

COMMITTEE ON ORDINANCES - June 25, 2019
MEETING AT 7:00 PM, City Hall, 133 William Street, New Bedford, MA City Council Chambers -
Room 214
AGENDA

REVISED AGENDA

1. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Lopes, Abreu and Giesta, requesting on behalf of Antoine J. Khalife and Michael J. Khalife, that 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227, be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

1a. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019 to discuss the proposed requests for the rezoning of 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227 from Mixed-Use Business to Industrial "B"; the Planning Board voted to send a FAVORABLE RECOMMENDATION, recommending the City Council consider rezoning the above-mentioned parcels. (Ref'd 6/19/19)

INVITEES: David Gerwatowski, Legal Counsel Attorney; Tabitha Harkin, City Planner; Antoine J. Khalife; Michael J. Khalife; Abutters

2. COMMUNICATION/EMAIL, Heidi Johnson to Councillor Maria Giesta, stating her support of the Khalife brothers' development efforts. (Ref'd 4/11/19) (5/30/19-continued until 6/25/19)

3. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Lopes, Abreu and Giesta, requesting on behalf of Heidi Johnson "Trustee"/Mitchell Street Trust - 2013, that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

3a. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019, to discuss the proposed request that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial "B"; the Planning Board voted to send a FAVORABLE RECOMMENDATION, recommending the City Council consider rezoning the above-mentioned parcel. (Ref'd 6/19/19)

INVITEES: David Gerwatowski, Legal Counsel Attorney; Tabitha Harkin, City

Planner; Heidi Johnson; Abutters

4. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Gomes and Lopes, requesting that the Committee on Ordinances amend Chapter 9, Section 4131B of the Code of Ordinances, Relative to Marijuana Establishment Zoning. (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4a. PUBLIC HEARING, CONTINUED, on AN ORDINANCE, amending Chapter 9, Subsection (ii) of Section 4131B – Location Requirements and Restrictions – by striking the last paragraph of subsection and inserting – “The distance under this 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.” (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4b. PUBLIC HEARING, CONTINUED, on AN ORDINANCE, amending Chapter 9, Section 4131, Paragraph (a) of Subsection (ii) – Location Requirements and Restrictions – by adding inserting after the words “Medical Marijuana Treatment Center”– “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.” (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4c. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019 to discuss the proposed requests for two ordinance amendments to the Marijuana Establishment Zoning Ordinance; the Planning Board voted to send UNFAVORABLE RECOMMENDATIONS for changing the measurement from property line to primary door and adding the exception for when there is a separation provided by a roadway layout measuring more than 50 feet wide with 4 designated lanes of traffic. (Ref'd 6/19/19)

INVITEES: David Gerwatowski, Legal Counsel Attorney; Tabitha Harkin, City Planner; Mikaela McDermott, City Solicitor

5. WRITTEN MOTION, Councillors Carney and Dunn, requesting that DPI Commissioner Jamie Ponte meet with the Committee on Ordinances to discuss the \$50.00 fee that residents are being charged for exterior meters. (To be Referred to the Committee on Ordinances.) (Ref'd 5/9/19)

INVITEES: Jose Arruda; Chris Charleston; Carminda Ferreira; Deborah Furtado; Jeff Gallant; Joe Gonçalves; Doug Hollis; Richard Medeiros; Jamie

***Ponte, Commissioner, Department of Public Infrastructure; Tony Silva;
Fernando Veiga***

In accordance with the Americans with Disabilities Act (ADA), if any accommodations are needed, please contact the Clerk of Committees Office at 508-979-1482. Requests should be made as soon as possible but at least 48 hours prior to the scheduled meeting.



Item Title:
REVISED AGENDA

Item Detail:

REVISED AGENDA

Additional Information:



Item Title:

REZONE REQUEST - 157-161 Coggeshall Street (Plot 93/Lot 169) & 171 Coggeshall Street (Plot 93/Lot 227)

Item Detail:

1. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Lopes, Abreu and Giesta, requesting on behalf of Antoine J. Khalife and Michael J. Khalife, that 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227, be rezoned from Mixed-Use Business to Industrial “B”. (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref’d 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

1a. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019 to discuss the proposed requests for the rezoning of 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227 from Mixed-Use Business to Industrial “B”; the Planning Board voted to send a FAVORABLE RECOMMENDATION, recommending the City Council consider rezoning the above-mentioned parcels. (Ref’d 6/19/19)

Additional Information:

ATTACHMENTS:

Description	Type
1. ABUTTERS LIST 157-161 & 171 Coggeshall St & ES Mitchell St	Cover Memo
1a. STAFF REPORT_Case 19-11_157-161 Coggeshall Street_Rezoning Request	Cover Memo
Rezoning.Planning Recommendations 1a, 3a	Cover Memo



City of New Bedford REQUEST for a CERTIFIED ABUTTERS LIST

This information is needed so that an official abutters list as required by MA General Law may be created and used in notifying abutters. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

SUBJECT PROPERTY	
MAP #	93
LOT(S)#	169, 227, and 275
ADDRESS: 157-161, 169, and 171 Coggeshall Street & ES Mitchell Street	
OWNER INFORMATION	
NAME:	
MAILING ADDRESS:	
APPLICANT/CONTACT PERSON INFORMATION	
NAME (IF DIFFERENT): Jennifer Carloni	
MAILING ADDRESS (IF DIFFERENT): Planning Dept	
TELEPHONE #	X67181
EMAIL ADDRESS:	
REASON FOR THIS REQUEST: <i>Check appropriate</i>	
<input type="checkbox"/>	ZONING BOARD OF APPEALS APPLICATION
<input checked="" type="checkbox"/>	PLANNING BOARD APPLICATION
<input type="checkbox"/>	CONSERVATION COMMISSION APPLICATION
<input type="checkbox"/>	LICENSING BOARD APPLICATION
<input type="checkbox"/>	OTHER (Please explain):

Once obtained, the Certified List of Abutters must be attached to this Certification Letter.

Submit this form to the Planning Division Room 303 in City Hall, 133 William Street. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

Official Use Only:

As Administrative Assistant to the City of New Bedford's Board of Assessors, I do hereby certify that the names and addresses as identified on the attached "abutters list" are duly recorded and appear on the most recent tax.

Carlos Amado

Printed Name

Carlos Amado

Signature

5/8/2019

Date

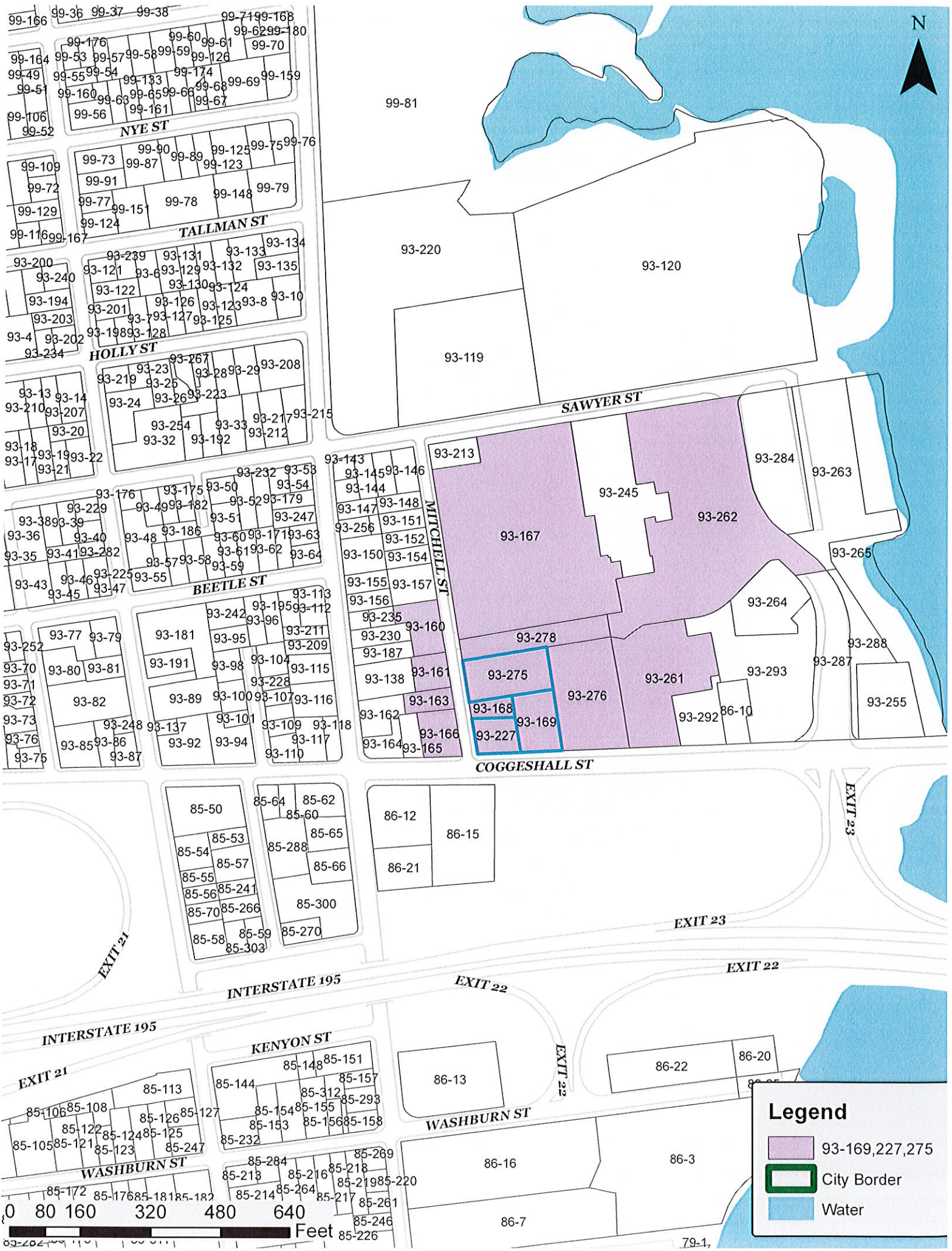
May 8, 2019
Dear Applicant,

Please find below the List of Abutters within 300 feet of the property known as 157-161, 169 & 171 Coggeshall Street & ES Mitchell Street (Map: 93, Lot: 169,227,275). The current ownership listed herein must be checked and verified by the City of New Bedford Assessor's Office. Following said verification, the list shall be considered a Certified List of Abutters.

Please note that multiple listed properties with identical owner name and mailing address shall be considered duplicates and shall require only 1 mailing. Additionally, City of New Bedford-Owned properties shall not require mailed notice.

Parcel	Location	Owner and Mailing Address
93-276	141 COGGESHALL ST	ARCHLAND PROPERTY I LLC, C/O MC DONALDS'S CORP P O BOX 182571 COLUMBUS, OH 43218
93-261	119 COGGESHALL ST	COGGESHALL-NEW BEDFORD LLC, 867 MIDDLE ROAD ACUSHNET, MA 02743
93-168	8 MITCHELL ST	BOUTIN SCOTT R, BOUTIN TAMMY M 358 BREAM STREET NEW BEDFORD, MA 02744
93-275	MITCHELL ST	JOHNSON HEIDI "TRUSTEE", MITCHELL STREET TRUST - 2013 83 POINT ROAD PORTSMOUTH, RI 02871
93-166	3 MITCHELL ST	ANDRADE GERMANO, 148 NORTH WARREN AVENUE BROCKTON, MA 02301
93-163	13 MITCHELL ST	DACUNHA ANTONIO, CUNHA OLIVIA 13 MITCHELL ST NEW BEDFORD, MA 02746
93-227	171 COGGESHALL ST	KHALIFE ANTOINE J, KHALIFE MICHAEL J 2 MANOR DRIVE FAIRHAVEN, MA 02719 <i>171 Coggeshall St. New Bedford, MA 02746</i>
93-169	157 COGGESHALL ST	KHALIFE MICHAEL J, KHALIFE ANTOINE J 171 COGGESHALL STREET NEW BEDFORD, MA 02746
93-161	17 MITCHELL ST	MENDONCA MANUEL R, 17 MITCHELL ST NEW BEDFORD, MA 02746
93-278	MITCHELL ST	SYSTEM CAPITAL REAL PROPERTY CORPORATION, C/O MCDONALDS CORP 020-0585 P O BOX 182571 COLUMBUS, OH 43218
93-167	122 SAWYER ST	DSM MB II LLC, C/O DEMOULAS SUPER MARKETS INC 875 EAST STREET TEWKSBURY, MA 01876-1469
93-262	SAWYER ST	DSM MB II LLC, C/O DEMOULAS SUPER MARKETS INC 875 EAST STREET TEWKSBURY, MA 01876-1469
93-160	23 MITCHELL ST	MOURA ARLINDO, FONTES MARIA L 11 BEECHWOOD DR ACUSHNET, MA 02743

N





PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development

608 Pleasant St, New Bedford, Massachusetts 02740
Telephone: (508) 979.1500 Facsimile: (508) 979.1575

STAFF REPORT

REPORT DATE
May 15, 2019

PLANNING BOARD MEETING
June 12, 2019

Case # 19-11: REZONING
157-161, and 171
Coggeshall Street
Map: 93 Lot: 169 & 227

Case #19-12: REZONING
ES Mitchell Street
Map: 93 Lot: 275

Petitioner: City Councilors
Joseph P. Lopes, Ward 6
Ian Abreu, At Large
Maria Giesta, Ward 2
133 William Street, Rm 215
New Bedford, MA



Overview of Request:

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances.

This case requests the rezoning of three adjacent parcels located at the north west corner of Coggeshall Street and along the east side of Mitchell Street. The properties are 157-161 Coggeshall Street (Map: 93, Lot: 169), a 0.28-acre parcel of land; 171 Coggeshall Street (Map: 93 Lot: 227), a 0.184-acre parcel; and East Side Mitchell Street (Map: 93 Lot: 275), a 0.44-acre parcel of land. The request is to rezone the properties from their existing designation as Mixed-Use Business (MUB) to an Industrial B (IB) zoned district.

Background:

New Bedford City Councilors Joseph P. Lopes, Councilor Ward 6; Ian Abreu, Councilor at Large; and Maria Giesta, Councilor Ward 2 have put the zoning requests forward on behalf of Mr. Antonie J. Khalife and Mr. Michael J. Khalife, owners of the 157-161 and 171 Coggeshall Street properties; and Ms. Heidi Johnson, Trustee of Mitchell Street Trust-2013, owner of ES Mitchell Street.

This proposal before the board represents a revision of the rezoning request that was before the board on March 13, 2019. The Planning Board sent an unfavorable recommendation to the City Council on the previous request. The board expressed concerns that the previous proposal would be perceived as spot zoning, as the request was to change the zoning on only one parcel surrounded by parcels predominantly zoned Mixed-Use Business. The Board indicated it would be more amenable if there were other adjacent properties included in the rezoning request.

The current request represents the inclusion of multiple properties to address the previous concern expressed by the board at the March hearing.

At the previous hearing, The Khalife brothers petitioned that they were unaware a previous rezoning of the site to MUB would limit the use of the building as a marijuana establishment and therefore seek to return the property zoning to Industrial B zoning district. Further, they note that there are other industrial zoned properties in the neighborhood. They also explained they propose to develop 157-161 Coggeshall Street into a retail cannabis shop. They acknowledged in the current site configuration the property would not meet the 200' residential buffer under marijuana establishment ordinance; however, they are exploring multiple options to obtain compliance. These options include pursuing a zoning variance or purchasing abutting property and applying for a property lot line revision to make the site property line in conformance with the setback.

Existing Conditions:

Located just west of the I-195 Exit 23 on and off ramps, the subject area in total is 0.9± acres, with 191.5'± of frontage on Coggeshall Street and a combined frontage of 180'± of on Mitchell Street.

Currently the sites consist of:

- 157-161 Coggeshall Street has a 1,968 SF retail building with two units and an attached 720 SF car wash.
- 171 Coggeshall Street has a 1,350 SF gas station and convenience store known as Petro Mart.
 - There is shared vehicular access through both Coggeshall Street properties.
- ES Mitchell Street is an undeveloped parcel of land abutting 157-161 Coggeshall Street in the rear.

It should be noted that 8 Mitchell Street (Map: 93, Lot: 168), currently Scott Collision, an auto repair business, located between 171 Coggeshall Street and ES Mitchell Street, is not included in the request. 8 Mitchell Street is already zoned Industrial B. If the request is approved the entire corner would therefore be zoned Industrial B.

Also, present in the neighborhood directly abutting the parcels to the east is a McDonalds fast food restaurant. Directly abutting in the rear is a Market Basket grocery store. Directly south of the sites is undeveloped land associated with the highway and a Sunoco gas station with convenience store and auto service center.

Multiple zoning districts are represented in the area surrounding the subject site, including: Mixed Use Business (MUB), Industrial A (IA), and Industrial B (IB). Additionally, these parcels are within the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

Historically, industrial mill buildings were located along the Acushnet River and therefore much of this area was zoned for industrial uses. Overtime the area developed including housing and a variety of commercial uses.

The Hicks Logan Sawyer District, in which the subject site is in, was identified as an area for redevelopment in the early 2000's. Extensive planning efforts were undertaken for this area and a Master Plan¹ was developed. An interim overlay district was adopted for this area in 2008.

Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD)

The HLS IPOD is a temporary overlay zoning district that supersedes all underlying zoning regulations, except when a development is an expansion of an existing use and does not exceed 500 SF or if the proposed development is located within another overlay district adopted prior to this overlay; or for projects that were issued permits prior to enactment of this overlay.

The HLS IPOD is a flexible district allowing for the mix of compatible land uses, such as residential, commercial, and light manufacturing through a Special Permit process.

¹ Hicks Logan Sawyer Master Plan, available online: www.newbedford-ma.gov/planning/hicks-logan-sawyer-district-2/

Each project proposed under the HLS IPOD Special Permit process are evaluated for conformance with the HLS district mater plan design policies, principals, and goals:

- **Relationship to Public Spaces**
- **Historic Context**
- **Relationship to the Waterfront**
- **Environmental Goals**
- **Economic Development Goals**
- **Master Plan**

Rezoning History

Planning staff research found that:

Pre-2006 – the properties were previously zoned Industrial B. A determination would need to be made through archival records search as to exactly when the zoning changed to Mixed Use Business (MUB).

2006 – the Zoning Board of Appeals granted a Special Permit (Case #3739) for the 157-161 Coggeshall Street property (f/k/a 149-159 Coggeshall Street) to be developed into a retail building with car wash. The decision indicates the property was zoned mixed use business at that time.

2008 – City adopts the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

Master Plan.2020

In the Master Plan, these parcels are identified as part of an area known as the Hicks Logan Sawyer District. A district with identified goals to: maintain the historic character of the District, create a vibrant mixed-use center as a new city destination, better utilize the waterfront and public access to the Acushnet River, and improve connections to surrounding neighborhoods.

Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department. Although no comments have been received as of the production date of these Planning Staff Comments, any such comments subsequently received will be provided at the Planning Board’s public hearing.

For Board Member Consideration:

A table comparing the uses permitted in the existing MUB zone and proposed IB zone is available as an attachment (Attachment #1) to these comments.

MERITS

If the rezoning was to be adopted, sixteen (16) new uses would be allowed. These uses include: motor vehicle body repairs manufacturing, marijuana retailer, manufacturing, light manufacturing, biotechnology facilities, medical device manufacturers, wholesale warehouse/self-storage/mini-warehouse or distribution facility, transportation terminal, contractors' yard, batch asphalt and concrete plants, craft marijuana cooperative, independent testing laboratory, marijuana cultivator, marijuana product manufacturer, marijuana research facility, and medical marijuana treatment centers.

The area was historically an industrially zoned area and other industrial properties are in the surrounding area.

CONCERNS

If the rezoning was to be adopted, twenty-five (25) uses that are currently allowed in the MUB zoning district would be prohibited under a new IB district. These uses include: residential uses, cemeteries, hospitals, adult and family daycares, club, funeral home, bed and breakfast, big box retail, mixed use, live/work spaces, restaurant, fast food restaurant, business or professional office, medical office, bank, indoor or outdoor recreation, theater/auditorium.

There are only 4 other Industrial B zoned properties in the immediate vicinity of the subject: the abutting auto body property (Scott Collision), the Sunoco gas station across Coggeshall Street, the municipal pump house, and a light manufacturing property east on Coggeshall Street.

The Industrial A zoned block located west of the site consists of predominantly multifamily dwellings, a few mixed residential commercial properties, and two auto repair businesses. This block may also require a zoning re-assessment given the mixture of uses.

The intention of the HLS IPOD district was to allow for the development of a smart growth mixed use district. Since, the overlay supersedes any underlying zoning, any change to the base zoning would have little effect. Additionally, the overlay district allows for greater flexibility regarding uses in the district than either the existing or proposed base zoning district provides.

Staff acknowledges that the overlay district was intended as a interim measure and more permanent zoning regulations have yet to be accepted for the area.

Standards for Evaluating Rezoning Requests

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests to ensure its action is consistent with case law:

- Uniformity: the extent to which the zoning change would resemble the surrounding zoning;
- Consistency: whether or not the parcel is being singled out for a zoning change;
- Surroundings: how the proposal would change the neighborhood;
- Fiscal Impact: what impact on local/city economic development the rezoning would have; and
- Discriminating Benefit: an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

Attachments:

1. Use Table Comparison
2. Written Motion by City Councilors: Joseph P. Lopes (Ward 6); Ian Abreu (At Large); and Maria Giesta (Ward 2)
3. Zoning Maps & Aerials

ATTACHMENT 1: USE TABLE

EXISTING:	
MIXED USE BUSINESS DISTRICT	
A. Residential	
1. Single-family dwelling	Y
2. Two-family dwelling	Y
3. Multi-family townhouse (3 stories)	Y
5. Multi-family mixed use (6 stories)	PB
8. Boarding house	BA
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
14. Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
9. Cemeteries	Y
10. Hospital	Y
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	Y
3. Animal clinic or hospital; with ancillary animal boarding	BA
4. Adult day care	BA

C. Commercial	
5. Family day care	BA
6. Large family day care	BA
7. Club or lodge, nonprofit	CC

Proposed:	
INDUSTRIAL B DISTRICT	
A. Residential	
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	BA
3. Animal clinic or hospital; with ancillary animal boarding	BA
4. Adult day care	BA

C. Commercial	

C. Commercial (continued)	
8. Funeral home	BA
9. Adult entertainment establishment	CC
10. Bed & Breakfast	BA
11. Motel, hotel or inn	Y
12. Retail stores and services not elsewhere set forth	Y
13. Grocery stores	Y
14. Big Box Retail (60,000 Sq. ft. or greater)	BA
15. Health clubs	Y
16. Mixed use	Y
17. Live /work	BA
18. Motor vehicle sales and rental	CC
19. Motor vehicle general repairs	CC
21. Motor vehicle light service	CC
22. Restaurant	Y
23. Restaurant, fast-food	BA
24. Business or professional office	Y
25. Medical offices, center, or clinic	BA
26. Bank, financial agency	Y
27. Indoor commercial recreation	Y
28. Outdoor commercial recreation	BA
29. Wireless Communications Facilities	PB
30. Theatres and auditoriums	PB
31. Convention Centers	PB
D. Industrial	
4. Research, development or testing laboratories and facilities	Y

C. Commercial (continued)	
9. Adult entertainment establishment	CC
11. Motel, hotel or inn	Y
12. Retail stores and services not elsewhere set forth	Y
13. Grocery stores	BA
15. Health clubs	Y
18. Motor vehicle sales and rental	CC
19. Motor vehicle general repairs	CC
20. Motor Vehicle body repairs	CC
21. Motor vehicle light service	CC
29. Wireless Communications Facilities	PB
31. Convention Centers	PB
32. Marijuana Retailer	PB
D. Industrial	
2. Manufacturing	Y
3. Light manufacturing	Y
4. Research, development or testing laboratories and facilities	Y
5. Biotechnology facilities	Y
6. Medical devices manufacturing	Y
8. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	Y
9. Transportation terminal	Y
15. Contractor's yard	Y
18. Batch asphalt & concrete plants	CC
19. Craft Marijuana Cooperative	PB
20. Independent Testing Laboratory	PB
21. Marijuana Cultivator	PB
22. Marijuana Product Manufacturer	PB
23. Marijuana Research Facility	PB
24. Medical Marijuana Treatment Center	PB

*Highlighted (green) uses would be newly permitted if the proposed rezoning were to be adopted.

**Highlighted (gray) uses would no longer be permitted if the proposed rezoning were to be adopted.

***Prohibited uses in either zoning district have been removed from the use table for clarity purposes



CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting on behalf of Antoine J. Khalife and Michael J. Khalife, that 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227, be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.)

Joseph P. Lopes, Councillor Ward Six

Ian Abreu, Councillor at Large

Maria Giesta, Councillor Ward Two

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk



CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting on behalf of Heidi Johnson "Trustee"/ Mitchell Street Trust - 2013, that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.)

Joseph P. Lopes, Councillor Ward Six

Ian Abreu, Councillor at Large

Maria Giesta, Councillor Ward Two

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

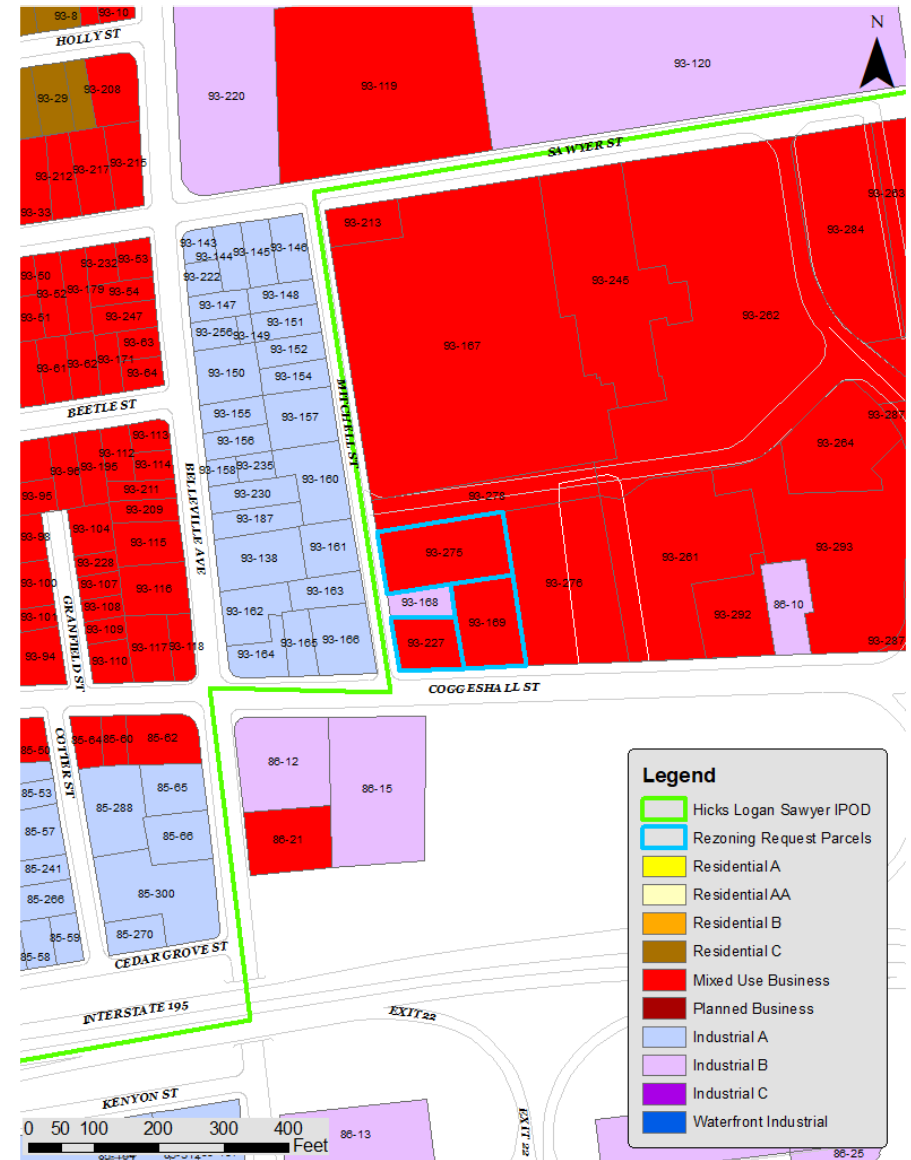
Dennis W. Farias, City Clerk

a true copy attests

City Clerk

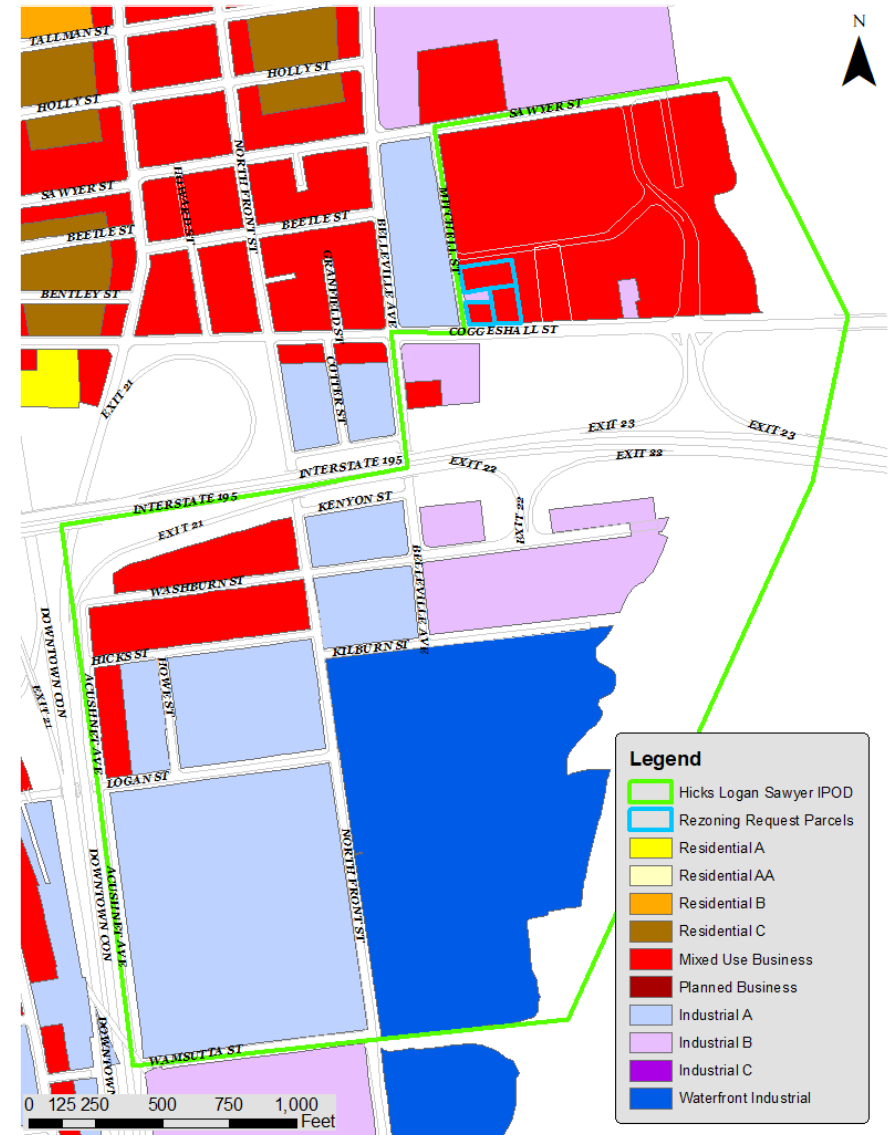
AERIAL & ZONING MAP OF SITE & NEARBY PROPERTIES

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



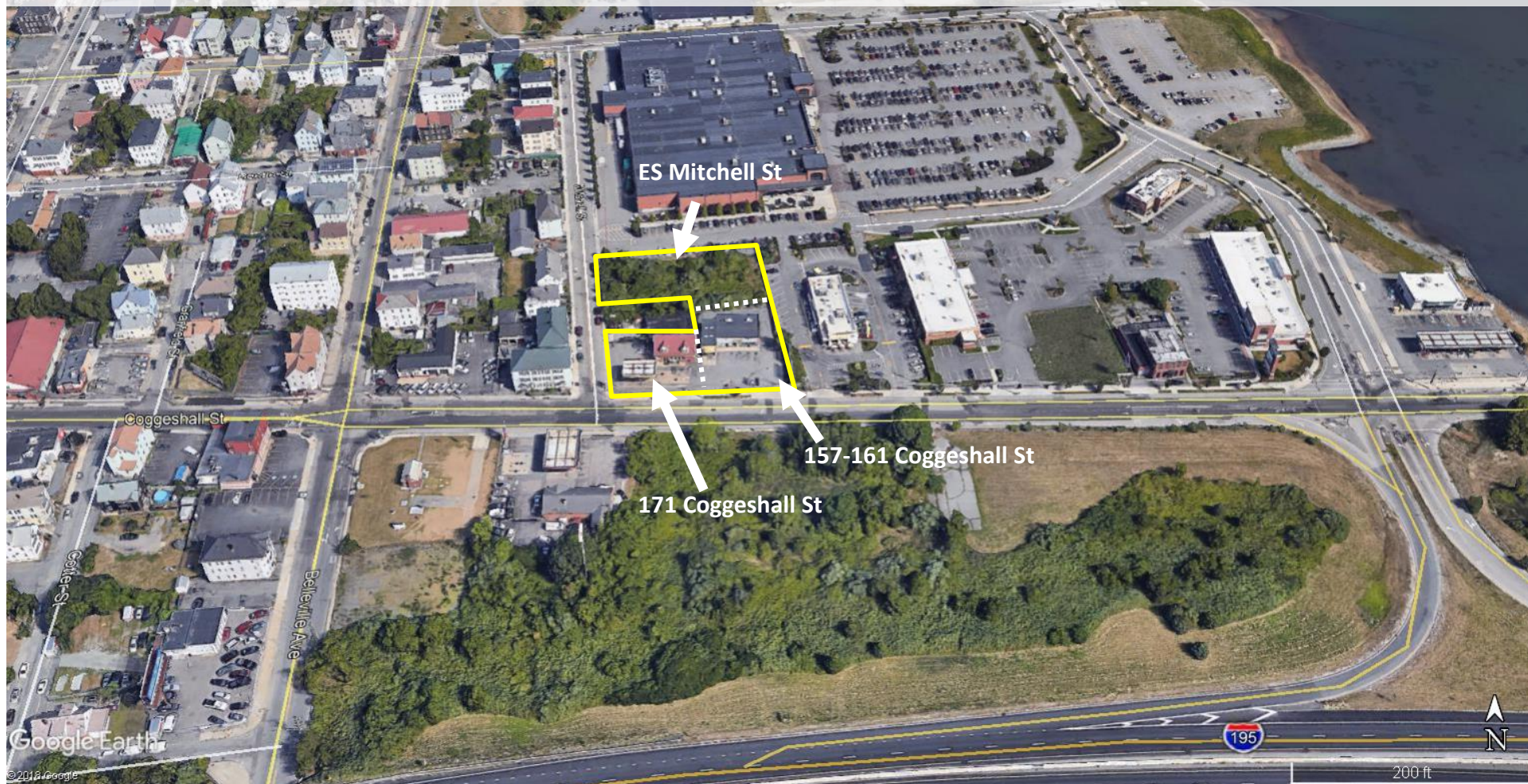
AERIAL & ZONING MAP OF HICKS LOGAN SAWYER IPOD

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



157-161, & 171 Coggeshall Street Map: 93 Lots: 169 & 227 ES Mitchell Street Map: 93 Lot: 275

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.





PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development
133 William Street, New Bedford, Massachusetts 02740
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

1a.
+
3a.

June 13, 2019

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

RE: PROPOSED REZONING REQUESTS
CASE #19-11 157-161 Coggeshall Street (Map: 93 Lot: 169) &
171 Coggeshall Street (Map: 93 Lot: 227)

CASE #19-12 ES Mitchell Street (Map: 93 Lot: 275)

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, June 12, 2019 to discuss the proposed requests for the rezoning of 157-161 Coggeshall Street (Map: 93 Lot: 169), 171 Coggeshall Street (Map: 93 Lot: 227) from the Mixed-Use Business (MUB) zone to Industrial B (IB) zone; as well as, the request for rezoning of ES Mitchell Street (Map: 93 Lot: 275) from the Mixed-Use Business (MUB) zone to Industrial B (IB) zone. **The Planning Board sends a favorable recommendation for both proposals.**

At the hearing, Mr. Michael Khalife and Mr. Antone Khalife (171 Coggeshall Street New Bedford, MA), owners of 157-161 and 171 Coggeshall Street presented that they have amended their previous request from March. The amended proposal includes more parcels to address the Planning Board's concern that the previous request was spot zoning. The request now includes two properties they own, and an abutting property owned by others.

Ms. Heidi Johnson, Trustee of the Mitchell Street Realty Trust, owner of ES Mitchell Street read a prepared statement into the record. Her statement noted her family's long history owning property around this subject area. She explained the entire area surrounding the sites were historically zoned industrial and had changed at some point in to 2000's, not at the request of the owners. She noted the zoning likely changed for the plans that were going on at that time, however, that was over ten years ago, and things have changed. The current request is made as times have changed and there are different development opportunities now than there was then. She noted that 57% of New Bedford voters voted in favor of legalizing cannabis and it is a highly regulated industry with massive growth potential. She complimented the Kalife brothers as business owners and developers who are good stewards of their properties and business.

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

City Councilor Joseph Lopes (133 William Street New Bedford, MA) spoke in favor of the rezoning request. He noted the proposal addressed the spot zoning concern of the previous request. He also noted for the board that it is easier to develop a property you already own rather than acquiring a new property. Particularly for such a highly regulated and difficult type of business to get started. The zoning change would allow for the development of a business that would improve the area. He noted the stigmatism is fading away from the recreational marijuana industry. He further noted, the Khalife brothers have strong ties to New Bedford, and one is a veteran. He described the brothers as exemplary property owners.

No one spoke in opposition of the request.

As it does with all rezoning requests, the Planning Board's review included consideration of the following specific criteria to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact and discriminating benefit.**

Board members discussed the proposed rezoning request and the comments received during the public hearing. Board members debated their reasons for whether they were in favor or in opposition of the request.

Most members agreed that the issue of spot zoning had been addressed by the inclusion of multiple parcels. They noted the whole corner of Coggeshall Street and Mitchell Street would be Industrial B; further in combination with those also zoned Industrial B across Coggeshall Street it wouldn't be spot zoning.

Some board members were concerned the rezoning request was not in line with Master Plan and the Hick Logan Sawyer Overlay District plan. Describing that those plans called a walkable, pedestrian friendly neighborhood with a mixture of residential and supportive services. Noting the zoning changed to mixed use business and the overlay zoning in 2006 to encourage the plans' vision for the area. There was also concern that rezoning requests generally should be driven by planning studies, analysis, public meetings and such rather than individual business development proposals.

It was noted that cannabis wasn't even a consideration when the master plan was created.

It was also noted the location still had issues in meeting the requirements of the marijuana establishment ordinance. It was debated whether the location was an appropriate site for the use as presented.

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

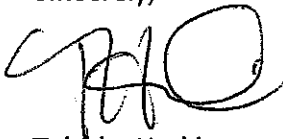
A motion was made in the affirmative to recommend the City Council consider rezoning 157-161 Coggeshall Street (Map: 93 Lot: 169) and 171 Coggeshall Street (Map: 93 Lot: 227) from the Mixed-Use

Business zone to Industrial B (IB) zone. **The motion passed on a vote of 3-2**, with board members A. Kalife, P. Cruz, and A. Glassman recorded in favor; board members K. Khazan, and K. Duff recorded in opposition.

A motion was made in the affirmative to recommend the City Council consider rezoning ES Mitchell Street (Map: 93 Lot: 275) from the Mixed-Use Business zone to Industrial B (IB) zone. **The motion passed on a vote of 3-2**, with board members A. Kalife, P. Cruz, and A. Glassman recorded in favor; board members K. Khazan, and K. Duff recorded in opposition.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'TH' with a large loop, likely belonging to Tabitha Harkin.

Tabitha Harkin
City Planner

encl. Staff Report

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk



Item Title:

COMMUNICATION/EMAIL - Heidi Johnson / Khalife Brothers' Development Efforts

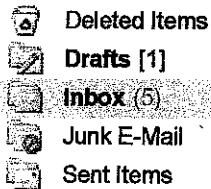
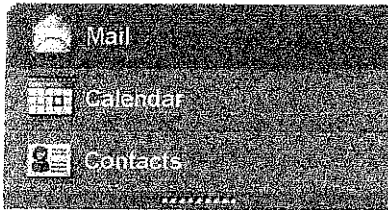
Item Detail:

2. COMMUNICATION/EMAIL, Heidi Johnson to Councillor Maria Giesta, stating her support of the Khalife brothers' development efforts. (Ref'd 4/11/19) (5/30/19-continued until 6/25/19)

Additional Information:

ATTACHMENTS:

Description	Type
 2. COMM re Khalife Brothers' Development Efforts	Cover Memo



Click to view all folders

Manage Folders...



Coggeshall/Mitchell St Zoning

Heidi Johnson [heidi@formativecom.com]

You replied on 4/11/2019 11:50 AM.

Sent: Thursday, April 11, 2019 9:41 AM

To: Maria Giesta

Hello Maria:

It was nice meeting you on Tuesday evening. I own the property on Mitchell Street next to the Khalife brothers.

My family has owned property there/done business there since 1985. My uncle started New Bedford antiques at the old Fairhaven Mills - My mother and I helped him buy the distressed mill at auction in 1995. To be honest, that old mill nearly bankrupted my family at one point. Many hopes to save, but not enough money/investors to do anything but sell at about break even. (the next buyer made the big \$..)

We are very hopeful that the Khalife brothers are given the opportunity to bring new development to the area. (So desperately needed) We would like nothing more than to see some local entrepreneurs succeed!

To that end, I am happy to attend any meetings necessary to keep the ball rolling. Please keep me posted.

Thanks again,

Heidi

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk



Item Title:

REZONE REQUEST - E.S. Mitchell Street (Plot 93/Lot 275)

Item Detail:

3. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Lopes, Abreu and Giesta, requesting on behalf of Heidi Johnson “Trustee”/Mitchell Street Trust - 2013, that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial “B”. (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref’d 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

3a. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019, to discuss the proposed request that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial “B”; the Planning Board voted to send a FAVORABLE RECOMMENDATION, recommending the City Council consider rezoning the above-mentioned parcel. (Ref’d 6/19/19)

Additional Information:

ATTACHMENTS:

Description	Type
3. ABUTTERS LIST 157-161 & 171 Coggeshall St & ES Mitchell St	Cover Memo
3a. STAFF REPORT_Case 19-11_157-161 Coggeshall Street_Rezoning Request	Cover Memo
Rezoning.Planning Recommendations 1a, 3a	Cover Memo



City of New Bedford REQUEST for a CERTIFIED ABUTTERS LIST

This information is needed so that an official abutters list as required by MA General Law may be created and used in notifying abutters. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

SUBJECT PROPERTY	
MAP #	93
LOT(S)#	169, 227, and 275
ADDRESS: 157-161, 169, and 171 Coggeshall Street & ES Mitchell Street	
OWNER INFORMATION	
NAME:	
MAILING ADDRESS:	
APPLICANT/CONTACT PERSON INFORMATION	
NAME (IF DIFFERENT): Jennifer Carloni	
MAILING ADDRESS (IF DIFFERENT): Planning Dept	
TELEPHONE #	X67181
EMAIL ADDRESS:	
REASON FOR THIS REQUEST: <i>Check appropriate</i>	
<input type="checkbox"/>	ZONING BOARD OF APPEALS APPLICATION
<input checked="" type="checkbox"/>	PLANNING BOARD APPLICATION
<input type="checkbox"/>	CONSERVATION COMMISSION APPLICATION
<input type="checkbox"/>	LICENSING BOARD APPLICATION
<input type="checkbox"/>	OTHER (Please explain):

Once obtained, the Certified List of Abutters must be attached to this Certification Letter.

Submit this form to the Planning Division Room 303 in City Hall, 133 William Street. You, as applicant, are responsible for picking up and paying for the certified abutters list from the assessor's office (city hall, room #109).

Official Use Only:

As Administrative Assistant to the City of New Bedford's Board of Assessors, I do hereby certify that the names and addresses as identified on the attached "abutters list" are duly recorded and appear on the most recent tax.

Carlos Amado

Printed Name

Carlos Amado

Signature

5/8/2019

Date

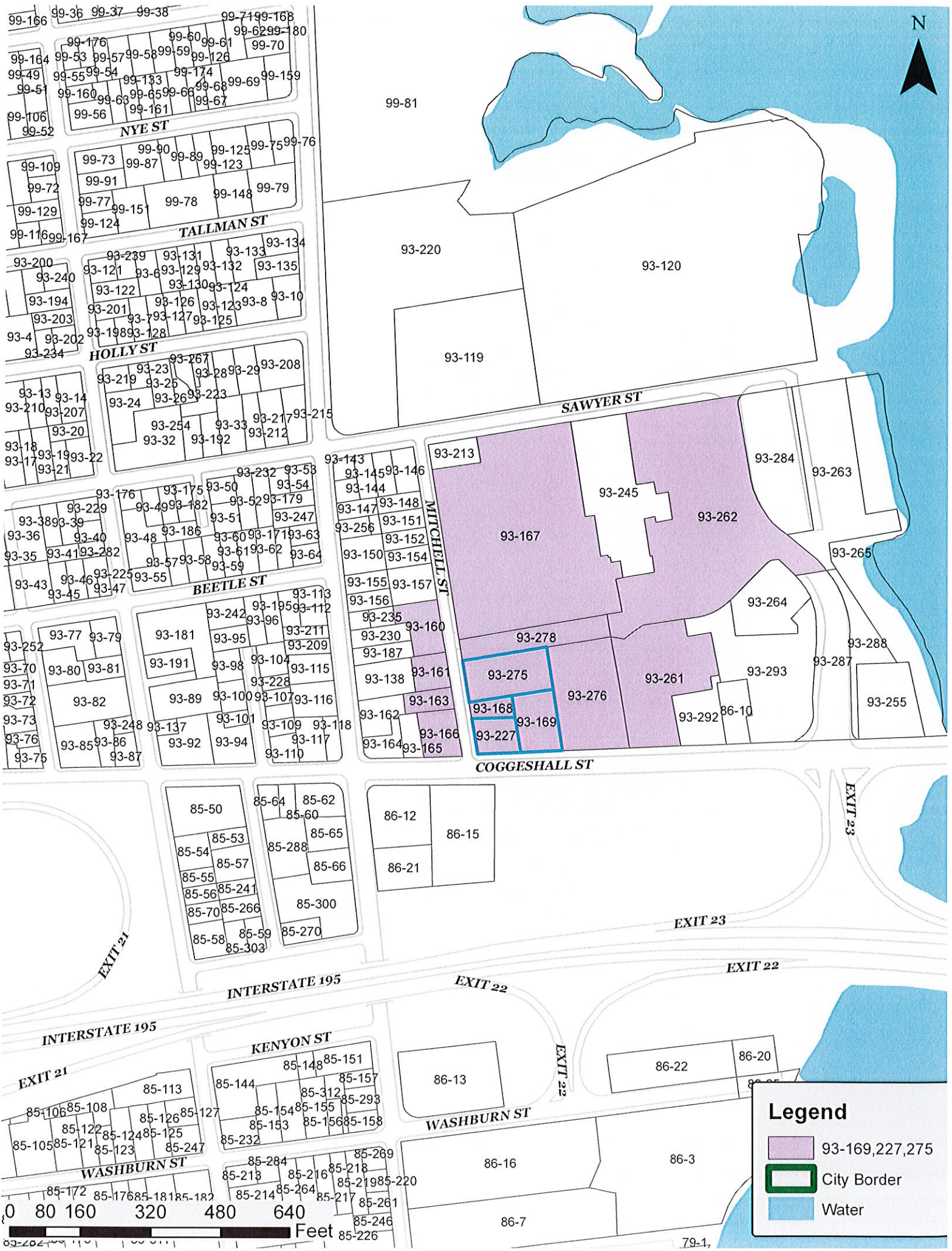
May 8, 2019
Dear Applicant,

Please find below the List of Abutters within 300 feet of the property known as 157-161, 169 & 171 Coggeshall Street & ES Mitchell Street (Map: 93, Lot: 169,227,275). The current ownership listed herein must be checked and verified by the City of New Bedford Assessor's Office. Following said verification, the list shall be considered a Certified List of Abutters.

Please note that multiple listed properties with identical owner name and mailing address shall be considered duplicates and shall require only 1 mailing. Additionally, City of New Bedford-Owned properties shall not require mailed notice.

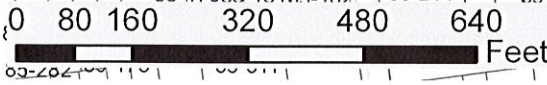
Parcel	Location	Owner and Mailing Address
93-276	141 COGGESHALL ST	ARCHLAND PROPERTY I LLC, C/O MC DONALDS'S CORP P O BOX 182571 COLUMBUS, OH 43218
93-261	119 COGGESHALL ST	COGGESHALL-NEW BEDFORD LLC, 867 MIDDLE ROAD ACUSHNET, MA 02743
93-168	8 MITCHELL ST	BOUTIN SCOTT R, BOUTIN TAMMY M 358 BREAM STREET NEW BEDFORD, MA 02744
93-275	MITCHELL ST	JOHNSON HEIDI "TRUSTEE", MITCHELL STREET TRUST - 2013 83 POINT ROAD PORTSMOUTH, RI 02871
93-166	3 MITCHELL ST	ANDRADE GERMANO, 148 NORTH WARREN AVENUE BROCKTON, MA 02301
93-163	13 MITCHELL ST	DACUNHA ANTONIO, CUNHA OLIVIA 13 MITCHELL ST NEW BEDFORD, MA 02746
93-227	171 COGGESHALL ST	KHALIFE ANTOINE J, KHALIFE MICHAEL J 2 MANOR DRIVE FAIRHAVEN, MA 02719 <i>171 Coggeshall St. New Bedford, MA 02746</i>
93-169	157 COGGESHALL ST	KHALIFE MICHAEL J, KHALIFE ANTOINE J 171 COGGESHALL STREET NEW BEDFORD, MA 02746
93-161	17 MITCHELL ST	MENDONCA MANUEL R, 17 MITCHELL ST NEW BEDFORD, MA 02746
93-278	MITCHELL ST	SYSTEM CAPITAL REAL PROPERTY CORPORATION, C/O MCDONALDS CORP 020-0585 P O BOX 182571 COLUMBUS, OH 43218
93-167	122 SAWYER ST	DSM MB II LLC, C/O DEMOULAS SUPER MARKETS INC 875 EAST STREET TEWKSBURY, MA 01876-1469
93-262	SAWYER ST	DSM MB II LLC, C/O DEMOULAS SUPER MARKETS INC 875 EAST STREET TEWKSBURY, MA 01876-1469
93-160	23 MITCHELL ST	MOURA ARLINDO, FONTES MARIA L 11 BEECHWOOD DR ACUSHNET, MA 02743

N



Legend

- 93-169,227,275
- City Border
- Water





PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development

608 Pleasant St, New Bedford, Massachusetts 02740
Telephone: (508) 979.1500 Facsimile: (508) 979.1575

STAFF REPORT

REPORT DATE
May 15, 2019

PLANNING BOARD MEETING
June 12, 2019

Case # 19-11: REZONING
157-161, and 171
Coggeshall Street
Map: 93 Lot: 169 & 227

Case #19-12: REZONING
ES Mitchell Street
Map: 93 Lot: 275

Petitioner: City Councilors
Joseph P. Lopes, Ward 6
Ian Abreu, At Large
Maria Giesta, Ward 2
133 William Street, Rm 215
New Bedford, MA



Overview of Request:

The Planning Board reviews rezoning petitions as standard practice and provides a recommendation based on their findings to the City Council Committee on Ordinances.

This case requests the rezoning of three adjacent parcels located at the north west corner of Coggeshall Street and along the east side of Mitchell Street. The properties are 157-161 Coggeshall Street (Map: 93, Lot: 169), a 0.28-acre parcel of land; 171 Coggeshall Street (Map: 93 Lot: 227), a 0.184-acre parcel; and East Side Mitchell Street (Map: 93 Lot: 275), a 0.44-acre parcel of land. The request is to rezone the properties from their existing designation as Mixed-Use Business (MUB) to an Industrial B (IB) zoned district.

Background:

New Bedford City Councilors Joseph P. Lopes, Councilor Ward 6; Ian Abreu, Councilor at Large; and Maria Giesta, Councilor Ward 2 have put the zoning requests forward on behalf of Mr. Antonie J. Khalife and Mr. Michael J. Khalife, owners of the 157-161 and 171 Coggeshall Street properties; and Ms. Heidi Johnson, Trustee of Mitchell Street Trust-2013, owner of ES Mitchell Street.

This proposal before the board represents a revision of the rezoning request that was before the board on March 13, 2019. The Planning Board sent an unfavorable recommendation to the City Council on the previous request. The board expressed concerns that the previous proposal would be perceived as spot zoning, as the request was to change the zoning on only one parcel surrounded by parcels predominantly zoned Mixed-Use Business. The Board indicated it would be more amenable if there were other adjacent properties included in the rezoning request.

The current request represents the inclusion of multiple properties to address the previous concern expressed by the board at the March hearing.

At the previous hearing, The Khalife brothers petitioned that they were unaware a previous rezoning of the site to MUB would limit the use of the building as a marijuana establishment and therefore seek to return the property zoning to Industrial B zoning district. Further, they note that there are other industrial zoned properties in the neighborhood. They also explained they propose to develop 157-161 Coggeshall Street into a retail cannabis shop. They acknowledged in the current site configuration the property would not meet the 200' residential buffer under marijuana establishment ordinance; however, they are exploring multiple options to obtain compliance. These options include pursuing a zoning variance or purchasing abutting property and applying for a property lot line revision to make the site property line in conformance with the setback.

Existing Conditions:

Located just west of the I-195 Exit 23 on and off ramps, the subject area in total is 0.9± acres, with 191.5'± of frontage on Coggeshall Street and a combined frontage of 180'± of on Mitchell Street.

Currently the sites consist of:

- 157-161 Coggeshall Street has a 1,968 SF retail building with two units and an attached 720 SF car wash.
- 171 Coggeshall Street has a 1,350 SF gas station and convenience store known as Petro Mart.
 - There is shared vehicular access through both Coggeshall Street properties.
- ES Mitchell Street is an undeveloped parcel of land abutting 157-161 Coggeshall Street in the rear.

It should be noted that 8 Mitchell Street (Map: 93, Lot: 168), currently Scott Collision, an auto repair business, located between 171 Coggeshall Street and ES Mitchell Street, is not included in the request. 8 Mitchell Street is already zoned Industrial B. If the request is approved the entire corner would therefore be zoned Industrial B.

Also, present in the neighborhood directly abutting the parcels to the east is a McDonalds fast food restaurant. Directly abutting in the rear is a Market Basket grocery store. Directly south of the sites is undeveloped land associated with the highway and a Sunoco gas station with convenience store and auto service center.

Multiple zoning districts are represented in the area surrounding the subject site, including: Mixed Use Business (MUB), Industrial A (IA), and Industrial B (IB). Additionally, these parcels are within the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

Historically, industrial mill buildings were located along the Acushnet River and therefore much of this area was zoned for industrial uses. Overtime the area developed including housing and a variety of commercial uses.

The Hicks Logan Sawyer District, in which the subject site is in, was identified as an area for redevelopment in the early 2000's. Extensive planning efforts were undertaken for this area and a Master Plan¹ was developed. An interim overlay district was adopted for this area in 2008.

Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD)

The HLS IPOD is a temporary overlay zoning district that supersedes all underlying zoning regulations, except when a development is an expansion of an existing use and does not exceed 500 SF or if the proposed development is located within another overlay district adopted prior to this overlay; or for projects that were issued permits prior to enactment of this overlay.

The HLS IPOD is a flexible district allowing for the mix of compatible land uses, such as residential, commercial, and light manufacturing through a Special Permit process.

¹ Hicks Logan Sawyer Master Plan, available online: www.newbedford-ma.gov/planning/hicks-logan-sawyer-district-2/

Each project proposed under the HLS IPOD Special Permit process are evaluated for conformance with the HLS district mater plan design policies, principals, and goals:

- **Relationship to Public Spaces**
- **Historic Context**
- **Relationship to the Waterfront**
- **Environmental Goals**
- **Economic Development Goals**
- **Master Plan**

Rezoning History

Planning staff research found that:

Pre-2006 – the properties were previously zoned Industrial B. A determination would need to be made through archival records search as to exactly when the zoning changed to Mixed Use Business (MUB).

2006 – the Zoning Board of Appeals granted a Special Permit (Case #3739) for the 157-161 Coggeshall Street property (f/k/a 149-159 Coggeshall Street) to be developed into a retail building with car wash. The decision indicates the property was zoned mixed use business at that time.

2008 – City adopts the Hicks Logan Sawyer Interim Planning Overlay District (HLS IPOD).

Master Plan.2020

In the Master Plan, these parcels are identified as part of an area known as the Hicks Logan Sawyer District. A district with identified goals to: maintain the historic character of the District, create a vibrant mixed-use center as a new city destination, better utilize the waterfront and public access to the Acushnet River, and improve connections to surrounding neighborhoods.

Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department. Although no comments have been received as of the production date of these Planning Staff Comments, any such comments subsequently received will be provided at the Planning Board’s public hearing.

For Board Member Consideration:

A table comparing the uses permitted in the existing MUB zone and proposed IB zone is available as an attachment (Attachment #1) to these comments.

MERITS

If the rezoning was to be adopted, sixteen (16) new uses would be allowed. These uses include: motor vehicle body repairs manufacturing, marijuana retailer, manufacturing, light manufacturing, biotechnology facilities, medical device manufacturers, wholesale warehouse/self-storage/mini-warehouse or distribution facility, transportation terminal, contractors' yard, batch asphalt and concrete plants, craft marijuana cooperative, independent testing laboratory, marijuana cultivator, marijuana product manufacturer, marijuana research facility, and medical marijuana treatment centers.

The area was historically an industrially zoned area and other industrial properties are in the surrounding area.

CONCERNS

If the rezoning was to be adopted, twenty-five (25) uses that are currently allowed in the MUB zoning district would be prohibited under a new IB district. These uses include: residential uses, cemeteries, hospitals, adult and family daycares, club, funeral home, bed and breakfast, big box retail, mixed use, live/work spaces, restaurant, fast food restaurant, business or professional office, medical office, bank, indoor or outdoor recreation, theater/auditorium.

There are only 4 other Industrial B zoned properties in the immediate vicinity of the subject: the abutting auto body property (Scott Collision), the Sunoco gas station across Coggeshall Street, the municipal pump house, and a light manufacturing property east on Coggeshall Street.

The Industrial A zoned block located west of the site consists of predominantly multifamily dwellings, a few mixed residential commercial properties, and two auto repair businesses. This block may also require a zoning re-assessment given the mixture of uses.

The intention of the HLS IPOD district was to allow for the development of a smart growth mixed use district. Since, the overlay supersedes any underlying zoning, any change to the base zoning would have little effect. Additionally, the overlay district allows for greater flexibility regarding uses in the district than either the existing or proposed base zoning district provides.

Staff acknowledges that the overlay district was intended as a interim measure and more permanent zoning regulations have yet to be accepted for the area.

Standards for Evaluating Rezoning Requests

The Planning Board has previously relied on the following criteria in its evaluation of other rezoning requests to ensure its action is consistent with case law:

- Uniformity: the extent to which the zoning change would resemble the surrounding zoning;
- Consistency: whether or not the parcel is being singled out for a zoning change;
- Surroundings: how the proposal would change the neighborhood;
- Fiscal Impact: what impact on local/city economic development the rezoning would have; and
- Discriminating Benefit: an assessment of whether the reclassification of a single parcel that allows a use beneficial to the property owner is made to the detriment of the neighbors or community-at-large.

Attachments:

1. Use Table Comparison
2. Written Motion by City Councilors: Joseph P. Lopes (Ward 6); Ian Abreu (At Large); and Maria Giesta (Ward 2)
3. Zoning Maps & Aerials

ATTACHMENT 1: USE TABLE

EXISTING:	
MIXED USE BUSINESS DISTRICT	
A. Residential	
1. Single-family dwelling	Y
2. Two-family dwelling	Y
3. Multi-family townhouse (3 stories)	Y
5. Multi-family mixed use (6 stories)	PB
8. Boarding house	BA
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
14. Animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of net area of the lot. Net area shall be determined by subtracting the gross ground floor area of all buildings and structures on the lots from the gross area of the lot plus any contiguous lots owned by the same party.	Y
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
9. Cemeteries	Y
10. Hospital	Y
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	Y
3. Animal clinic or hospital; with ancillary animal boarding	BA
4. Adult day care	BA

C. Commercial	
5. Family day care	BA
6. Large family day care	BA
7. Club or lodge, nonprofit	CC

Proposed:	
INDUSTRIAL B DISTRICT	
A. Residential	
9. Group residence	BA
10. Assisted or Independent living facility	BA
11. Nursing or Convalescent home	BA
B. Exempt and Institutional Uses	
1. Use of land or structures for religious purposes	Y
2. Use of land or structures for educational purposes on land owned or leased by the commonwealth or any of its agencies, subdivisions or bodies politic or by a religious sect or denomination, or by a nonprofit educational corporation	Y
3. Child care facility (in existing building)	Y
4. Child care facility (not in existing building)	Y
5. Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y
6. Facilities for the sale of produce, and wine and dairy products, provided that during the months of June, July, August, and September of every year, or during the harvest season of the primary crop, the majority of such products for sale, based on either gross sales dollars or volume, have been produced by the owner of the land containing more than five acres in area on which the facility is located	Y
7. Municipal facilities	Y
8. Essential services	BA
1. Nonexempt agricultural use	BA
2. Nonexempt educational use	BA
3. Animal clinic or hospital; with ancillary animal boarding	BA
4. Adult day care	BA

C. Commercial	

C. Commercial (continued)	
8. Funeral home	BA
9. Adult entertainment establishment	CC
10. Bed & Breakfast	BA
11. Motel, hotel or inn	Y
12. Retail stores and services not elsewhere set forth	Y
13. Grocery stores	Y
14. Big Box Retail (60,000 Sq. ft. or greater)	BA
15. Health clubs	Y
16. Mixed use	Y
17. Live /work	BA
18. Motor vehicle sales and rental	CC
19. Motor vehicle general repairs	CC
21. Motor vehicle light service	CC
22. Restaurant	Y
23. Restaurant, fast-food	BA
24. Business or professional office	Y
25. Medical offices, center, or clinic	BA
26. Bank, financial agency	Y
27. Indoor commercial recreation	Y
28. Outdoor commercial recreation	BA
29. Wireless Communications Facilities	PB
30. Theatres and auditoriums	PB
31. Convention Centers	PB
D. Industrial	
4. Research, development or testing laboratories and facilities	Y

C. Commercial (continued)	
9. Adult entertainment establishment	CC
11. Motel, hotel or inn	Y
12. Retail stores and services not elsewhere set forth	Y
13. Grocery stores	BA
15. Health clubs	Y
18. Motor vehicle sales and rental	CC
19. Motor vehicle general repairs	CC
20. Motor Vehicle body repairs	CC
21. Motor vehicle light service	CC
29. Wireless Communications Facilities	PB
31. Convention Centers	PB
32. Marijuana Retailer	PB
D. Industrial	
2. Manufacturing	Y
3. Light manufacturing	Y
4. Research, development or testing laboratories and facilities	Y
5. Biotechnology facilities	Y
6. Medical devices manufacturing	Y
8. Wholesale, warehouse, self-storage mini-warehouse, or distribution facility	Y
9. Transportation terminal	Y
15. Contractor's yard	Y
18. Batch asphalt & concrete plants	CC
19. Craft Marijuana Cooperative	PB
20. Independent Testing Laboratory	PB
21. Marijuana Cultivator	PB
22. Marijuana Product Manufacturer	PB
23. Marijuana Research Facility	PB
24. Medical Marijuana Treatment Center	PB

*Highlighted (green) uses would be newly permitted if the proposed rezoning were to be adopted.

**Highlighted (gray) uses would no longer be permitted if the proposed rezoning were to be adopted.

***Prohibited uses in either zoning district have been removed from the use table for clarity purposes



CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting on behalf of Antoine J. Khalife and Michael J. Khalife, that 157-161 Coggeshall Street, Plot 93/Lot 169 and 171 Coggeshall Street, Plot 93/Lot 227, be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.)

Joseph P. Lopes, Councillor Ward Six

Ian Abreu, Councillor at Large

Maria Giesta, Councillor Ward Two

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

City Clerk



CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting on behalf of Heidi Johnson "Trustee"/ Mitchell Street Trust - 2013, that E.S. Mitchell Street, Plot 93/Lot 275 be rezoned from Mixed-Use Business to Industrial "B". (To be Referred to the Committee on Ordinances and the Planning Board.)

Joseph P. Lopes, Councillor Ward Six

Ian Abreu, Councillor at Large

Maria Giesta, Councillor Ward Two

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

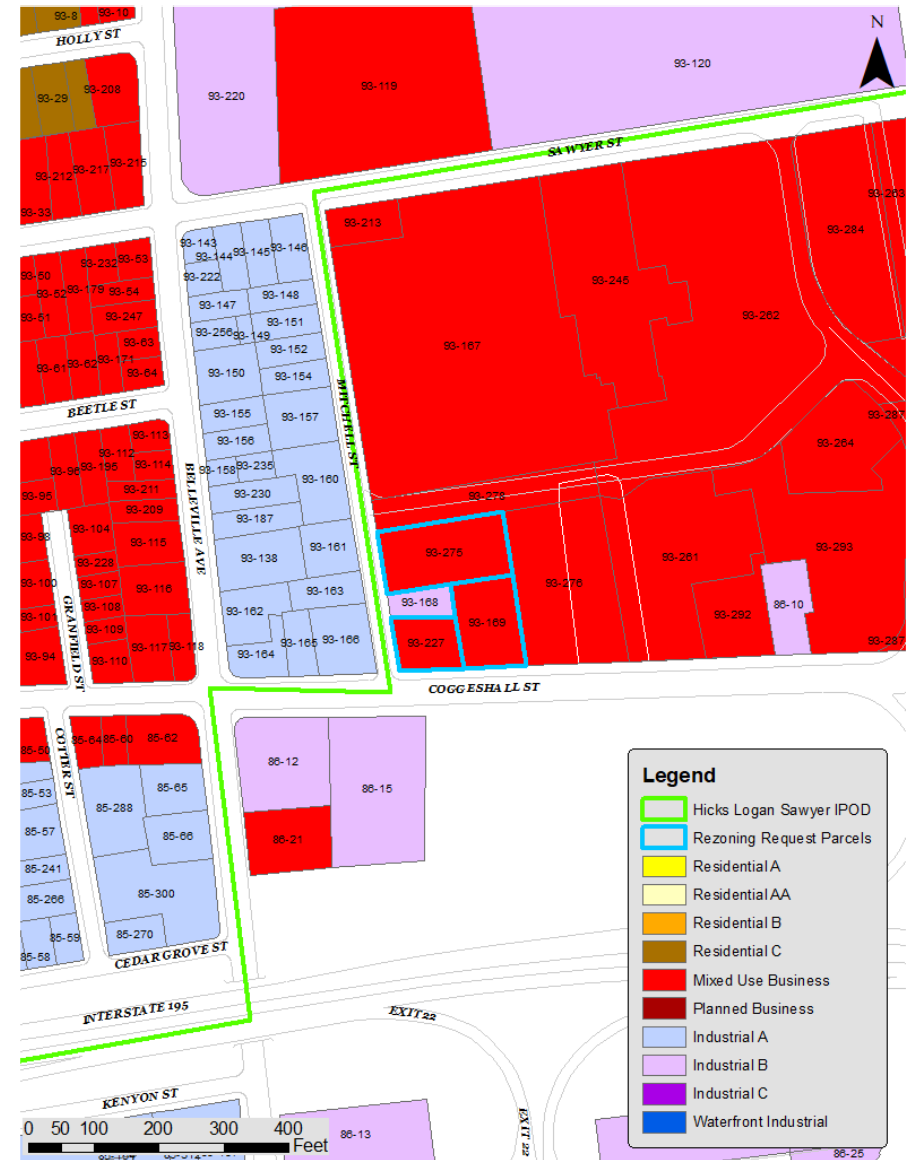
a true copy attests

A handwritten signature in cursive script, appearing to read "Dennis W. Farias".

City Clerk

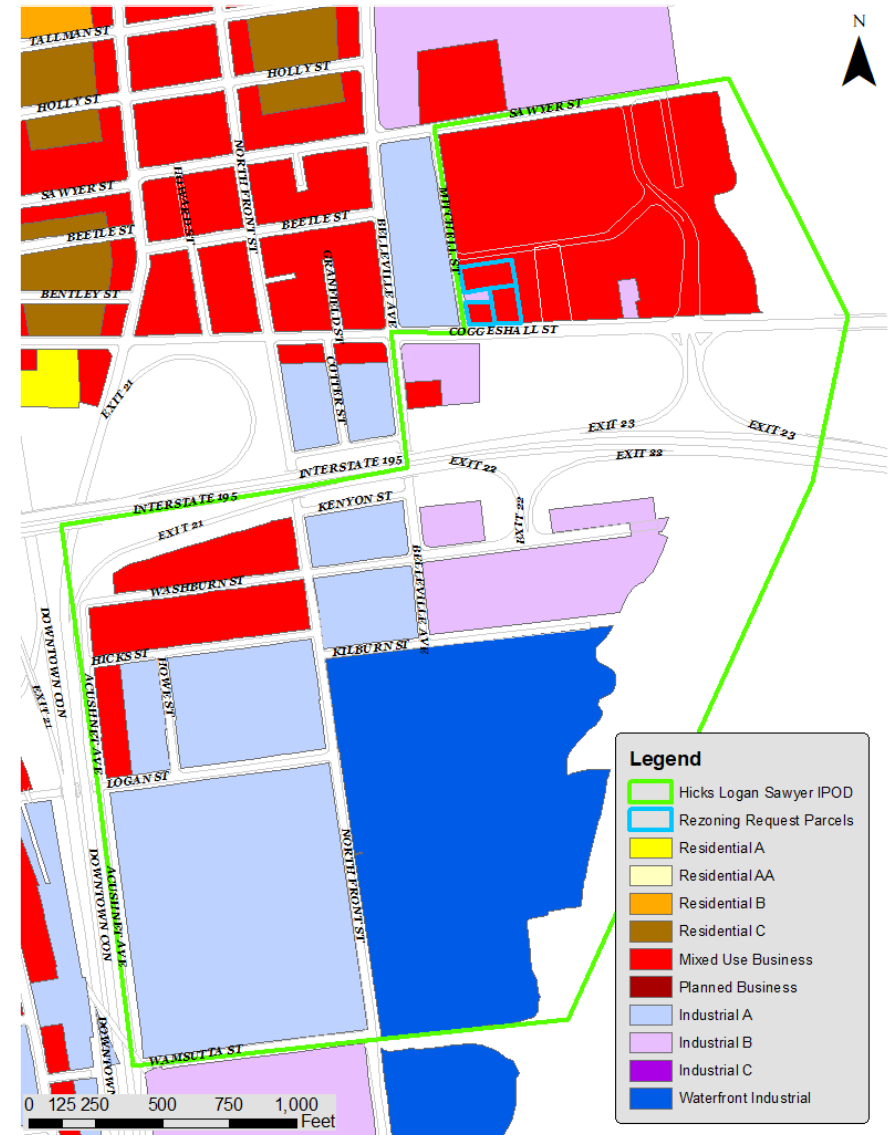
AERIAL & ZONING MAP OF SITE & NEARBY PROPERTIES

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



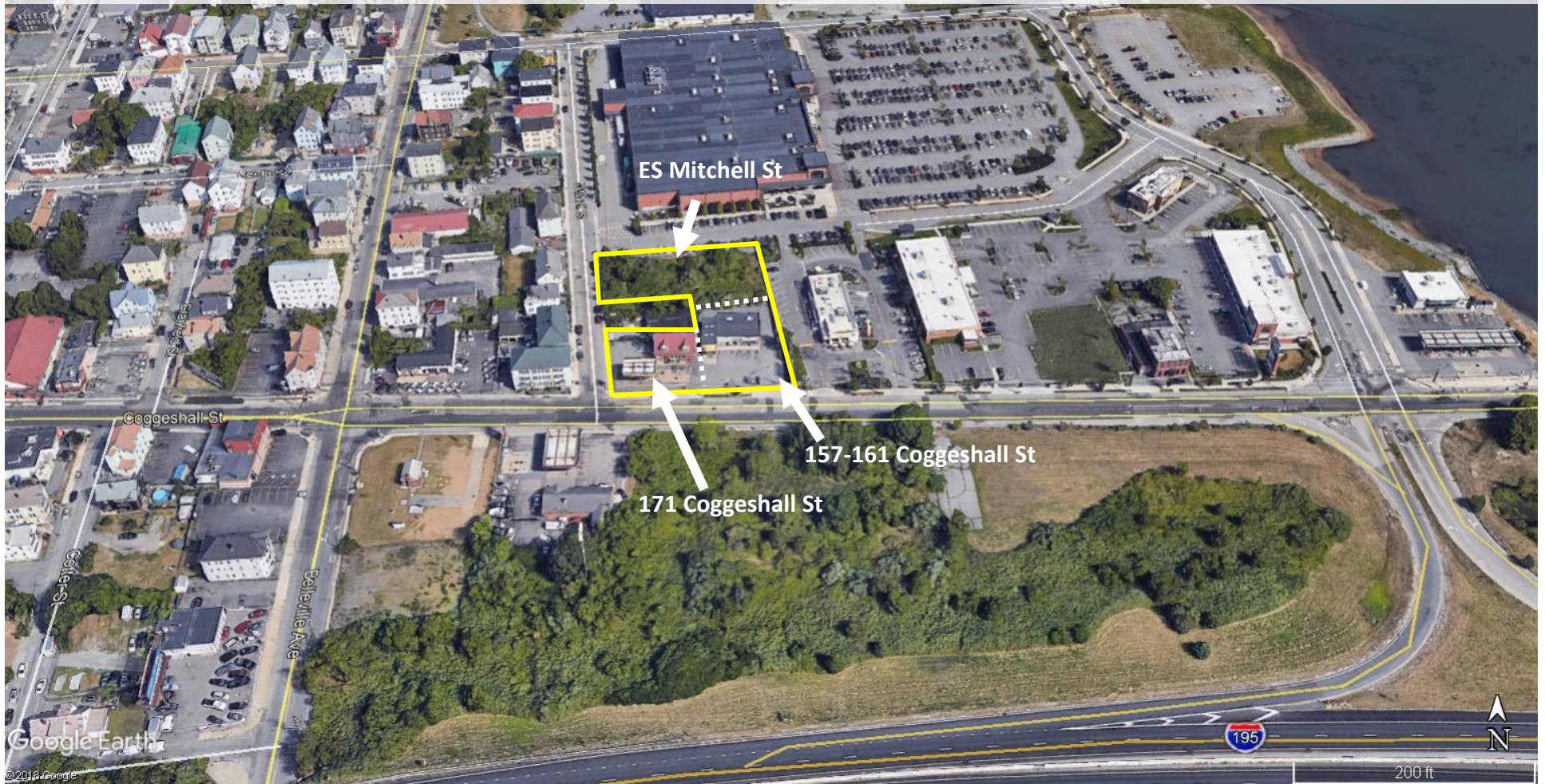
AERIAL & ZONING MAP OF HICKS LOGAN SAWYER IPOD

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.



157-161, & 171 Coggeshall Street Map: 93 Lots: 169 & 227 ES Mitchell Street Map: 93 Lot: 275

NOTE: Property line is approximate; for discussion purposes, only. Aerial map is oriented north.





PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development
133 William Street, New Bedford, Massachusetts 02740
Telephone: (508) 979.1488 Facsimile: (508) 979.1576

1a.
+
3a.

June 13, 2019

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

RE: PROPOSED REZONING REQUESTS
CASE #19-11 157-161 Coggeshall Street (Map: 93 Lot: 169) &
171 Coggeshall Street (Map: 93 Lot: 227)

CASE #19-12 ES Mitchell Street (Map: 93 Lot: 275)

Dear Chairman Dunn:

This is to advise you of Planning Board action on Wednesday, June 12, 2019 to discuss the proposed requests for the rezoning of 157-161 Coggeshall Street (Map: 93 Lot: 169), 171 Coggeshall Street (Map: 93 Lot: 227) from the Mixed-Use Business (MUB) zone to Industrial B (IB) zone; as well as, the request for rezoning of ES Mitchell Street (Map: 93 Lot: 275) from the Mixed-Use Business (MUB) zone to Industrial B (IB) zone. **The Planning Board sends a favorable recommendation for both proposals.**

At the hearing, Mr. Michael Khalife and Mr. Antone Khalife (171 Coggeshall Street New Bedford, MA), owners of 157-161 and 171 Coggeshall Street presented that they have amended their previous request from March. The amended proposal includes more parcels to address the Planning Board's concern that the previous request was spot zoning. The request now includes two properties they own, and an abutting property owned by others.

Ms. Heidi Johnson, Trustee of the Mitchell Street Realty Trust, owner of ES Mitchell Street read a prepared statement into the record. Her statement noted her family's long history owning property around this subject area. She explained the entire area surrounding the sites were historically zoned industrial and had changed at some point in to 2000's, not at the request of the owners. She noted the zoning likely changed for the plans that were going on at that time, however, that was over ten years ago, and things have changed. The current request is made as times have changed and there are different development opportunities now than there was then. She noted that 57% of New Bedford voters voted in favor of legalizing cannabis and it is a highly regulated industry with massive growth potential. She complimented the Kalife brothers as business owners and developers who are good stewards of their properties and business.

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

City Councilor Joseph Lopes (133 William Street New Bedford, MA) spoke in favor of the rezoning request. He noted the proposal addressed the spot zoning concern of the previous request. He also noted for the board that it is easier to develop a property you already own rather than acquiring a new property. Particularly for such a highly regulated and difficult type of business to get started. The zoning change would allow for the development of a business that would improve the area. He noted the stigmatism is fading away from the recreational marijuana industry. He further noted, the Khalife brothers have strong ties to New Bedford, and one is a veteran. He described the brothers as exemplary property owners.

No one spoke in opposition of the request.

As it does with all rezoning requests, the Planning Board's review included consideration of the following specific criteria to ensure its action is consistent with existing case law: **uniformity, consistency, surroundings, fiscal impact and discriminating benefit.**

Board members discussed the proposed rezoning request and the comments received during the public hearing. Board members debated their reasons for whether they were in favor or in opposition of the request.

Most members agreed that the issue of spot zoning had been addressed by the inclusion of multiple parcels. They noted the whole corner of Coggeshall Street and Mitchell Street would be Industrial B; further in combination with those also zoned Industrial B across Coggeshall Street it wouldn't be spot zoning.

Some board members were concerned the rezoning request was not in line with Master Plan and the Hick Logan Sawyer Overlay District plan. Describing that those plans called a walkable, pedestrian friendly neighborhood with a mixture of residential and supportive services. Noting the zoning changed to mixed use business and the overlay zoning in 2006 to encourage the plans' vision for the area. There was also concern that rezoning requests generally should be driven by planning studies, analysis, public meetings and such rather than individual business development proposals.

It was noted that cannabis wasn't even a consideration when the master plan was created.

It was also noted the location still had issues in meeting the requirements of the marijuana establishment ordinance. It was debated whether the location was an appropriate site for the use as presented.

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

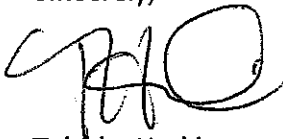
A motion was made in the affirmative to recommend the City Council consider rezoning 157-161 Coggeshall Street (Map: 93 Lot: 169) and 171 Coggeshall Street (Map: 93 Lot: 227) from the Mixed-Use

Business zone to Industrial B (IB) zone. **The motion passed on a vote of 3-2**, with board members A. Kalife, P. Cruz, and A. Glassman recorded in favor; board members K. Khazan, and K. Duff recorded in opposition.

A motion was made in the affirmative to recommend the City Council consider rezoning ES Mitchell Street (Map: 93 Lot: 275) from the Mixed-Use Business zone to Industrial B (IB) zone. **The motion passed on a vote of 3-2**, with board members A. Kalife, P. Cruz, and A. Glassman recorded in favor; board members K. Khazan, and K. Duff recorded in opposition.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'TH' with a large loop, likely belonging to Tabitha Harkin.

Tabitha Harkin
City Planner

encl. Staff Report

cc. John Mitchell, Mayor
Danny Romanowicz, Building Commissioner

Mickaela McDermott, City Solicitor
Dennis Farias, City Clerk



Item Title:

WRITTEN MOTION re Marijuana Establishment Zoning Amendments

Item Detail:

4. PUBLIC HEARING, CONTINUED, on a WRITTEN MOTION, Councillors Gomes and Lopes, requesting that the Committee on Ordinances amend Chapter 9, Section 4131B of the Code of Ordinances, Relative to Marijuana Establishment Zoning. (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4a. PUBLIC HEARING, CONTINUED, on AN ORDINANCE, amending Chapter 9, Subsection (ii) of Section 4131B – Location Requirements and Restrictions – by striking the last paragraph of subsection and inserting – “The distance under this 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.” (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4b. PUBLIC HEARING, CONTINUED, on AN ORDINANCE, amending Chapter 9, Section 4131, Paragraph (a) of Subsection (ii) – Location Requirements and Restrictions – by adding inserting after the words “Medical Marijuana Treatment Center”– “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.” (To be Referred to the Committee on Ordinances and the Planning Board.) (Ref'd 4/11/19) (Duly advertised in The Standard-Times on Thursday, May 16, 2019 and Thursday, May 23, 2019.) (5/30/19-continued until 6/25/19)

4c. COMMUNICATION, Tabitha Harkin, City Planner, to Councillor Hugh Dunn, Chairman, Committee on Ordinances, advising that the Planning Board held a public hearing on June 12, 2019 to discuss the proposed requests for two ordinance amendments to the Marijuana Establishment Zoning Ordinance; the Planning Board voted to send UNFAVORABLE RECOMMENDATIONS for changing the measurement from property line to primary door and adding the exception for when there is a separation provided by a roadway layout measuring more than 50 feet wide with 4 designated lanes of traffic. (Ref'd 6/19/19)

Additional Information:

ATTACHMENTS:

Description	Type
<input type="checkbox"/> 4. Case 19-13_Current Zoning Ordinance for Marijuana Establishments	Cover Memo
<input type="checkbox"/> 4a. ORD re Marijuana Establishment Zoning	Cover Memo
<input type="checkbox"/> 4b. ORD re Marijuana Establishment Zoning	Cover Memo

- ▢ 4c. STAFF REPORT_Case 19-13_Ordinance Amendement_Marijuana Establishments Zoning Cover Memo
- ▢ Marajuana Est. Amend. Planning Rec. 4c Cover Memo



SEP 13 2018

CITY OF NEW BEDFORD

In the Year Two Thousand and Eighteen

AN ORDINANCE

ZONING FOR MARIJUANA ESTABLISHMENTS AND MEDICAL MARIJUANA TREATMENT CENTERS

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Chapter 9 of the New Bedford Code of Ordinances, Comprehensive Zoning, is hereby amended by inserting the following after Section 4900A:

Section 4100B. Marijuana Establishments and Medical Marijuana Treatment Centers

4110B. Purpose.

The purposes of this section are to:

4111B. Allow state-licensed marijuana establishments and medical marijuana treatment centers to operate in the City of New Bedford in accordance with applicable state laws and regulations.

4112B. Minimize the adverse impacts that marijuana establishments and medical marijuana treatment centers might have on adjacent properties, residential neighborhoods, dwellings, schools, substance abuse treatment centers, churches, and other sensitive land uses.

4113B. Provide standards for the placement, design, siting, safety, security, monitoring, modification, and discontinuance of marijuana establishments and medical marijuana treatment centers that will protect the public health, safety, welfare, and the natural environment.

4120B. Definitions.

Craft Marijuana Cooperative: a Marijuana Cultivator comprised of residents of the

Commonwealth and organized as a limited liability company, limited liability partnership, or cooperative corporation under the laws of the Commonwealth. A cooperative is licensed to cultivate, obtain, manufacture, process, package, and brand cannabis or marijuana products to transport marijuana to Marijuana Establishments, but not to consumers.

Independent Testing Laboratory: a laboratory that is licensed by the Cannabis Control Commission and is (a) accredited to the International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Accrediting Cooperation mutual recognition arrangement or that is otherwise approved by the Commission; (b) independent financially from any Medical Marijuana Treatment Center (MMTC), Marijuana Establishment or licensee for which it conducts a test; and (c) qualified to test cannabis or marijuana in compliance with 935 CMR 500.160 and M.G.L. c. 94C, §34.

Marijuana: all parts of any plant of the genus *Cannabis*, not excepted below and whether growing or not; the seeds thereof; and resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol; provided, however, that “marijuana” shall not include: (i) the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt derivative, mixture or preparation of the mature stalks, fiber, oil or cake made from the seeds of the plant or the sterilized seed of the plant that is incapable of germination; (ii) hemp; or (iii) the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other products.

Marijuana Cultivator: an entity licensed to cultivate, process and package marijuana, and to transfer marijuana to other Marijuana Establishments, but not to consumers. A Craft Marijuana Cooperative is a type of Marijuana Cultivator.

Marijuana Establishment: a Marijuana Cultivator, Craft Marijuana Cooperative, Marijuana Product Manufacturer, Marijuana Retailer, Independent Testing Laboratory, Marijuana Research Facility, Marijuana Transporter, or any other type of licensed marijuana-related business, except a medical marijuana treatment center.

Marijuana Product Manufacturer: an entity licensed to obtain, manufacture, process and package cannabis or marijuana products and to transfer these products to other Marijuana Establishments, but not to consumers.

Marijuana Products: products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.

Marijuana Research Facility: an entity licensed to engage in research projects by the Cannabis Control Commission.

Marijuana Retailer: means an entity licensed to purchase and transport cannabis or marijuana product from Marijuana Establishments and to sell or otherwise transfer this product to Marijuana Establishments and to consumers. Retailers are prohibited from delivering cannabis or marijuana products to consumers; and from offering cannabis or marijuana products for the purposes of on-site social consumption on the premises of a Marijuana Establishment.

Marijuana Transporter: an entity, not otherwise licensed by the Cannabis Control Commission, that is licensed to purchase, obtain, and possess cannabis or marijuana product solely for the purpose of transporting, temporary storage, sale and distribution to Marijuana Establishments, but not to consumers. Marijuana Transporters may be an Existing Licensee Transporter or Third Party Transporter.

Medical Marijuana Treatment Center, also known as a Registered Marijuana Dispensary (MMTC): means an entity registered under 105 CMR 725.100 that acquires, cultivates, possesses, processes (including development of related products such as edible cannabis or marijuana products, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing cannabis or marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers for medical use.

Substance abuse treatment facility: a facility that provides substance abuse treatment programs, as that term is defined in 105 CMR 164.006, licensed by the Massachusetts Department of Public Health.

4130B. **General.**

4131B. Location Requirements and Restrictions.

- (i) Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC).
- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:
 - (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, **excluding chapels located within a cemetery**, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center; or

- (b) 200 feet of any dwelling or dwelling unit.

The distance under this provision shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment or Medical Marijuana Treatment Center will be located.

- (iii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located inside a dwelling or building containing a dwelling unit or inside any building containing transient housing, including a hotel, motel, or dormitory.
- (iv) Marijuana Establishments shall satisfy the conditions and requirements of all other applicable sections of the Zoning Ordinance, including but not limited to dimensional and parking requirements.

4132B. Physical Requirements and Restrictions.

- (i) All Marijuana Establishments and Medical Marijuana Treatment Centers shall be contained within a building or structure. All operations of a Marijuana Establishment or a Medical Marijuana Treatment Center must take place at a fixed location within a fully enclosed secured building and shall not be visible from the exterior of the building.
- (ii) Except for a Marijuana Transporter, no Marijuana Establishment or Medical Marijuana Treatment Center may be located in a trailer, storage freight container, motor vehicle, or other similar movable enclosure.
- (iii) No Marijuana Retailer or Medical Marijuana Treatment Center that dispenses marijuana or marijuana products to the public shall have a total gross floor area of more than 5,000 square feet.

4133B. Operational Requirements and Restrictions.

- (i) The hours of operation shall be set by the special permit granting authority, but in no event shall a Marijuana Establishment or Medical Marijuana Treatment Center that dispenses marijuana or marijuana products to the public be open to the public between the hours of 7:00 p.m. and 10:00 a.m., Monday through Sunday.
- (ii) No drive-through service shall be permitted at a Marijuana Establishment or Medical Marijuana Treatment Center.

- (iii) No marijuana shall be smoked, eaten, or otherwise consumed or ingested on the premises of any Marijuana Establishment or Medical Marijuana Treatment Center absent a positive vote by ballot question presented to the voters of the city at a biennial state election pursuant to G.L. c.94G, §3(b). The prohibition on on-site consumption shall also include private social clubs or any other establishment which allows for social consumption of marijuana or marijuana products on the premises, regardless of whether the product is sold to consumers on site
- (iv) No outside storage of marijuana, related supplies, or promotional materials shall be permitted.
- (v) All Marijuana Establishments and Medical Marijuana Treatment Centers shall be ventilated in such a manner that:
 - a. No pesticides, insecticides, or other chemicals or products used in the cultivation or processing of marijuana are dispersed into the outside atmosphere; and
 - b. No odor from marijuana or its processing can be detected by a person with an unimpaired and otherwise normal sense of smell at the exterior of the Marijuana Establishment, Medical Marijuana Treatment Center, or any adjoining use or property.

4134B. Marijuana Establishments and Medical Marijuana Treatment Centers shall not be permitted as Home Occupations under section 2500 of Chapter 9 of the New Bedford Code of Ordinances.

4135B. Any Medical Marijuana Treatment Center that received a provisional certificate of registration from the Department of Public Health prior to July 1, 2017 and has entered into a Host Community Agreement with the City shall be exempt from citing and permitting requirements of this ordinance with respect to its medical marijuana operations, but shall obtain a special permit to convert or expand its operations to include a non-medical Marijuana Establishment.

4140B. **Special Permit.**

4141B. General.

- (i) Except as provided in Section 4135B herein, it shall be unlawful for any Marijuana Establishment or Medical Marijuana Treatment Center

to operate in the City without first obtaining a special permit from the Planning Board.

- (ii) A Marijuana Establishment or Medical Marijuana Treatment Center must obtain a new special permit or a modification of its existing special permit for each additional use that is proposed after the initial permitting process.
- (iii) The special permit requirements set forth in this section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law, including site plan review by the Planning Board under Section 5400 of Chapter 9 of the New Bedford Code of Ordinances.
- (iv) No activity shall be conducted at a Marijuana Establishment or Medical Marijuana Treatment Center other than that for which the special permit has been issued.
- (v) A Marijuana Establishment or Medical Marijuana Treatment Center must, prior to seeking a special permit from the Planning Board, file a security plan with the New Bedford Police Department that includes information relating to alarms, fencing, gates, limited access areas, delivery procedures, police details, and video and lighting locations. The security plan shall show the arrangement of pedestrian circulation and access to the public points of entry to the premises from the nearest public or private street or off-street parking area. When Marijuana Establishments and Medical Marijuana Treatment Centers update their security plans, they must share these updates with the New Bedford Police Department. These security plans and updates shall, to the maximum extent permissible under the law, remain confidential.
- (vi) A Marijuana Establishment or Medical Marijuana Treatment Center must, prior to seeking a special permit from the Planning Board, file an emergency response plan with the New Bedford Fire, Police, and Health Departments. When Marijuana Establishments and Medical Marijuana Treatment Centers update their emergency response plans, they must share these updates with the New Bedford Fire, Police, and Health Departments. These emergency response plans and updates shall, to the maximum extent permissible under the law, remain confidential.

4142B. Limit on Number of Marijuana Establishments and Medical Marijuana

Treatment Centers.

- (i) The Planning Board shall limit the number of special permits issued to Marijuana Retailers to 20% of the number of licenses issued within the City under MGL c. 138, §15 for the retail sale of alcoholic beverages not to be drunk on the premises where sold (“the 20% number”). If the 20% number is not a whole number at the time that the Planning Board is considering a special permit application for a Marijuana Retailer, then it shall be rounded up to the next whole number for purposes of determining the maximum allowable number of special permits in the City for Marijuana Retailers. A special permit for a Marijuana Retailer shall not be revoked solely because the total number of special permits issued to Marijuana Retailers in the City exceeds the 20% number due to a reduction in the number of licenses issued within the City under MGL c.138, §15.
- (ii) Other than any Medical Marijuana Treatment Center that received a provisional certificate of registration from the Department of Public Health prior to July 1, 2017 and entered into a Host Community Agreement with the City, there shall be no Medical Marijuana Treatment Centers in the City that dispense marijuana or marijuana products to the public.

4143B. Application.

A special permit application for Marijuana Establishments and Medical Marijuana Treatment Centers must be filed with the Planning Board. In addition to the special permit requirements of Section 5300, as part of the application, each applicant shall submit to the Planning Board:

- (i) The name and address of each owner of the Marijuana Establishment or Medical Marijuana Treatment Center.
- (ii) A list of all executives, managers, officers, directors, persons or entities having direct or indirect authority over the management, policies, security operations or cultivation operations of the Marijuana Establishment or Medical Marijuana Treatment Center.
- (iii) Proof of approval from the Commonwealth of Massachusetts for the proposed Marijuana Establishment or Medical Marijuana Treatment Center, including copies of all required registrations, licenses, and permits issued to the applicant for the facility by the state and any of

its agencies, including the Cannabis Control Commission and/or the Department of Public Health, as the case may be. The Planning Board shall not consider or act upon any special permit application that does not demonstrate that the proposed Marijuana Establishment or Medical Marijuana Treatment Center has obtained a preliminary license or provisional certificate of registration from the state or one of its agencies.

- (iv) A copy of any executed Host Community Agreement entered into between the Marijuana Establishment or Medical Marijuana Treatment Center and the City, signed by the Mayor and approved by the City Council.
- (v) Evidence of the applicant's right to use the site in question for a Marijuana Establishment or Medical Marijuana Treatment Center, such as a deed, a copy of the lease agreement with a notarized statement from the property owner attesting to its validity, a real estate contract contingent upon successful licensing and permitting, or a notarized letter of intent by the owner of the property indicating intent to lease the premises to the applicant upon successful licensing and permitting.
- (vi) A detailed description of the proposed activities to occur at the site in relation to the special permit criteria set forth in Sections 4150B and 5320 of Chapter 9 of the New Bedford Code of Ordinances. Such narrative shall include information relating to the cultivation, manufacturing, and processing of marijuana and marijuana products; on-site sales of marijuana products; off-site deliveries; distribution of educational materials; and other programs or activities.
- (vii) A statement from the New Bedford Police Chief or his/her designee, acknowledging review and approval of the applicant's security plan submitted pursuant to Section 4141B(v) above. This statement may be on a form approved by the Planning Board.
- (viii) Statements from the New Bedford Fire, Police, and Health Departments that each department has reviewed and approved the applicant's emergency response plan submitted pursuant to Section 4141B(vi) above. These statements may be on forms approved by the Planning Board.
- (ix) An odor control plan that provides for adequate ventilation, detailing the specific odor-emitting activities or processes to be conducted on-

site, the source of those odors, the locations from which they are emitted from the facility, the frequency of such odor-emitting activities, the duration of such odor-emitting activities, and the administrative and engineering controls that will be implemented to control such odors, including maintenance of such control.

- (x) A quantitative transportation analysis, prepared by a qualified transportation specialist acceptable to the Planning Board, modeling the expected origin and frequency of client and employee trips to the site, the expected modes of transportation used by clients and employees, and the frequency and scale of deliveries to the site.

4150B. Action by Planning Board.

In addition to the findings required for a special permit in Section 5320 of Chapter 9 of the New Bedford Code of Ordinances, the Planning Board shall make the following specific findings before granting a special permit to a proposed Marijuana Establishment or Medical Marijuana Treatment Center:

4151B. The applicant has demonstrated that the proposed Marijuana Establishment or Medical Marijuana Treatment Center has met all of the permitting requirements of all applicable agencies within the Commonwealth and will be in compliance with all applicable state laws and regulations.

4152B. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance.

4153B. The proposed use is designed to minimize any adverse visual, economic, security, or health impacts on abutters and other parties in interest.

4160B. Transfer/Discontinuance of Use/Lapse.

4161B. A special permit granted under this section is non-transferable and shall have a term limited to the duration of the applicant's ownership or leasing of the premises as a Marijuana Establishment or a Medical Marijuana Treatment Center. A special permit issued for a Marijuana Establishment or Medical Marijuana Treatment Center shall not be transferable or assignable to a different location or to a different type of Marijuana Establishment or Medical Marijuana Treatment Center. A change of the licensee or ownership of the Marijuana Establishment or Medical Marijuana Treatment Center shall require submission of an application for a new special permit application or modification of the existing special permit to the Planning Board for approval.

4162B. Any Marijuana Establishment or Medical Marijuana Treatment Center permitted under this section shall be required to remove all material, plants, equipment and other paraphernalia within ninety (90) days of ceasing operations or immediately following the expiration, revocation, or voiding of its state license. A Marijuana Establishment or Medical Marijuana Treatment Center shall notify the Planning Board and Zoning Enforcement Officer in writing within forty-eight (48) hours of any cessation of operations or expiration, revocation, or voiding of any state license or registration.

4163. A special permit shall lapse if the applicant does not commence construction or operation of the proposed Marijuana Establishment or Medical Marijuana Treatment Facility within one (1) year of the special permit's issuance.

4170B. Inspections.

The City and its agents, including representatives from the Building, Health, Police, and Fire Departments, may conduct unannounced, unscheduled, periodic inspections of the premises of any Marijuana Establishment or Medical Marijuana Treatment Center on weekdays during normal business hours to determine the Marijuana Establishment's or Medical Marijuana Treatment Center's compliance with the requirements of state and local laws, regulations, licenses, and permits, including this section.

4180B. Severability.

If any provision of this Section 4100B is found to be invalid by a court of competent jurisdiction, the remainder of Section 4100B shall not be affected but shall remain in full force. The invalidity of any provision of Section 4100B shall not affect the validity of the remainder of the City's Zoning Ordinance.

Section 2. Table of Uses

The Table of Principal Use Regulations in Chapter 9 of the New Bedford Code of Ordinances, Comprehensive Zoning, is hereby amended by:

(a) Inserting the following in Section C. Commercial:

C. Commercial	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD
32. Marijuana Retailer	N	N	N	N	N	N	PB	PB	PB	N	N

and

(b) Inserting the following in Section D. Industrial:

D. Industrial	RA	RB	RC	RAA	MUB	PB	IA	IB	IC	WI	KHTOD
19. Craft Marijuana Cooperative	N	N	N	N	N	N	PB	PB	PB	N	N
20. Independent Testing Laboratory	N	N	N	N	N	N	PB	PB	PB	N	N
21. Marijuana Cultivator	N	N	N	N	N	N	PB	PB	PB	N	N
22. Marijuana Product Manufacturer	N	N	N	N	N	N	PB	PB	PB	N	N
23. Marijuana Research Facility	N	N	N	N	N	N	PB	PB	PB	N	N
24. Medical Marijuana Treatment Center	N	N	N	N	N	N	PB	PB	PB	N	N

Section 3.

This ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, June 14, 2018

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

IN CITY COUNCIL, August 16, 2018

Passed to a Second Reading.

Dennis W. Farias, City Clerk

IN CITY COUNCIL, September 13, 2018

Passed, to be Ordained – Yeas 11, Nays 0.

Dennis W. Farias, City Clerk

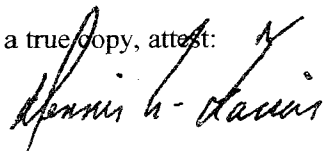
Presented to the Mayor for Approval September 17, 2018.

Dennis W. Farias, City Clerk

Approved September 26, 2018.

Jonathan F. Mitchell, Mayor

a true copy, attest:



City Clerk



CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by striking the last paragraph of said Subsection and inserting, in place thereof, the following paragraph:-

The distance under this 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.

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

Dennis W. Farias
City Clerk



CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Paragraph (a) of Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by inserting, after the words "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.

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

Dennis W. Farias
City Clerk



PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford
Department of Planning, Housing & Community Development
608 Pleasant St, New Bedford, Massachusetts 02740
Telephone: (508) 979.1500 Facsimile: (508) 979.1575

STAFF REPORT

REPORT DATE
May 23, 2019

PLANNING BOARD MEETING
June 12, 2019

Case # 19-13 A & B: Ordinance Text Amendment – Marijuana Establishment Zoning

Petitioners: City Councilors: Brian K. Gomes, At Large and Joseph P. Lopes, Ward 6
133 William Street, Rm 215 New Bedford, MA

Proposal: 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:

The proposed text amendments are both related to the marijuana establishment zoning location requirements and restrictions sections. Which currently reads as follows:

Current Ordinance Text

4131B. Location Requirements and Restrictions.

- (i) Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC).
- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:
 - (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center; or
 - (b) 200 feet of any dwelling or dwelling unit.

The distance under this provision shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment or Medical Marijuana Treatment Center will be located.

- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located inside a dwelling or building containing a dwelling unit or inside any building containing transient housing, including a hotel, motel, or dormitory.
- (iv) Marijuana Establishments shall satisfy the conditions and requirements of all other applicable sections of the Zoning Ordinance, including but not limited to dimensional and parking requirements.

Case 19-13 A:

Proposes Removing the following paragraph:

The distance under this provision shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment or Medical Marijuana Treatment Center will be located.

And inserting instead:

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."

Case 19-13 B:

Proposes changing this paragraph from this:

No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:

- (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center; or

To read as follows:

No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:

- (a) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center **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;** or

Combined, the proposed would read as follows:

4131B. Location Requirements and Restrictions.

- (iii) Marijuana Establishments and Medical Marijuana Treatment Centers shall only be located in Industrial Districts A (IA), B (IB), and C (IC).
- (ii) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located within:
 - (b) 500 feet of any public or private school providing education in kindergarten or any of grades 1 through 12, licensed daycare center, nursery school, preschool, building operated as part of the campus of any private or public institution of higher learning, playground, park, public library, church, excluding chapels located within a cemetery, substance abuse treatment facility, Marijuana Establishment, or Medical Marijuana Treatment Center **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;** or
 - (b) 200 feet of any dwelling or dwelling unit.

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.”

- (iv) No Marijuana Establishment or Medical Marijuana Treatment Center shall be located inside a dwelling or building containing a dwelling unit or inside any building containing transient housing, including a hotel, motel, or dormitory.
- (iv) Marijuana Establishments shall satisfy the conditions and requirements of all other applicable sections of the Zoning Ordinance, including but not limited to dimensional and parking requirements.

Background:

How does the City verify Zoning Conformance for Marijuana Establishments?

Currently, an applicant makes a request for a zoning conformance determination letter from the Department of Inspectional Services. The request identifies the property or properties the applicant wishes to verify. The Commissioner of Inspectional Services receives the request and forwards it to various city departments for comments regarding conformance.

The Planning Division Staff create a map using existing data in a mapping software (ArcMap) to create a buffer map. Inspectional Services staff then use the generated map on a site visit for an in the field assessment.

The maps use parcel level data to create two buffers: one at 200’ and one at 500’ based on the property boundaries. Any of the uses identified for the 500’ buffer are highlighted on the map. Residential properties are not currently highlighted as there is too many residential properties throughout the city resulting in a large data set that slows the program down and would make the maps overly complex.

During the field review, Inspectional Services staff note whether or not residential properties are located within the 200’ buffer as shown. Further, due to data being potentially out of date, staff verifies in the field if any 500’ buffer properties identified on the map are still active and also check the area for ones that may have been missed in the map data.

Arc Map is a good estimate for measurement, though it not to be considered exact at a small-scale measurement. In cases where the measurement is very close the city has required a surveyed measurement via a stamped statement supplied from a professional land surveyor measuring the distance between the identified properties.

To date the City has had eighteen (18) requests for zoning conformance, to seek conformance on fifty eight (58) property sites. **Fifteen properties have been found in conformance.**

Input from Other City Departments:

The rezoning request was distributed to City Clerk, City Solicitor, Health Department, Inspectional Services, Engineering, Public Infrastructure, Conservation Commission, Fire Department and School Department. Although no comments have been received as of the production date of these Planning Staff Comments, any such comments subsequently received will be provided at the Planning Board's public hearing.

For Board Member Consideration:

19-13 A: Changing the measurement: from property line to primary door

Merits: The proposed change to how the city measures the buffer requirement would likely reduce the distance between the points of measurement; therefore, potentially increasing the number of locations that would conform with the zoning requirements.

Concerns: The measuring metric for the original ordinance language was taken directly from the language of the State law. Such a reduction in measurement could potentially violate such statute. Additionally, the new way of measuring would be much more difficult and potentially more costly. The City does not currently have a reliable geographic database that includes buildings. All measurements for the newly proposed measurement would require an in field measurement either by city staff or at the applicant's expense by a professional land surveyor.

State law:

935 CMR Section 500.110 Security Requirements for Marijuana Establishments (3) Buffer Zones:

"(3) Buffer Zone. The property where the proposed Marijuana Establishment is to be located, at the time the license application is received by the Commission, is not located within 500 feet of a pre-existing public or private school providing education in kindergarten or any of grades one through 12, unless a city or town adopts an ordinance or by-law that reduces the distance requirement. The distance under 935 CMR 500.110(3) **shall be measured in a straight line from the nearest point of the property line in question to the nearest point of the property line where the Marijuana Establishment is or will be located.**"

The distance to a primary entrance may be located away from any of the conflicting uses; however, in the case of large sites other portions of the site may be near an incompatible use identified. Since, site activities are not limited to the primary door this may be problematic. For example, delivery areas with truck traffic are typically located in the rear of a site.

The primary entrance may change later, which could create a difficult enforcement issue. It would also be infeasible to issue a conformance decree for a vacant lot or a property where a new building is proposed. Further, as the Special Permit process involves site plan review, it is possible that the Planning Board would propose a different area for a "primary entrance". This raises the question, would the applicant then be denied based upon the fact that the Planning

Board does not approve of the entrance they picked as their primary one? Additionally, there is the question of what is the definition of “primary entrance”.

19-13 B: Adding the exception for when there is a separation provided by a roadway layout measuring 50’ or more wide with 4 designated lanes of traffic

Merits: This proposed change would allow for the roadway to serve as the buffer between uses. Roadways such as the Interstate-195, Route 140, portions of Route 6, Route 18 (JFK Memorial Boulevard) and others could presumably qualify in this instance. In the instances of I-195 or Route 140 the limited highway access status prevents individuals from crossing along the roadway. In these instances, the limited access highways do provide a physical barrier between uses.

Concerns:

There are several questions regarding the definition of a “lane of traffic” (does a turn lane qualify, for example) and the definition of “roadway layout”.

For example, depending on the definition of the “lane of traffic”, the New Bedford Business Park with paired roadway separated by a grass median, could possibly have two marijuana establishments across the street from one another.

The phrase “roadway layout” in engineering is often understood to include the entire right of way (ROW); meaning including the sidewalks, curbs, and travel lanes for vehicles. In some cases, a roadway layout on a recorded plan may be larger than what has been built. This is for instances where roadway widening may be needed in the future or places where sidewalks weren’t previously required.

Another concern is that roadway widths vary and may not be a consistent width throughout. An in field measurement would need to be taken for each site and there is no definition as to where this measurement should be taken; Would one point along the property frontage have to meet the width requirement, or would it have to be consistently wider than required along the entire site frontage/property line?

There are many city roadways that measure wider than 50’. Not all currently have 4 vehicular travel lanes. For a comparative analysis, planning staff determined the following:

- **Using the engineering definitions of “roadway layout” there are over 900 segments of roadway in the city that are 50’ or wider.**
- **Measuring only the roadway width (edge of pavement to edge of pavement; not including sidewalks or curbs), there are approximately fourteen (14) streets with roadway widths 50’ or wider.** These include, but may not be limited to, segments of: Brock Avenue, Cove Street, W. Rodney French Boulevard, Cove Road, Rockdale Avenue, Page Street, Acushnet Avenue, Kempton Street, Mt. Pleasant Street, Belleville Avenue, and Theodore Rice Boulevard.

Attachments:

1. Written Motion by City Councilors: Brian K. Gomes (At Large) and Joseph P. Lopes (Ward 6).

2. ATTACHMENT # 1: WRITTEN MOTION FOR CITY COUNCIL



CITY OF NEW BEDFORD

CITY COUNCIL

April 11, 2019

WRITTEN MOTION

Requesting that the Committee on Ordinances amend Chapter 9, Section 4131B of the Code of Ordinances, Relative to Marijuana Establishment Zoning. (To be Referred to the Committee on Ordinances and the Planning Board.)

Brian K. Gomes, Councillor at Large

Joseph P. Lopes, Councillor Ward Six

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy attests

A handwritten signature in dark ink, appearing to read "Dennis W. Farias".

City Clerk



CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

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SECTION 1. Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by striking the last paragraph of said Subsection and inserting, in place thereof, the following paragraph:—

The distance under this 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.

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

PLANNING
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

Dennis W. Farias
City Clerk



CITY OF NEW BEDFORD

In the Year Two Thousand and Nineteen

AN ORDINANCE

RELATIVE TO MARIJUANA ESTABLISHMENT ZONING

31- 509

Be it ordained by the City Council of the City of New Bedford as follows:—

SECTION 1. Paragraph (a) of Subsection (ii) of Section 4131B of Chapter 9 of the Code of Ordinances is hereby amended by inserting, after the words "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.

SECTION 2. This Ordinance shall take effect in accordance with the provisions of Chapter 40A of the General Laws.

RECEIVED
APR 17 2019
DEPARTMENT

IN CITY COUNCIL, April 11, 2019

Referred to the Committee on Ordinances and the Planning Board.

Dennis W. Farias, City Clerk

a true copy, attest:

Dennis W. Farias
City Clerk



PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development

133 William Street, New Bedford, Massachusetts 02740

Telephone: (508) 979.1488 Facsimile: (508) 979.1576

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.

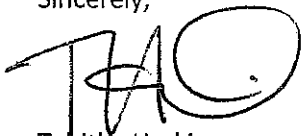
After closing the public hearing, two separate motions were made, one for each request.

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.



Item Title:

WRITTEN MOTION re Exterior Meter Fees

Item Detail:

5. WRITTEN MOTION, Councillors Carney and Dunn, requesting that DPI Commissioner Jamie Ponte meet with the Committee on Ordinances to discuss the \$50.00 fee that residents are being charged for exterior meters. (To be Referred to the Committee on Ordinances.) (Ref'd 5/9/19)

Additional Information:



Item Title:
Accessibility Statement

Item Detail:

In accordance with the Americans with Disabilities Act (ADA), if any accommodations are needed, please contact the Clerk of Committees Office at 508-979-1482. Requests should be made as soon as possible but at least 48 hours prior to the scheduled meeting.

Additional Information: