



ZONING BOARD of APPEALS

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2020 AUG 28 A 8:14

CITY CLERK

CITY OF NEW BEDFORD

JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4412			
Request Type:	Variance			
Address:	1 Pearl Street			
Zoning:	Industrial B (IB) Zoned District			
Recorded Owner:	Ocean View Realty Trust			
Owner Address:	680 Acushnet Avenue, New Bedford, MA 02740			
Applicant:	Pearl Street Solar Roof, LLC, Pearl Street Solar Canopy, LLC			
Applicant Address:	405 Atlantis Road, Suite E115, Cape Canaveral, FL 32920			
Application Submittal Date	Public Hearing Date	Decision Date		
February 14, 2020	August 20, 2020	August 20, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
72	172 & 173	4471	328 (Lot 172)	18729 (Lot 173)

A Variance under Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements – Appendix B, front, side & rear yard-Ft.); relative to property located at **1 Pearl Street**, Assessors' map 72 lot 172 & 173 in an Industrial B [IB] zoned district. The petitioners are proposing to install solar panels on the roof of the existing industrial building and construct three free standing carport canopies with solar panels within the southwest front and side setback of the property 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 August 28, 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.

August 27, 2020

Date

Stephen Brown, Clerk of the Zoning Board of Appeals

APPLICATION SUMMARY

The petitioners are proposing to install solar panels on the roof of the existing industrial building and construct three free standing carport canopies with solar panels within the southwest front and side setback of the property per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements – Appendix B, front, side & rear yard-Ft.); relative to property located at **1 Pearl Street**, Assessors' map 72 lot 172 & 173 in an Industrial B [IB] zoned district.

1.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan set, drawn by SITEC, dated January 27, 2020, date stamped February 14, 2020 by City Clerk's Office.
 - Cover Sheet
 - SL-1 Site Layout
 - LM-1 Locus Map
 - SMP-1 Stormwater Management Plan
 - EC-1 Existing Conditions
 - DP-1 Demolition Plan
 - ECP-1 Erosion Control Plan
 - DET-1 Detail Sheet
- Plan set, drawn by BAJA Construction, dated July 26, 2019, date stamped February 14, 2020 by City Clerk's Office.
 - S-1 Cross Section
 - S-2 Framing Plan
- REVISED Plan set, drawn by SITEC, dated July 21, 2020, date stamped July 21, 2020 by City Clerk's Office.
 - Cover Sheet
 - SL-1 Site Layout
 - LM-1 Locus Map
 - SMP-1 Stormwater Management Plan
 - EC-1 Existing Conditions
 - DP-1 Demolition Plan
 - ECP-1 Erosion Control Plan
 - DET-1 Detail Sheet

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office February 14, 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 Office of the City Planner, dated July 31, 2020.

2.) DISCUSSION

On the evening of the August 20, 2020 meeting, board members: Leo Schick, Laura Parrish, Stephen Brown, Robert Schilling and Celeste Paleologos 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 regard to Case #4412 Clerk Brown made a motion, seconded by Mrs. Paleologos 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 July 31, 2020; Correspondence letter in support of the proposal from Ward 6 Councilor & Council President Joseph P. Lopes, dated August 10, 2020; Correspondence letter in support of the proposal from Ward 3 Councilor Hugh C. Dunn, dated August 12, 2020; Correspondence letter in support of the proposal from Councilor at Large Ian Abreu, dated August 18, 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: Steve D. Gioiosa, P.E., SITEC, Inc. (449 Faunce Corner Road, Dartmouth) presented the case at the hearing representing the applicant, Pearl Street Solar Roof, LLC, Pearl Street Solar Canopy, LLC (405 Atlantis Road, Suite E115, Cape Canaveral, FL). Mr. Gioiosa began his presentation by stating the subject proposal is for a solar project located on 1 Pearl Street. Mr. Gioiosa briefly described the site. The subject property is a 211,550' ± SF parcel located on the northwest corner of Pearl Street and Acushnet Avenue, with 469' ± LF of frontage on Pearl Street and a depth of 255' ± SF in an Industrial B (IB) zone. The project site is located on the east side of the Route 18 Downtown Connector, bounded by Pearl Street on the south, Acushnet Avenue on the west, industrial land on the north, and a railroad right of way easterly. There is a 17,549' ± SF one story industrial building on the property. The building currently hosts a tire recycling business, known as NB Tire Reduction Corporation.

The petitioners are proposing to install solar panels on the roof of the existing industrial building and construct three free standing carport canopies with solar panels within the southwest front and side setback of the property per plans filed.

The installation and construction of the solar canopies would not comply with dimensional requirements for front, side and rear yard setbacks, and therefore, requires a variance.

Mr. Gioiosa continued his presentation by referencing the proposed site plan submitted. Mr. Gioiosa stated the applicant is seeking to place solar panels at the subject property to promote green and renewable energy in the downtown area. The proposal will include a two phase solar project to complement the existing tire recycling operation.

Phase 1 of the project will consist of the repair of the roof of the existing industrial building. This repair will include the upgrade of portions of the sub roof system, as needed, followed by a new roof system.

Phase 2 of the project will be the construction of three freestanding canopies mounted solar panel systems. Mr. Gioiosa notes that there is a similar solar structure off Macarthur Drive located in the south end of the city.

Mr. Gioiosa continued his presentation by briefly describing the proposed freestanding solar canopies; the canopies would be elevated and rectangular/square in shape and size. The elevation would be to allow the recycler to utilize the space below the structures; while generating green energy on the site.

Mr. Gioiosa proceeded with the presentation stating the revised site plans are a collaboration of an extensive review process with the Planning Board, the Department of City Planning and the Department of Public Infrastructure. Mr. Gioiosa briefly notes the esthetic revisions are crucial due to the close proximity to the future rail line. The revisions will include; revised setbacks, closing the existing curb cut on Pearl Street and reactivating/reconstructing two existing curb cuts on Acushnet Avenue to city standards, upgraded screening, landscape plantings and vegetation management plans. Mr. Gioiosa notes the Solar Company will be funding all site improvements and not the landowner.

Additionally, Mr. Gioiosa states the revised proposal still requires zoning relief from the Zoning Board of Appeals. The relief needed is on the Pearl Street side with a proposed 14' setback and 21' setback on the Acushnet Avenue side. Mr. Gioiosa notes the east side (future Rail side) is compliant with the minimum setback of 25' and that the use is allowed in an Industrial zoned district.

The proposal required Site Plan Review (Case 20-11) from the Planning Board. The initial hearing was held on July 8, 2020. Per request of the Planning Board the hearing was continued to Wednesday, August 12, 2020 to allow the petitioner to submit final revised plans. The Site Plan Review was granted, with conditions by the Planning Board on August 12, 2020.

Mr. Gioiosa concluded the presentation briefly summarizing the criteria necessary to grant the variance; noting the unique shape and topographic features of the property created by the pedestrian walkway and existing structure; impacting the available maneuvering space on site for the recycling establishment.

Additionally, Mr. Gioiosa notes the setback requirements of the ordinance are intended to provide a buffer from adjacent land uses and to ensure that structures built close to the right-of-way do not obstruct sight lines along the streets. Mr. Gioiosa states the open canopy structures will not obstruct sight lines or impact adjacent structures. The solar canopy system will provide green energy and reduce carbon output to the environment and will allow for the upgrade of the onsite stormwater system, reducing surface runoff into the city stormwater system.

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 or be recorded in opposition of the petition of the application. There was no response to Chairperson Schick's invitation to speak or be recorded in opposition.

Chairperson Schick asked the Board if there were any questions.

Board member Schilling inquired who is behind the solar project, Mr. Gioiosa replied it's a company based out of Florida, their parent company is named Clean Footprint. Mr. Gioiosa states the company is interested in investing in future projects within the city and have the proper funding secured for the current proposal.

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

The board had a brief discussion. Clerk Brown read an excerpt by the Director of City Planning, Tabitha Harkin regarding climate change and renewable energy.

With no further discussion 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 based on the limitations associated with the shape and topography, the only portion of the site that is available for the canopy placement is the southeast corner.

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, it would cause a significant financial hardship, due to the shape and topographic features of the property. Compliance with the zoning setbacks would result in a significant reduction in the solar canopy system, rendering the project economically unfeasible.

- 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 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements – Appendix B, front, side & rear yard-Ft.); relative to property located at **1 Pearl Street**, Assessors' map 72 lot 172 & 173 in an Industrial B [IB] 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 #4412: **Ocean View Realty Trust** (680 Acushnet Avenue, New Bedford, MA 02740), **Pearl Street Solar Roof, LLC** and **Pearl Street Solar Canopy, LLC** (405 Atlantis Road, Suite E115, Cape Canaveral, FL 32920) and **SITEC** (499 Faunce Corner Road, N. Dartmouth, MA 02747); relative to property located at **1 Pearl Street**, Assessors' map 72 lot 172 & 173 in an Industrial B [IB] zoned district. The petitioners are proposing to install solar panels on the roof of the existing industrial building and construct three free standing carport canopies with solar panels within the southwest front and side setback of the property per plans submitted, which requires a **Variance** under Chapter 9 Comprehensive Zoning Sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements – Appendix B, front, side & rear yard-Ft.). 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.

Specific Conditions on this decision shall include:

- This proposal required Site Plan Review by the Planning Board. Any conditions imposed by the Planning Board decisions shall also be conditions of this Variance.

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, L. Parrish, C. Paleologos 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:



August 27, 2020

Stephen Brown
Clerk of the Zoning Board of Appeals

Date