



ZONING BOARD OF APPEALS

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CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4175			
Request Type:	Variance			
Address:	ES Dana Street			
Zoning:	Residential B Zoned District			
Recorded Owner:	Kenneth Koroski and Arminda Koroski			
Applicant:	Kenneth and Arminda Koroski; Field Engineering Co., Inc.			
Applicant Address:	43 Lambeth Street New Bedford, MA 02745; 11D Industrial Drive P.O. Box 1178 Mattapoisett, MA 02739			
Application Submittal Date	Public Hearing Date	Decision Date		
January 23 rd , 2015	March 26 th , 2015	March 26 th , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
125A	473	7132	226	

Application:

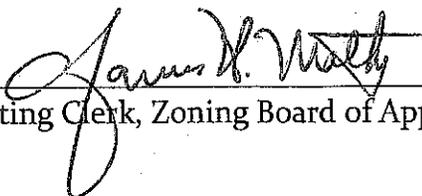
Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), & 2720 (Table of Dimensional Requirements, Appendix-B-Lot Frontage); relative to property located at ES Dana Street, Assessor's Map Plot 125A, Lot: 473 in a Residential-B Zoned District. The petitioner is proposing to construct a 26'x44' single family with a 12'x12' rear deck 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 April 7th, 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.

4/7/15

Date


Acting Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to construct a 26'x44' single family with a 12'x12' rear deck as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), & 2720 (Table of Dimensional Requirements, Appendix-B-Lot Frontage); relative to property located at ES Dana Street, Assessor's Map Plot 125A, Lot: 473 in a Residential-B Zoned District.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn by Field Engineering Co., Inc, dated 5/12/05, last dated revision 11/17/14, date stamped received by City Clerk's Office January 23rd, 2015

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office January 23rd, 2015.
- Letter to ZBA from Project Manager, Richard R. Riccio III, P.E., dated January 21st, 2015
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 6th, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated March 23rd, 2015.
- Letter to ZBA from Conservation Agent, Sarah Porter, enclosed Order of Conditions, dated March 20th, 2015.
- Letter to ZBA from New Bedford Redevelopment Authority Chairman, David A. Kennedy, dated March 19th, 2015.
- Letter to ZBA from Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 23rd, 2015.

2.) DISCUSSION

Board Members I. Comerford, J. Mathes, J. Walsh, R. Schilling, 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 Jane Medeiros Friedman (First Assistant City Solicitor) were present during proceedings for the subject case review.

Acting Clerk J. Mathes read and motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated March 6th, 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; and that the Communication from the Office of City

Planner dated March 23rd, 2015 be received and placed on file. Motion seconded by L. Schick. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Representative of the Petitioner: Richard Riccio of Field Engineering (11D Industrial Drive Mattapoisett, MA) explained the history of the proposed project and the petition before the board. Mr. Riccio explained the petitioner, Mr. Koroski, had purchased the parcel of land from the New Bedford Redevelopment Authority in 2004 with the intent of building a single family house on the property. Mr. Riccio explained that this project originally began the permitting process around the time of purchase. During the permitting the unconstructed portion of Dalton Street that ran alongside this property was discontinued in May 2005. Mr. Riccio explained this was suggested to bring the property line closer to the already constructed portion of Dana Street. Mr. Riccio stated the applicants had gone through the Notice of Intent process with Conservation Commission and received an Order of Conditions in November 2005 and subsequently extended the permit. An amended Order of Conditions from the Conservation Commission has been granted for the current petition in front of the Board, he said. Mr. Riccio explained with the downturn in the economy the project was then put on hold for a period of time. During this time Mr. Riccio further explained that the City had an internal memo in 2011 instructing that building permits are not to be issued nor Form-A plans to be signed without adequate constructed frontage. Previous practice, Mr. Riccio stated, was that a rider could be recorded with the property stating the City was not responsible for the private way, but was no longer the case as of 2011. Since, that time working with the City it has been decided the best way to move forward would be to build an extension of Dana Street to the parcel providing it some constructed frontage, which is why they are before the Board.

Mr. Riccio explained due to wetlands on and near the lot they are unable to build a full width roadway. He further commented that had Dalton Street not been discontinued the adequate frontage could have been built along that portion of the property through a subdivision plan.

Mr. Riccio addressed the findings necessary for the board to grant the variance. Mr. Riccio read from his communication to the Board as submitted in the application packet. He stated there are circumstances related to the existing wetlands on and adjacent to the property which developed during the initial attempt to permit the property which create a hardship to Mr. and Mrs. Koroski. The existing wetlands preclude Mr. and Mrs. Korkoski from construction of adequate frontage within the Dana Street layout to access the lot and meet the current Zoning Ordinance. Mr. Riccio indicated on the plan where the wetland line was originally when the property was purchased and where it was revised and is located today, closer to the property and in the original roadway layout.

He further stated, Mr. and Mrs. Koroski purchased the property with the specific intent to develop a single family dwelling on the vacant parcel of land and add the property to the City tax rolls as a developed piece. During the permitting process, Mr. and Mrs. Koroski have spent a substantial amount of money in an attempt to ascertain the necessary approvals to construct the single family dwelling. We feel that the given the history of the project, there is a substantial hardship that would be developed with literal enforcement of the provisions of the Zoning Ordinance related to frontage, he said.

Mr. Riccio continued by saying that the petitioners feel that relief may be granted without nullifying or substantially derogating from the intent of the Zoning Ordinance as the subject parcel will meet all other requirements of the Zoning Ordinance with the exception of frontage. The proposed driveway is adequate to provide access to one single family dwelling and due to the existing wetlands further along Dana Street, there would be no way to develop any additional lots off of this driveway.

Lastly, he stated the petitioners feel that the relief may be granted without substantial detriment to the public good as the single family dwelling is consistent with the uses in this area. In addition, there may be a benefit to the public good, as part of this project the applicant is proposing to perform some drainage improvements at the end of Dana Street to minimize the amount of runoff that ponds at the end of the roadway in current conditions. This will consist of constricting a paved apron within the Dana Street layout which will direct the runoff off the roadway towards the wetlands. The applicant is also proposing a crushed stone drainage trench along the proposed driveway to provide some attenuation of the runoff. Based on these reasons the applicants believe they meet the requirements for a variance and respectfully request the board grant the variance.

J. Walsh asked Mr. Riccio if what was depicted as pavement to the dwelling was Dana Street or a private roadway. Mr. Riccio clarified that it is a private way designed within the Dana Street layout. Mr. Riccio explained they have worked with the City DPI (Department of Public Infrastructure) in the design of the private way.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. Mr. Kenneth Koroski (43 Lambeth Street New Bedford, MA), owner of the property, spoke in favor of the petition. Mr. Koroski explained he had purchased the property from the New Bedford Redevelopment Authority to develop a property and add tax revenue to the City. He stated he has been trying to develop this property for the past eleven (11) years. He would like the Board to take that into consideration and grant the property the necessary variance so it can generate tax revenue for the City and its residents. At Large City Councilor Linda Morad (1426 Acushnet Avenue New Bedford, MA) spoke in favor of the petition. Councilor Morad explained she had assisted the applicants in their interactions with the New Bedford Redevelopment Authority to originally acquire the property. She also was present to assist the applicant in discussions with the City Planning Department in 2004 or 2005 on developing the property, when they received advice to discontinue Dalton Street. She

stated she was the City Councilor to move that motion forward at that time. Councilor Moard stated that looking back this may not have been the best advice to have received. She explained the petitioner has continued since that time to figure out a way to develop the single family home. Councilor Morad explained the neighborhood consists of single family homes and this would be within the character of the neighborhood. She further stated the project would provide some improvements for drainage in the neighborhood for neighbors who have had issues with the way the street drains currently. Councilor Morad asked the Board for favorably consideration for two taxpaying individuals in the City who have attempted to do this the right way and maybe didn't get some of the best advice they should have gotten, and to grant them the relief they are seeking. No one else 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.

Chairperson I. Comerford asked First Assistant City First Assistant City Solicitor Friedman to explain the decision that was made to discontinue the street in 2004. First Assistant City Solicitor Friedman stated she could not explain as to why the street was discontinued as she was not present at the time. First Assistant City Solicitor Friedman did wish to bring the Board members attention to the communications received from the Building Commissioner and City Planner. First Assistant City Solicitor Friedman said she shared the concern that a gravel driveway does not constitute adequate frontage for a way. As far as the design with the eighteen (18) feet width, it has been reviewed by the City and is fine, however it would need to be paved for access for fire trucks and ambulances, she explained.

Chairperson I. Comerford opened the floor for Board member comments.

J. Walsh stated he was concerned that if the Board were inclined to grant the Variance the petitioner could not build on the lot anyway, based on his understanding of the law. He stated he was not sure if it would be better to wait until the conditions of the lot were such that the petitioner was allowed to build on the lot; or if it was appropriate to grant a variance on the condition that at some point in time the lot would become buildable once there is access from the street. He stated he would be inclined to grant it if they could.

R. Schilling asked if the New Bedford Redevelopment Authority had any connection with the City of New Bedford or if it was a private, non-profit, non-governmental organization.

Chairperson Comerford asked if Councilor Morad could answer that question. Councilor Morad explained they are a quasi-government agency and they hold some land in the City of New Bedford. She explained they, as the petitioner mentioned, sell land to be developed to put the land back on the tax rolls.

R. Schilling expressed frustration that a quasi-government agency with New Bedford in the name would sell property for the purpose of putting it on the tax rolls and eleven (11) years later still a project would have obstacles to development being put in the way. R. Schilling stated this must have been a nightmare for the applicants. R. Schilling said from the Board members positions here he said it would be to speed up the process if there were any way to do it. He noted there are other departments and agencies involved in the development of the project as well.

Chairperson Comerford said it's amazing they've kept up with it for so long after going through this.

Councilor Morad stated it has been a nightmare for the applicants and as mentioned at one point due to the economics in the area it wasn't reasonable to proceed.

R. Schilling asked First Assistant City Solicitor Friedman if the road changed physical, or if nothing happened to the road, just a change to its designation. First Assistant City Solicitor Friedman confirmed its designation was changed.

J. Walsh commented that the Board granting the Variance would get the petitioner one step closer to building it but it would still be unbuildable at that point.

J. Mathes referenced the letter from the City Planner stating the approval include private way be paved and they follow the Order of Conditions from the Conservation Commission. J. Mathes asked if the applicant would accept those conditions.

Mr. Riccio stated he understood the comments. He asked for clarification if the pavement would be required just for the portion in the Dana Street layout or the Dana Street layout and the applicants' driveway. Mr. Riccio stated the reason for the gravel was the difficulty in getting the approval of the Conservation Commission. Mr. Riccio stated he believes they could design it with pavement in the Dana Street layout. Mr. Riccio stated he could return to the Conservation Commission with that requirement, as long as they only have to pave as much as necessary.

J. Mathes said the letter from the City Planner says "private way" so it would be that portion.

Chairperson Comerford stated the Board does have concerns when it comes to public safety and these types of conditions they do take into consideration. If the applicant is ok with it, then they will make it a condition that they pave the private way.

J. Walsh asked if the paving of a private way constitutes a street. First Assistant City Solicitor Friedman explained that the construction of the subdivision street would constitute a street.

J. Walsh asked, if it is paved it becomes a street? First Assistant City Solicitor Friedman explained if it is built to City standards it then becomes a street. J. Mathes asked, if it is paved it's still a private way and not a City street? First Assistant City Solicitor Friedman explained that frontage can be on a private way.

First Assistant City Solicitor Friedman alerted the applicant to a concern for the fire department's ability to turn around an emergency response vehicle on the lot. She said that would be something the applicant would want to check as it may hold up a building permit. Mr. Riccio stated he would discuss it with the Fire Department and asked if the Board could make the approval from the Fire Department confirming adequate access to the property a condition of approval.

The Board discussed the procedure for obtaining a Building Permit and the Fire Departments role and authority.

J. Mathes commented that when the applicant bought the property it was a buildable lot. R. Schilling concurred that was his understanding. J. Mathes commented that the City changed the rules and has led the applicant to be before the Board. R. Schilling stated he thought they should put the minimal amount of riders on the approval for these reasons. The Board discussed what they thought should be the conditions of approval.

J. Walsh asked Commissioner Romanowicz that if the Board grants the Variance then does that tie the Building Department hands to issue or not issue a Building Permit. Commissioner Romanowicz explained a Building Permit cannot be issued until that private way is paved.

The Board continued to discuss conditions of approval.

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

The Board discussed the way to make their motion and the conditions of approval.

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 the location of the wetland is a circumstance relating to the land limiting the applicant to only eighteen (18) feet of frontage which if literal enforcement of the dimensional requirements of the zoning district would constitute a hardship for the applicant, as they could not build.

- 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.

- 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 Regulations), 2710 (General), & 2720 (Table of Dimensional Requirements, Appendix-B-Lot Frontage); relative to property located at ES Dana Street, Assessor's Map Plot 125A, Lot: 473 in a Residential-B Zoned District. The petitioner is proposing to construct a 26'x44' single family with a 12'x12' rear deck as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. That the petitioner must submit plans reflecting pavement for the private way;
- b. That the applicant must meet the requirements listed in the Order of Conditions from the Conservation Commission;
- c. The project shall be set forth according to plans submitted with the application as revised per the public hearing;

- d. 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;
- e. 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

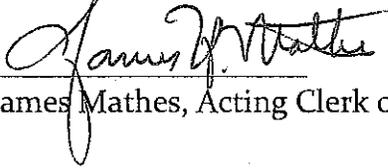
Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby GRANTS, WITH CONDITIONS, the requested Variance.

On a motion by J. Mathes, seconded by L. Schick to grant the requested Variance, the vote carried 5-0 with members J. Mathes, L. Schick, R. Schilling, J. Walsh and I. Comerford voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

4/7/15

Date



James Mathes, Acting Clerk of the Zoning Board of Appeals