



ZONING BOARD OF APPEALS
 City Hall, Room 303
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CITY CLERK'S OFFICE
 NEW BEDFORD, MA
 2015 MAY -6 A 9:14
 CITY CLERK

CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4177			
Request Type:	Variance			
Address:	69 Sycamore Street			
Zoning:	Residential B Zoned District			
Recorded Owner:	Joseph E Raposa and Eileen Raposa			
Applicant:	Joseph E Raposa and Eileen Raposa			
Applicant Address:	59 Evelyn Street Dartmouth, MA 02747			
Application Submittal Date	Public Hearing Date		Decision Date	
March 25 th , 2015	April 23 rd , 2015		April 23 rd , 2015	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
65	265	6105	265	

Application:

Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Height of Building, # of stories; relative to property located at 69 Sycamore Street, Assessor's Map Plot 65 Lot 265 in a Residential B Zoned District. The petitioner is proposing to perform code upgrades and to renovate the third floor for a cottage style set up 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 May 6th, 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.

May 6, 2015
 Date


 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to perform code upgrades and to renovate the third floor for a cottage style set up as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Height of Building, # of stories; relative to property located at 69 Sycamore Street, Assessor's Map Plot 65 Lot 265 in a Residential B Zoned District.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, drawn by Choubah Engineering Group, P.C., Stamped Received by City Clerk's Office March 25th, 2015, including:
 - Existing Basement and First Floor Layouts
 - Existing and Proposed 2nd & 3rd Floor Layouts
 - Proposed 3rd Floor Framing, Section & General notes

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office March 25th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 30th, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated April 15th, 2015.

2.) DISCUSSION

Board Members I. Comerford, A. Decker, L. Schick, D. Trahan, and R. Schilling 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 March 30th, 2015; the Communication from the Office of City Planner dated April 15th, 2015; the appeal packet; the plan as submitted; and, that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the action of the Clerk in giving notice of the hearing as stated be and is hereby ratified. Motion seconded by D. Trahan. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Petitioners: Mr. Joseph Raposa and Ms. Eileen Raposa (59 Evelyn Street Dartmouth, MA) described the reasoning for the requested relief. Mr. Raposa explained that he

previously lived at the property for many years and now rents the property. An electrical fire occurred at the property due to a tenant overloading a circuit. When he filed for a building permit to rehabilitate the home and bring it back into code, he was informed he would need to apply for a Variance from the Zoning Board of Appeals for the third floor. Mr. Raposa explained the second and third floor are connected as one unit. He explained that when he lived at the home his family used the third floor as bedrooms. He further explained that he is bringing the property up to code with new electrical, a heating system, and putting new sheetrock on the third floor, making it a livable space again and that he is not extending or changing anything about the property.

The Board clarified the previous use of the third floor and the extent of damage from the fire with the applicant. Mr. Raposa explained the damage and stated he cannot have tenants, and therefore has no income coming in from the property at this time. Mr. Raposa said the third floor had always been used as bedrooms while he owned it. D. Trahan stated that the third floor was probably never on record and confirmed with Commissioner Romanowicz that was correct, there was no record of permits for the third floor. The Raposa's stated they lived at the property for sixteen years.

A .Decker clarified with the applicants that the third floor and second floor will not be separate living units. The applicants stated the third floor and second floor are connected, and the property is and will remain a two family.

Chairperson Comerford requested Commissioner Romanowicz explain the zoning code meaning of number of stories. Commissioner Romanowicz explained once a floor is made habitable it becomes a story under the code. So, in this case if the third floor was an attic it would have been storage space, but as bedrooms it becomes habitable and therefore a story. He further explained that the applicant may have purchased the property with bedrooms on the third floor; however there was never any record of the bedrooms. The record is important as it ensures that life and safety issues are addressed such as wiring and fire safety, ensuring the safety of individuals who will be habiting those spaces.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No 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 discussed the circumstances and criteria met to grant the variance.

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 circumstances in this case is that the structure is being renovated from fire damage and being brought into compliance with existing codes of the City of New Bedford, and the hardship in this case is that enforcement of the zoning ordinance prevents use of the third floor, and combining the third and second floor allows the intended use.

- 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), and 2720 (Table of Dimensional Requirements, Appendix-B-Height of Building, # of stories; relative to property located at 69 Sycamore Street, Assessor's Map Plot 65 Lot 265 in a Residential B Zoned District. To allow the petitioner to perform code upgrades and to renovate the third floor for a cottage style set up 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 A. Decker, seconded by L. Schick to grant the requested Variance, the vote carried 5-0 with members L. Schick, R. Schilling, A. Decker, I. Comerford, and D. Trahan voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

May 6, 2015
Date

Allen Decker
Allen Decker, Clerk of the Zoning Board of Appeals