

June 25, 2020

Date