



ZONING BOARD of APPEALS

City Hall, Room 303
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New Bedford, MA 02740
(508) 979-1488
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CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

Registry of Deeds/City Clerk Use Only:

NOTICE OF DECISION

Case Number:	#4431				
Request Type:	Special Permit				
Address:	115,117,121,127-129 Union Street & 7 North Second Street				
Zoning:	Mixed Use Business (MUB) & (DBOD) Zoned District				
Recorded Owner:	117 Union Street, LLC				
Owner Address:	128 Union Street, Suite 400, New Bedford, MA 02740				
Applicant:	117 Union Street, LLC				
Applicant Address:	128 Union Street, Suite 400, New Bedford, MA 02740				
Application Submittal Date		Public Hearing Date		Decision Date	
October 21, 2020		November 12, 2020		November 12, 2020	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number	
53	40,41,215,216,146	12830	27		

A Special Permit under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulation-Appendix A, Commercial: #17 live/work), 2400 (Nonconforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of use), 4500-4572 (Downtown Business Overlay District (DBOD) and 5300-5390 (special permit); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40,41,215,216 & 146 in a Mixed Used Business (MUB) and (DBOD) zoned district. The petitioner proposes to amend special permit #4372 to allow for a total of 43 residential units on the upper level floors along with a combination of retail and three work/live units on the ground level floor 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, November 19, 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.

November 19, 2020

Date



Stephen Brown, Clerk of the Zoning Board of Appeals

APPLICATION SUMMARY

The petitioner proposes to amend special permit #4372 to allow for a total of 43 residential units on the upper level floors along with a combination of retail and three work/live units on the ground level floor per plans filed, which requires a Special Permit under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulation-Appendix A, Commercial: #17 live/work), 2400 (Nonconforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of use), 4500-4572 (Downtown Business Overlay District (DBOD) and 5300-5390 (special permit); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40,41,215,216 & 146 in a Mixed Used Business (MUB) and (DBOD) zoned district.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, drawn by Stantec Architecture and Engineering P.C., plans dated November 8, 2019, date stamped October 21, 2020 by City Clerk's Office.
 - AS-100 Site Plan
 - A-100 Basement
 - A-101 Level 1
 - A-102 Level 2
 - A-103 Level 3
 - A-104 Level 4
 - A-105 Level 5
 - A-106 Roof Plan

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office October 21, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 2, 2020.
- Staff Comments to the ZBA from the Office of the City Planner, dated November 3, 2020.

2.) DISCUSSION

On the evening of the November 12, 2020 meeting, board members: Celeste Paleologos, Stephen Brown, Allen Decker and Leo Choquette, Jr. were present for the virtual 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 #4431 Clerk Brown made a motion, seconded by Mr. Decker to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D.

Romanowicz, dated November 2, 2020; staff comments from the Department of City Planning, dated November 3, 2020; Letter in support of the proposal from Ward 6, Councilor Joseph Lopes, dated October 26, 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.

Acting Chairperson Paleologos then declared the hearing open.

The petitioner: Christopher Saunders, Esquire, (700 Pleasant Street, New Bedford) presented the case at the hearing representing the proprietor, 117 Union Street, LLC (128 Union Street, Suite 400, New Bedford). Attorney Saunders began the presentation by stating the applicant is seeking a Special Permit to allow for residential dwellings on upper level floors and permission to change non-conforming uses and structures.

The petitioner proposes to amend special permit #4372 to allow for a total of 43 residential units on the upper level floors along with a combination of retail and (3) three work/live units on the ground level floor per plans filed.

The applicant proposes demolition of all buildings except for the three-story portion of the 127-129 Union Street property (known as the Moby Dick Building) in order to develop the site. The proposed development includes the new construction of a 5 story building along with the rehabilitation and conversion of the adjacent 3 story, historically significant building (Moby Dick) into a mixed use commercial and residential development.

Attorney Saunders continued the presentation providing a brief background of the original proposal (Case #4372 Special Permit). Mr. Saunders stated the majority of Board Members present tonight; were also present for the original proposal heard in 2019 and for the most recent hearing to allow for an Extension of Time Limits for Case #4372.

On April 25, 2019, The City of New Bedford Zoning Board of Appeals granted the applicant a Special Permit Case #4372 to construct 42 residential dwelling units and 3,000 SF of ground level retail space at the premises.

On September 17, 2020 the applicant was granted a one year extension of Special Permit #4372 by the City of New Bedford Zoning Board of Appeals.

Attorney Saunders stated phase one of the original proposal consisted of 42 dwellings on upper level floors with one live/workspace on the first floor. Mr. Saunders noted the thought process of phase two (Moby Dick Building) was to host eight residential dwelling units on upper level floors. Phase two never came to fruition.

Attorney Saunders proceeded with the presentation stating due to the COVID-19 Crisis, plans were affected, and the proposal was redesigned to increase the size of unit dwellings and decrease the number of units originally proposed.

Previously, in total the project proposed to create 51 residential units, 2 commercial units, with one on-site handicapped parking space.

The current project, in total proposes to create 46 residential units, 2 commercial/retail units, office space (for the leasing office) with one on-site handicapped parking space.

Clerk Brown briefly interjected stating the new proposal is to modify a special permit that was previously granted by the Zoning Board of Appeals and that the modification will be less onerous on the resources of the city; therefore, creating a more benign proposal. Clerk Brown explained to the board in his personal opinion he views the new proposal as a non-controversial motion.

Attorney Saunders continued with the presentation concurring with Clerk Brown's statement. Attorney Saunders stated the new proposal would downsize density, by eliminating the number of studio apartments originally proposed and increasing the number of one bedroom apartments.

Additionally, Attorney Saunders noted a Special Permit for a parking reduction was granted by the Planning Board on November 4, 2020.

The project also required a modification of a previously approved Special Permit (Case #19-07) for a parking reduction from the Planning Board. The Special Permit was granted by the Planning Board on November 4, 2020 via Zoom. The project is also required to seek a revised approval from the Historical Commission.

Mr. Saunders concluded the presentation by asking the board to vote favorably to allow a blighted property to be utilized and provide valuable housing for the people of New Bedford. Attorney Saunders then welcomed questions from the board.

Following the petitioner's testimony, Acting Chairperson Paleologos invited anyone wishing to speak in favor or be recorded in favor of the petition of the application. There was no response to Acting Chairperson Paleologos invitation to speak or be recorded in favor.

Acting Chairperson Paleologos invited anyone wishing to speak in opposition of the petition or be recorded in opposition of the petition of the application. There was no response to Acting Chairperson Paleologos invitation to speak or be recorded in opposition.

Acting Chairperson Paleologos asked the Board if there were any further questions. With no further questions, Acting Chairperson Paleologos closed the hearing.

With no further questions. The board indicated their readiness to vote.

3.) FINDINGS

The Board found that in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 5320, the benefit to the City and the neighborhood outweighs the adverse effects 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, or 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 structures; and impacts on the natural environment.

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 2200 (use regulations), 2210 (general), 2230 (table of use regulation-Appendix A, Commercial: #17 live/work), 2400 (Nonconforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of use), 4500-4572 (Downtown Business Overlay District (DBOD) and 5300-5390 (special permit); relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40,41,215,216 & 146 in a Mixed Used Business (MUB) and (DBOD) zoned district. The petitioner proposes to amend special permit #4372 to allow for a total of 43 residential units on the upper level floors along with a combination of retail and three work/live units on the ground level floor 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 special permit.

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

In regard to Case #4431 for **117 Union Street, LLC** (128 Union Street, Suite 400, New Bedford, MA 02740) relative to property located at **115, 117, 121, 127-129 Union Street & 7 North Second Street**, Assessors' map 53 lot 40,41,215,216 & 146 in a Mixed Used Business (MUB) and (DBOD) zoned district. The petitioner proposes to amend special permit #4372 to allow for a total of 43 residential units on the upper level floors along with a combination of retail and three work/live units on the ground level floor per plans filed, which requires a **Special Permit** under Chapter 9 Comprehensive Zoning Sections 2200 (use regulations), 2210 (general), 2230 (table of use regulation-Appendix A, Commercial: #17 live/work), 2400 (Nonconforming uses and structures), 2410 (applicability), 2420 (non-conforming uses), 2421 (change or substantial extension of use), 4500-4572 (Downtown Business Overlay District (DBOD) and 5300-5390 (special permit). 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:

The board finds that in respect to these sections 5300-5330 and 5360-5390 relative to the granting of Special Permits, that the benefit to the city and the neighborhood outweighs the adverse effects of the

proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination included consideration of each of the following:

- *Social, economic, or 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 structures;*
- *Impacts on the natural environment;*
- *Potential fiscal impact, including impact on City services, tax base, and employment*

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 a revised approval from the Historic Commission and a modification of a previous Special Permit by the Planning Board. Any conditions imposed by the Historic Commission and the Planning Board decisions shall also be conditions of this special permit.**

General 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 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 the approval will lapse.

On a motion by S. Brown seconded by A. Decker to grant the requested Special Permit, the vote carried 4-0-0 with members S. Brown, C. Paleologos, A. Decker and L. Choquette, Jr. voting in the affirmative; with no members voting in the negative; and no one abstaining. (Tally 4-0-0).

Filed with the City Clerk:



Stephen Brown
Clerk of the Zoning Board of Appeals

November 19, 2020

Date