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ZONING BOARD OF APPEALS

STAFF REPORT

ZONING BOARD OF APPEALS MEETING

MEETING DATE: September 19, 2019

STAFF REPORT: September 9, 2019

Case #4392: Variance

Case #4393: Special Permit

40-42 Bonney Street
Map: 36, Lot: 111

Owner: The Bonney Street Nominee Trust
C/O Karen Kalife
40-42 Bonney Street
New Bedford, MA 02740

Applicant: The Bonney Street Nominee Trust
C/O Karen Kalife
40-42 Bonney Street
New Bedford, MA 02740



Overview of Request: The petitioner has submitted applications for both a **Variance** and for a **Special Permit** relative to the subject property located within a Residential B [RB] zoning district. Notice is given of a public hearing on the petition of: **The Bonney Street Nominee Trust, C/O Karen Kalife** (15 Brigham Street, 3rd Floor, New Bedford, MA 02740) for a **Variance** under Chapter 9, Comprehensive Zoning Sections 3000 (general regulation), 3100 (parking and loading), 3110 (applicability) and 3130 (table of parking loading requirements-Appendix C, two family dwelling) and for a **Special Permit** under Chapter 9, Comprehensive Zoning Sections 2400 (non-conforming uses and structures), 2410 (applicability), 2430-2432 (nonconforming structures, other than single and two family structure) and 5300-5330 & 5360-5390 (special permit); relative to property located at **40-42 Bonney Street**, Assessors' map 36 lot 111 in a Residential B [RB] zoned district. The petitioner is proposing to convert the existing building from a place of worship to a two-family residential dwelling with no parking per plans filed.

NOTE: The proposal to convert the subject property from a place of worship to a two-family residential dwelling with no parking was granted by the Zoning Board of Appeals on October 12, 2017 (Case #4292 & 4293). The prior decisions were never recorded at the Registry of Deeds. The allotted time frame has lapsed, therefore requiring a new Variance and Special Permit from the Zoning Board of Appeals.

The zoning ordinance requires four (4) off-street parking spaces for the proposed two-family dwelling. The proposal has zero off-street parking spaces, requiring a variance from the requirement.

As with all **Variances**, the board must find:

- a) There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located.
- b) If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner.
- c) The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good.

Under the zoning ordinance a change to an existing nonconforming structure for a substantially different purpose requires a special permit from the Zoning Board of Appeals.

As with all **Special Permits**, the ZBA must determine that the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use. To this end the board shall consider each of the following in its determination:

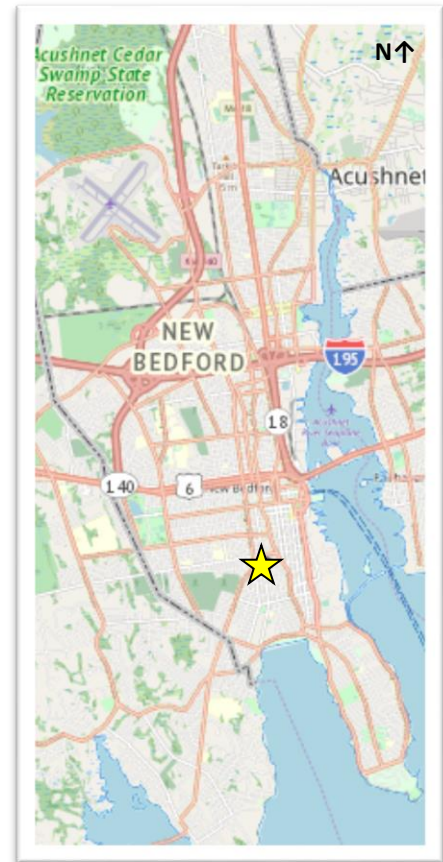
- a.) social, economic, or community needs which are served by the proposal;
- b.) traffic flow and safety, including parking and loading;
- c.) adequacy of utilities and other public services;
- d.) neighborhood character and social structures;
- e.) impacts on the natural environment; and potential fiscal impact, including impact on city services, tax base, and employment.

Additionally, the city ordinance for nonconforming structures (Chapter 9 Comprehensive Zoning Section 2430) sets forth specific regulations for Special Permits. Those regulations include:

- f.) The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

Existing Conditions: The existing 4,021 SF corner lot has 50' of frontage on Bonney Street and 80' of frontage on the adjacent Sherman Street. The property has a 40'x 56' two story structure situated approximately in the center of the lot. A front porch serves two doors located on the front of the building and an enclosed staircase serves a rear entrance. The south side yard is a 5'± wide grassy area running the length of the building. The front yard and north side yard is paved asphalt. There are two curb cuts in front of the building on Bonney Street. Bonney Street is a one-way northbound. Sherman Street is a two-way street.

The building was most recently used as a place of worship by The Universal Church. The interior of the building has an area of worship on the first floor with a choir area above the western end of the building and a bathroom. The second-floor hosts three offices. The basement is finished with three additional offices, storage spaces, a bathroom and an open area with a kitchen.



The property is located southwest of downtown in a neighborhood two blocks south of Allen Street bounded by Dartmouth Street to the west and County street to the east. The neighborhood is comprised of a range of housing types including single family, two-, three-, and multi-unit dwellings. Directly abutting this property to the south are two two-family dwellings and to the east (rear) is a single-family dwelling. Directly across Sherman Street are two single-family dwellings. Directly across Bonney Street are two single family dwellings and a multi-unit dwelling.



Proposal: The petitioner proposes to convert the building from a place of worship to a two-family residential dwelling. The two-family dwelling will be divided into two separate units; one unit occupying the first-floor level and the second unit on the second-floor level. The apartments will have identical floor plans; each unit will be comprised of an open kitchen area with a dining/living room, den, game room, laundry room, six (6) bedrooms and two bathrooms. The basement will host storage spaces, with an existing kitchen and bathroom. In total the entire structure will have twelve (12) bedrooms, five (5) full-bathrooms, three (3) kitchens and six (6) storage spaces in the basement. No off-street parking spaces are proposed for the site.

For consideration: In considering each of the criteria necessary to grant the **Variance** appeal, staff offers the following for the board's consideration:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located. The petitioner states the existing building size, configuration, location and coverage does not allow for any off-street parking on the parcel. Staff acknowledges the configuration of the existing structure on the parcel leaves no available space on the parcel to provide the required four (4) off-street parking spaces.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner. The petitioner states in order to be in compliance with the current parking requirements, the structure would require a substantial modification. Staff acknowledges a substantial change would need to be made to the building and associated structures in order to comply with the off-street parking requirement.
- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good. The petitioner states that granting relief will not substantially derogate or nullify the intent of the zoning by-law or pose a detriment to the public good. The petitioner notes the relief would provide traffic and parking relief. Staff acknowledges the property is an existing nonconforming property in the neighborhood. The proposed use requires less parking than the most recent use of the premises, which would therefore be a reduction in the parking demand at this site.

For Consideration: In considering each of the criteria necessary to grant the **Special Permit** appeal, staff offers the following for the board's consideration:

- a) **Social, economic or community needs which are served by the proposal.** The petitioner states the proposed use as a two-family dwelling requires less parking than the most recent use as a place of worship thus providing some parking relief to the neighborhood. Additionally, the petitioner notes the proposal creates additional housing in a residentially-zoned neighborhood. Staff acknowledges the proposal could potentially offer additional housing in a residential B (RB) zoned district.
- b) **Traffic flow and safety including parking/unloading.** The application indicates there will be traffic relief to the neighborhood. Staff acknowledges that the proposed use is likely to have less traffic demand than previous uses at this site. Staff notes the property was most recently used as a church, and prior to that use it was a furniture show room/warehouse and at one point, an athletic social club.
- c) **Adequacy of utilities and other public services.** The petitioner states no new utilities are required, the existing utilities will be utilized for the project. Staff notes that there are adequate utility services serving this area.
- d) **Neighborhood character.** The petitioner states the area is a dense residential neighborhood comprised of single, two-family & three-family dwellings. The petitioner notes the proposed use would not be out of character with the neighborhood. Staff acknowledges that the neighborhood is a dense residential area with a mix of housing types.
- e) **Impacts on the natural environment.** The petitioner does not anticipate any increased impacts to the natural environment as there are minimal proposed exterior changes. Staff acknowledges the impacts on the natural environment are neutral as proposed. Staff does not anticipate a substantial change in the existing impacts on the natural environment at this site.
- f) **Potential fiscal impact, etc.** The application indicates no fiscal impact other than the proposed use potentially providing traffic and parking relief. Staff acknowledges the proposal would provide a residential use on a parcel in a residential B zoned district.
- g) **Requirements under section 2430: Existing Nonconforming Structures Other Than Single and Two Family Structures: The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this Section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.** The petitioner states the proposal does not substantially change nor does it create a more detrimental impact than the existing nonconforming structure to the neighborhood. Staff acknowledges the proposal for a residential use at this site brings the property more into conformity within the residentially zoned district.

40-42 Bonney Street Map: 36, Lot: 111

NOTE: Property line is approximate; for discussion purposes, only.

