



ZONING BOARD OF APPEALS

City Hall, Room 303
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 New Bedford, MA 02740
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CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:		#4171		
Request Type:		Variance		
Address:		67 Chancery Street		
Zoning:		Residential B Zoned District		
Recorded Owner:		Dana B. Lewis		
Applicant:		Dana B. Lewis		
Applicant Address:		18 Tanner Lane Fairhaven, MA		
Application Submittal Date		Public Hearing Date		Decision Date
January 16 th , 2015		February 26 th , 2015		February 26 th , 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
45	461	11194	191	

CITY CLERKS OFFICE
 NEW BEDFORD, MA
 2015 MAR 10 AM 10:28
 CITY CLERK

Application:

Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulation), and 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Height of Buildings-# of stories); relative to property located at 67 Chancery Street, Assessor's Map Plot 45 Lot 461 in a Residential-B Zoned District. To allow the petitioner to create a cottage setup between the second floor and attic as plans filed.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached Decision with the Conditions as described in the attached Decision.
 (See Attachment)

A copy of this Decision was filed with the City Clerk of the City of New Bedford on March 10th, 2015. Any person aggrieved by this decision has twenty (20) days to appeal the decision in accordance with the procedures set forth in Section 17 of Chapter 40A of the General Laws of Massachusetts.

March 10, 2015
 Date

Allen D. Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to create a cottage setup between the second floor and attic as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulation), and 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Height of Buildings-# of stories); relative to property located at 67 Chancery Street, Assessor's Map Plot 45 Lot 461 in a Residential-B Zoned District.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan and Floor Plans Packet, drawn by Comprehensive Design-Build Services, date stamped received by City Clerk's Office January 16th, 2015, including:
 - Existing Basement Plan, Drawing no. EX1.1.
 - First Floor Plans, Drawing no. A1.1
 - Second Floor Plans, Drawing A1.2
 - Third Floor Plans, Drawing A1.3
 - Existing Site Plan, Drawing no. C1.1.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office January 16th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, dated January 26th, 2015.
- Letter to ZBA from City Planner Jill Maclean, dated February 25th, 2015.
- Letter to ZBA from City Councilor Steven Martins, dated February 24th, 2015, date stamped received City Planning Department February 25th, 2015
- Photograph of property, submitted by Armando Pereira, received February 26th, 2015.

2.) DISCUSSION

Board Members I. Comerford, J. Mathes, A. Decker, and L. Schick were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A. Decker read and motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated January 26th, 2015; to have the appeal be received and placed on file; to have the plan be received and placed on file; that the owners of the lots as indicated are the ones deemed by the Board to be affected; that the Communication from the Office of City Planner dated February

25th, 2015 be received and placed on file; and that the Communication from the City Councilor Martins dated February 25th, 2015 be received and placed on file. Motion seconded by J. Mathes. With all in favor, the motion carried. Chairperson Comerford then declared the hearing open.

The Representative of the Petitioner: Mr. Armando Pereira (P.O. Box 578 West Wareham, MA 02576) submitted a picture of the property to the Board. A Decker motioned to receive and place on file the photograph of the property. Motion seconded by J. Mathes. With all in favor, motion carried.

Mr. Pereira explained the property is currently 2.5 stories. Mr. Pereira spoke about confusion due to definitions in the Massachusetts state building code and the New Bedford code for basements and number of stories.

Mr. Pereira explained that the property is currently a two family, which this plan will not change. He explained that the proposal ensures that the property will remain still a two family. Mr. Pereira described the location of the proposed stairs within the second unit. The second floor will be open to the third floor a "cottage style".

Chairperson Comerford asked Commissioner Romanowicz to explain the number of stories for this property. Commissioner Romanowicz used the submitted photo to point out the three stories. He explained that the top portion was designed as storage space for these types of home, to be used as habitable space it then becomes a story. Chairperson Comerford asked Commissioner Romanowicz to explain how a property can have a half story. Commissioner Romanowicz explained under a previous version of the code a Special Permit could be granted to convert a 2.5 story home into a three family. Therefore, a number of houses are classified as 2.5 stories when technically they are a three family house.

Mr. Pereira thanked Commissioner Romanowicz for the explanation. Mr. Pereira reiterated that the intention was to prevent the three apartment. Rather they are proposing the third story be tied down into the second story in a cottage style setup. The lower level would have livable space and the upper level would have bedrooms.

Chairperson Comerford noted the plans show existing rooms in the third level. Chairperson Comerford asked if there are already bedrooms in the third story. Mr. Pereira said there are existing plaster walls in the third story. He explained the redesign of the space and the movement of the stairs and a bedroom to ensure the third floor cannot be used as a third separate apartment. He stated the petitioner understands the area the property is located in.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the petition. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further stated questions or concerns, Chairperson I. Comerford declared the hearing closed.

The Board members discussed the case.

L.Schick and A. Decker discussed that it won't be a third apartment. A. Decker stated he like that the third floor is to be tied down to the second floor. The Board discussed the meaning of cottage style. Chairperson Comerford stated he didn't believe it add any additional burden to the area as it wasn't increasing the current footprint. It's what already exists. A. Decker concurred.

4.) FINDINGS

Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)

The Board of Appeals may vary otherwise applicable dimensional requirements pertaining to frontage, lot area, building height and sidelines upon finding the following:

- a.) *That owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;*

The Board found that a literal enforcement of the dimensional requirements of the zoning district would constitute a hardship for the applicant.

- b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact to the public good. The board felt there was not any additional burden to the area as the proposal wasn't increasing the current footprint and the story already existed.

- c.) *And, that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.*

The Board found that the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

5.) RELIEF

With respect to the relief requested by the Applicant, the Board has been presented with sufficient information at the hearing to justify the relief described below, subject to the conditions set forth below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulation), and 2710 (General), 2720 (Table of Dimensional Requirements, Appendix-B-Height of Buildings-# of stories); relative to property located at 67 Chancery Street, Assessor's Map Plot 45 Lot 461 in a Residential-B Zoned District. To allow the petitioner to create a cottage setup between the second floor and attic as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The project shall be set forth according to plans submitted with the application;
- b. That the applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;
- c. And that the rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

7.) DECISION

Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested Variance.

On a motion by J. Mathes, seconded by L. Schick to grant the requested Variance, the vote carried 4-0 with members J. Mathes, L. Schick, A. Decker, and I. Comerford voting in the affirmative, no member voting in the negative. (Tally 4-0)

Filed with the City Clerk on:

March 10, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals