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ZONING BOARD OF APPEALS

STAFF REPORT

ZONING BOARD OF APPEALS MEETING

MEETING DATE: July 16, 2020

STAFF REPORT: July 2, 2020

Case #4420: Special Permit

Case #4421: Variance

335 Rockdale Avenue

Map: 26, Lot: 107

Owner: Antoinette T. Pacheco
Thomas S. Pacheco
335 Rockdale Avenue
New Bedford, MA 02740

Applicant: Antoinette T. Pacheco
Thomas S. Pacheco
335 Rockdale Avenue
New Bedford, MA 02740

123 Rockdale Avenue

Looking northwest from Rockdale Avenue



Overview of Request: The petitioner has submitted applications for both a **Special Permit** and a **Variance** relative to the subject property located within a Residential B [RB] zoning district. Notice is given of a public hearing on the petition of: **Antoinette T. Pacheco & Thomas S. Pacheco**, (335 Rockdale Avenue, New Bedford, MA 02740) for a **Special Permit** under Chapter 9, Comprehensive Zoning Sections 2400 (non-conforming uses and structures), 2410 (applicability), 2420 (nonconforming uses), 2421 (change or substantial extension of use), 2422 (change from one nonconforming use to another, less detrimental, nonconforming use), 2440 (nonconforming single and two-family structures) and 5300-5390 (special permit); and for a **Variance** under Chapter 9, Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking & loading), 3110 (applicability) and 3145 (open air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open air off street parking space shall be located in front of the dwelling or principal building); relative to property located at **335 Rockdale Avenue**, Assessors' map 26 lot 107 in a Residential B [RB] zoned district. The petitioner proposes to convert a commercial space into an in-law apartment per plans filed.

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.

The stipulation to grant a special permit to convert the commercial space into an in-law apartment; would require a variance as the location of the existing driveway would now be in front of a residential dwelling; which is not allowed under the zoning ordinance.

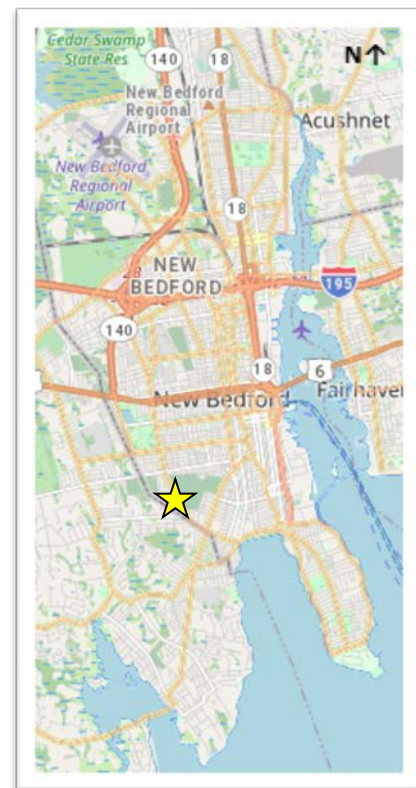
As with all **Variances**, the board must find:

- 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.

Existing Conditions: The 3,536 SF, single story medical office style building is located on Rockdale Avenue within the city's high traffic commercial area of Rockdale Avenue & Dartmouth Street. The site's parcel is a 23,990 SF lot, with 125.91' of frontage on Rockdale Avenue, with a lot depth of 195'. The subject property currently hosts a chiropractic office, known as "Torman Chiropractic", with an existing freestanding ground sign that is set within 2' from both the left side and front yard property lines.

There are approximately 8 off-street parking spaces on the front (south) side of the property, including one handicap space. There is an unmarked parking area in the rear of the building northly. The site has two curb cuts via Rockdale Avenue; one located southeast and the second located southwest. The parcel connects to surrounding business via accessways in the rear of the site located northeast and northwest.

The front southeast elevation serves as the main entrance to the building, with an attached handicap accessible ramp southwest. Additionally, there is a northeast rear elevation. The parcel is predominately impervious, with a small landscaped area with mature hedges in the front of the building facing south. Two city trees line Rockdale Avenue.



The property is located mid-block between Dartmouth and Hemlock Street in a Mixed Use Business zone. The neighborhood is comprised of commercial, retail and fast food restaurant uses. Directly abutting this property to the east is Auto Zone, further east is Domino's Pizza. Directly abutting in the rear northly is a parking area, northeast is the Loyal Order of Moose; a fraternal organization; northwest is Jay's Wine & Spirits and Rent A Center. Further north is Stop & Shop Super Market. Directly abutting west is P & K Nails, further west is Felicio Franco Hair Designer and Bluebird Taxi. Directly across Rockdale Avenue south is Marx Auto Center and a vacant residential property. Further west across Rockdale Avenue is Cumberland Farms Convenience/Gas Station.

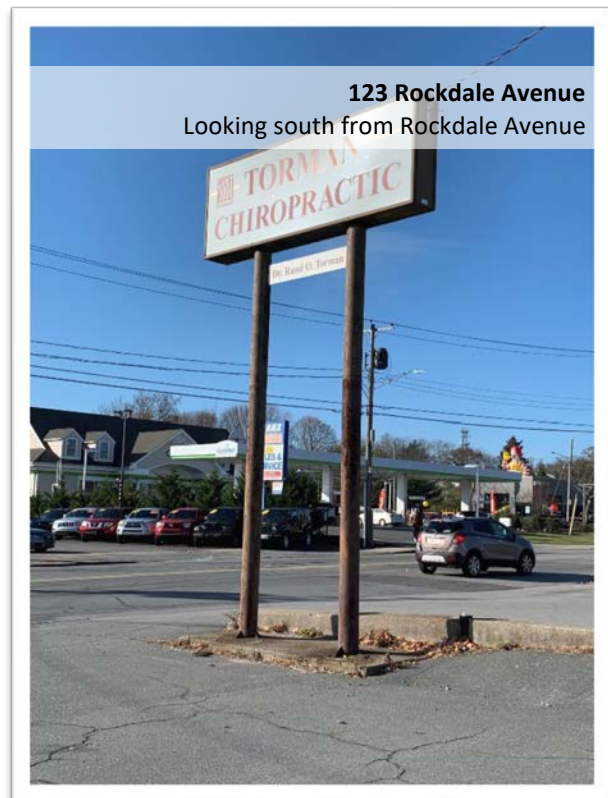
Proposal: The petitioners are proposing to raze the existing building and construct a Taco Bell fast food restaurant per plans filed. Additionally, the petitioners are proposing to install 3 wall signs and a free-standing ground sign which measures 50 SF, 10' to the bottom, 20' to the top of the sign, and is within 6' of the front lot line. The new 2,165 SF building is proposed to the west of the site with a drive thru-lane circling the proposed building. Parking will be provided in the eastern portion of the site. Vehicles will enter the site via a driveway off of Rockdale Avenue and exit via an "exit only" drive to Rockdale Avenue (southwest). The proposal requires Site Plan Review from the Planning Board. **Thus far, no plans have been submitted.** Any conditions imposed by the Planning Board decision shall also be conditions of this special permit.

The applicant proposes to provide twenty-eight (28) off street parking spaces. As shown on plans submitted, the applicant proposes all twenty-eight on the east side of the site. A loading space is not proposed.

The proposed number of customers is 675 per day, with an estimate of 30 employees. The proposed hours of operation are 7am-3am, seven days a week, with weekly deliveries.

The proposed free-standing ground sign is proposed to be located on the front southwest side of the property between the entrance and exit on Rockdale Avenue. The proposed sign has an overall sign area of 50 SF, with an overall height 20', 10' to the bottom, and 1' from the front lot line. Depicted on plans submitted the existing pylon stand would be removed. Additionally, three wall signs are proposed on three sides of the building, the front sign would total 26.2 SF and the side signs (left & right) would total 52.84 SF.

The proposal to construct a Taco Bell Restaurant requires a Special Permit and Variance from the Zoning Board of Appeals: **a special permit for the fast-food restaurant use and the variance to allow for three (3) wall signs and a free standing ground sign** totaling 50 SF with a height of 20' from the ground to the top of the sign and the ground sign located 1' from the front lot line.



NOTE: The proposal requires Site Plan Review from the Planning Board. **Thus far, no plans have been submitted.** Any conditions imposed by the Planning Board decision shall also be conditions of this special permit.

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 if the relief is granted the proposal would provide a significant positive economic benefit in the neighborhood and the city. The application states the proposal would create (30) new jobs; (7) full time and (23) part-time positions. Additionally, the petitioner states the proposed fast food restaurant would produce approximately \$140,000 in new meal tax receipts. Staff acknowledges the proposed use would offer a variety of fast food options on-site, in addition to creating new jobs.
- b) **Traffic flow and safety including parking/unloading.** The petitioner states the new curb cuts would provide safe ingress/egress access with efficient on-site circulation and sufficient parking to accommodate customers. The application states Rockdale Avenue is a busy commercial roadway but has the capacity to handle the traffic demands placed on it by all the surrounding businesses. Additionally, the application notes the additional traffic created by the proposal would be easily absorbed. Staff acknowledges commercial, retail and fast-food restaurant uses present. Additionally, Staff notes the *proposal requires Site Plan Review from the Planning Board*. Thus far no plans have been submitted.
- c) **Adequacy of utilities and other public services.** The petitioner states the necessity for gas, electric, water and sewer. Staff notes that there are adequate utility services serving this area.
- d) **Neighborhood character.** The petitioner states the property is located mid-block between Dartmouth and Hemlock Streets in a commercial area that includes a large Stop & Shop Supermarket, Domino's Pizza, McDonalds & a new Cumberland Farms gas station/convenience store. Staff acknowledges that the surrounding area includes fast food restaurants, retail and commercial store fronts.
- e) **Impacts on the natural environment.** The application states the proposal would slightly increase greenspace and pervious surfaces. The petitioner does not anticipate any increased impacts to the natural environment. 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 the project will create new jobs and services for the city, specifying that there will be approximately 30 employees. The petitioner states the proposal would increase property and meal tax receipts. Staff acknowledges the proposal would provide fast food options on-site, in addition to creating new jobs.

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 due to the size and location of the parcel being located midblock; the lack and size of signage would create a hardship for the economic reuse of the property. The petitioner notes the property is a relatively small parcel located midblock between Hemlock and Dartmouth Streets, surrounded by commercial and industrial parcels, several which have been recently redeveloped. The application indicates the parcel was rezoned in 2018 from industrial to mixed used business to encourage redevelopment. The petitioner mentions per the site plan, ingress/egress access to and from Rockdale Avenue, and site circulation, requires the ground sign to be set back 1' from the lot line. Additionally, the ground sign is proposed to contain 50 SF with a height to the top of the sign of 20'. The scale and location of the proposed ground sign compares favorably with several other signs located within the block. The petitioner also notes the proposal includes (3) wall signs (front, left, right), this number is also consistent within the block with other establishments; including U-Haul, Domino's Pizza, Auto Zone, JN Phillips Auto Glass, Marx Sales & services, Cumberland. Staff acknowledges ordained by the City Council on September 13, 2018, Map 18, Lot 113 - 123 Rockdale Avenue was rezoned from an Industrial B to Mixed Use Business zoned district.

- 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 the literal enforcement of the Zoning Ordinance would cause a substantial hardship for the economic reuse of the property and that it is necessary to place the ground sign within 6' of the front line for visibility. The petitioner notes in order to be economically viable, proper signage for a restaurant fast food use is critical. The application states such signage is necessary to establish visibility and to attract customers to its site. Staff acknowledges the presence of existing nonconforming signage in the surrounding neighborhood.
- 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 adjacent properties are retail/fast-food developments with similar numbers and sized signs, which would be unaffected by the addition of the (3) wall signs and freestanding ground sign. The petitioner states that the requested relief may be granted without substantial detriment to the public good because the proposed signage is in keeping with the commercial, retail, fast food use nature of the immediate neighborhood and the requested relief would ensure the economic viability of the property. The petitioner notes the redevelopment is consistent with the intent of the rezoning of the parcel. Staff acknowledges the surrounding area is predominantly comprised of fast food restaurants, retail and commercial uses.

123 Rockdale Avenue Map: 18, Lot: 113

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

