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June 14, 2019

Councilor Hugh Dunn, Chairman
Committee on Ordinances
133 William Street
New Bedford, MA 02740

RE: PROPOSED ORDINANCE AMENDMENTS – MARIJUANA ESTABLISHMENT ZONING

CASE #19-13A: **Ordinance Amendment** – Changing the measurement from property line to primary door

CASE #19-13B: **Ordinance Amendment** – Adding the exception for when there is a separation provided by a roadway layout measuring >50' wide with 4 designated lanes of traffic

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, June 12, 2019 after discussion of the proposed requests for two ordinance amendments to the Marijuana Establishment Zoning Ordinance.

The requests were:

Case #19-13A: Request by City Councilors Brian K. Gomes and Joseph P. Lopes for the Planning Board to review and make a recommendation to the City Council for its consideration of amending City of New Bedford Zoning By-Laws, Chapter 9- Comprehensive Zoning to Chapter 9, Section 4131B, Relative to Marijuana Establishment Zoning by striking the last paragraph of subsection (ii) and inserting, in place thereof, the following paragraph: **"The distance under the provision shall be measured in a straight line from the nearest point of the property line in question to the primary entrance doorway into the structure where the Marijuana Establishment or Medical Marijuana Treatment Center will be located."**

And

Case #19-13B: Request by City Councilors Brian K. Gomes and Joseph P. Lopes for the Planning Board to review and make a recommendation to the City Council for its consideration of amending City of New Bedford Zoning By-Laws, Chapter 9- Comprehensive Zoning to Chapter 9, Section 4131B, Relative to Marijuana Establishment Zoning by inserting after paragraph (a) of subsection (ii) the word "Medical Marijuana Treatment Center" the following words: **"unless the Marijuana Establishment or Medical Marijuana Treatment Center is separated from said property in question by a roadway layout of 50 feet or more that contains at least 4 designated lanes of traffic."**

The Planning Board sends an unfavorable recommendation for both proposals.

Meeting Summary:

At the hearing, the cases were taken up together, the Chair asked for a presentation to both. Joseph Lopes, Ward 6 City Councilor, presented the reasoning for the first request (Case #19-13A) only, stating that he would abstain from addressing the second request (#19-13B). Councilor Lopes explained that he had been approached by constituents representing large properties such as mill buildings. They had concerns that due to the size of their properties, the marijuana establishment zoning ordinance buffer measurement limited their ability to develop specific portions of their sites. For example, a large mill building could have a marijuana establishment set up shop in one portion of a building thousands of feet away from a conflicting use, however, due to the buffer measurement being from the property line to property line their properties would be in violation. Therefore, the request proposed is to provide relief by changing the system of measurement from the front door of where the establishment would be located on the site.

There was no response to the Chairwoman's offer to speak or be recorded in favor.

In response to the Chairwoman's offer to speak or be recorded in opposition were the following:

Ms. Martha Worley, of Worley Beds (197 Popes Island New Bedford, MA) spoke in opposition to Case #19-13B and submitted a letter of opposition from Neimiec Marine.

Ms. Worley expressed concern for unintended consequences of this amendment which was likely an being put forth as an accommodation for a proposed marijuana establishment at 161 Popes Island. She noted other areas such as King's Highway and Kempton Street would likely be affected. She petitioned that the request seemed like spot zoning and it would be at odds with the intent of the ordinance. Further it would be unjustified and not a public benefit. It would negate the pre-existing rights of existing property owners and tenants in the affected locations.

She expressed that in the case of Popes Island, Route 6 is not a limited access highway. Pedestrians and bicyclist use the bridge frequently and cross along the roadway often in search of additional parking. She described the amendment as a disingenuous skirt around of the intent of an existing ordinance that protects a park. Further, she noted that 19,000 vehicles use the bridge daily. The bridge opens and closes multiple times daily which already causes traffic impacts. Additional traffic in this area would be a further detriment to the existing business owners. She concluded that the ordinance amendment is for the express benefit of a select few and not in the public interest.

Chair Duff read the letter in opposition submitted from Mr. Bradford F. Neimiec, of Niemiec Marine (173 Popes Island). The letter noted if a marijuana establishment were to be allowed on Popes Island it would be a detriment to his business. It would create a safety concern for pedestrian and vehicular traffic on an already congested section of Route 6. It would cause an obstruction for customers to reach their facility which is located in the rear of the proposed 161 Popes Island site. Allowing a spot zoning exemption for a specific business would open the door for other marijuana establishment near public parks and recreational areas the letter stated. The letter requested the Planning Board reject the proposal in order to maintain public safety and protect the viability of the current long-term businesses on Popes Island.

Board members then discussed the proposed amendments and the comments received during the public hearing.

The board discussed the problem of enforcement with the proposed measurement to the door. They noted that if a site is vacant there is no front door, so it would be impossible to issue a conformance determination. This was

noted as being particularly problematic as a conformance determination is required as part of the state permitting process. It may inadvertently handicap owners of vacant lots from being able to apply for permits and develop their properties for this use.

It was noted the state law defined the measurement as from property line to property line. The board discussed concern that the amendment would conflict with the state law. There was also some concern expressed on whether a measurement into someone's property was an overreach of regulations and enforcement on private property.

The board wondered if there were other ways to address the issue for mill buildings.

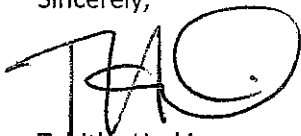
After closing the public hearing, two separate motions were made, one for each request.

A motion was made in the affirmative to recommend the City Council consider amending City of New Bedford Zoning By-Laws, Chapter 9- Comprehensive Zoning to Chapter 9, Section 4131B, Relative to Marijuana Establishment Zoning by striking the last paragraph of subsection (ii) and inserting, in place thereof, the following paragraph: "The distance under the provision shall be measured in a straight line from the nearest point of the property line in question to the primary entrance doorway into the structure where the Marijuana Establishment or Medical Marijuana Treatment Center will be located." **The motion failed on a vote of 0-5**, with no board members recorded in favor; board members A. Kalife, P. Cruz, A. Glassman, K. Khazan, and K. Duff recorded in opposition.

A motion was made in the affirmative to recommend the City Council consider amending City of New Bedford Zoning By-Laws, Chapter 9 - Comprehensive Zoning, Section 4131B, Relative to Marijuana Establishment Zoning by inserting after paragraph (a) of subsection (ii) the word "Medical Marijuana Treatment Center" the following words: "unless the Marijuana Establishment or Medical Marijuana Treatment Center is separated from said property in question by a roadway layout of 50 feet or more that contains at least 4 designated lanes of traffic." **The motion failed on a vote of 0-5**, with no board members recorded in favor; board members A. Kalife, P. Cruz, A. Glassman, K. Khazan, and K. Duff recorded in opposition.

As such the **Planning Board sends an unfavorable recommendation for both ordinance amendments**. Please find enclosed a copy of the Planning Division Staff Report regarding this matter for the Council's convenience and reference.

Sincerely,



Tabitha Harkin
City Planner

encl. Staff Report
Opposition Letter from Neimiec Marine

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk



Niemic Marine

Boatyard • Yacht Sales • Engine Sales, Service & Parts

June 12, 2019

Kathryn Duff, Chair
City of New Bedford Planning Board
133 William Street, Room 303
New Bedford, MA 02740

RE: Objection to Proposed Case #19-13 B Ordinance Amendment

Dear City of New Bedford Planning Board,

Niemic Marine, Inc. is a full-service boatyard employing approximately 20 full time employees and several other part time employees and subcontractors. We are located on Popes Island and have been the largest business on Popes Island since 1987. Niemic Marine occupies approximately 8 acres of real estate on Popes Island. Since moving to this location in 1987, we have made significant investments in our business, the real estate on Popes Island and the city of New Bedford.

It would be a great detriment to our company, customers and employees if a retail/recreational marijuana facility were to be allowed to occupy the proposed real estate on Popes Island. In addition, it would be a great safety concern to the pedestrians and vehicle traffic on Route 6. Currently, Popes Island has a significant parking constraint due to the heavy customer traffic for the Bridge Shoppes Plaza, Fathoms Restaurant, Popes Island Marina, Popes Island Marine Park, Captain LeRoy's Marina and several other businesses. Congesting this area further with a heavy volume retail marijuana facility would create an imminent danger to the public with traffic turning on and off Popes Island as well as pedestrians crossing four lanes of traffic on foot to find additional overflow parking. The result would be frequent motor vehicle accidents and pedestrians injured or killed by fast moving vehicle traffic.

In addition to creating a safety concern for the vehicles and pedestrians on Route 6 and Popes Island, allowing a recreational marijuana facility on Popes Island would create an obstruction for the customers of Niemic Marine to gain access to our facility which is located behind the proposed location for Wisk & Jane. The access lane between the Bridge Shoppes Plaza and the proposed building site is exceptionally narrow and would be inaccessible. This would essentially force Niemic Marine off Popes Island and possibly out of the City of New Bedford.

Allowing Wisk & Jane a spot zoning exemption or change for their specific business desires would open the door for several other recreational marijuana locations to open in areas located near public parks and recreational areas in the City of New Bedford.

We are requesting that the Planning Board reject the request proposed in Case #19-13 B Ordinance Amendment in order to maintain public safety and protect the viability of the current long-term businesses on Popes Island.

Sincerely,

Bradford F. Niemic

Niemic Marine, Inc.