



ZONING BOARD OF APPEALS
 City Hall, Room 303
 133 William Street,
 New Bedford, MA 02740
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 www.newbedford-ma.gov

CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number: #4185		2015 JUL 9 A 11:03 CITY CLERK CITY CLERK'S OFFICE NEW BEDFORD, MA		
Request Type: Variance				
Address: 935 Stratford Street				
Zoning: Residential A Zoned District				
Recorded Owner: Domingos P. Alves and Esperanca M. Alves				
Applicant: Domingos P. Alves				
Applicant Address: 935 Stratford Street New Bedford, MA 02745				
Application Submittal Date		Public Hearing Date		Decision Date
May 22 nd , 2015		June 26 th , 2015		June 26 th , 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
130	451	1730	223	

Application: Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Regulations-Appendix-B-Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property at 935 Stratford Street, Assessor's Map 130 Lot 451 in a Residential-A Zoned District. To allow the petitioner to erect a 20'-4" x 26'-0" attached garage addition 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 July 9th, 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.

July 9, 2015
 Date

Alvin D. Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to erect a 20'-4" x 26'-0" attached garage addition as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), 2720 (Table of Dimensional Regulations-Appendix-B-Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property at 935 Stratford Street, Assessor's Map 130 Lot 451 in a Residential-A Zoned District.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, drawn by HC Designs, Stamped Received by City Clerk's Office May 22nd, 2015, including:
 - SP 1.0 – Proposed Site Plan
 - EX 1.1 – Existing Conditions Plan
 - EX 1.0 – Existing Subdivision of Land/Plot Plan

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office May 22nd, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 1, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated June 19th, 2015.

2.) DISCUSSION

Board Members I. Comerford, A. Decker, R. Schilling, J. Walsh, and H. Tavares were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), Kreg Espinola (Assistant City Solicitor), 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 June 1st, 2015; the Communication from the Office of City Planner dated June 19th, 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 J. Walsh. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

Representative of the Petitioner: Mr. Hugo Coutinho (80 Angelica Avenue New Bedford, MA) presented the project and reasons for the requested relief. Mr. Coutinho explained the petitioner, Mr. Domingo Alves (935 Stratford Street New Bedford, MA), is proposing to add a garage addition to his home. The dimensions of the proposed garage addition are twenty (20)

feet wide by twenty-six (26) feet deep. Mr. Coutinho stated this causes the structure to encroach into the ten (10) foot setback leaving four and one-half (4 ½) feet of space between the side property. Mr. Coutinho stated the abutting neighbor on the side where the garage is proposed was present at the meeting and is not opposed to the petition. He further explained the abutting neighbor also has a garage with approximately five (5) feet setback from his property line; therefore he is not opposed to this petition.

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. Ms. Sheila Morris (947 Elliot Street New Bedford, MA) stated she is the owner of 926 Elliott Street which abuts this project on the back side. She explained she also owns 964 Elliott Street, the lots across the street and all the lots in between. Ms. Morris explained her concern in regards to this proposal is flooding in the neighborhood. There is already a problem of flooding in the area that City departments are aware of. Ms. Morris requested that before any variances or permits are issued for this project that a study be completed to show where any displaced water as a result of this garage is going to go. Ms. Morris explained she is concerned for an increase in the water table and the possible effects on her properties. She further explained there is water pooling on her properties and there is flooding on the properties on Stratford Street, which they are attributing to Ms. Morris's properties. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson I. Comerford offered an opportunity for rebuttal for the petitioner and requested they address the water issues. Mr. Coutinho stated the addition is a modest addition it shouldn't really affect the water issue expressed. He further explained there will be proper drainage around the property, stating they would do whatever is necessary to maintain what is currently happening at the property. Chairperson I. Comerford asked if the structure was on a slab. Mr. Coutinho, said the project is to be place on a poured in place concrete slab with a four foot frost wall.

A. Decker asked if the petitioner was present. Mr. Coutinho indicated yes. Mr. Domingo Alves came to the podium. A. Decker asked the petitioner to explain the hardship in this case and why he needed the garage. Mr. Alves stated he thinks it will look good, he always wanted a garage and has been at his property for thirty-nine (39) years. He thought it would be look good in the neighborhood and be good for the neighborhood. A. Decker asked if the petitioner could have built the garage and account for the setback. Mr. Coutinho stated it wouldn't necessarily work the way the petitioner wished to have the garage. He stated there is a chimney on that side of the home. He explained in order to have a means of entrance into the garage, as well as the overhead garage door, with the chimney where it is located, results in the project encroaching on the setback. Mr. Coutinho said it would be cumbersome for the applicant to not have the door and only have the overhead garage door to enter and exit.

I. Comerford explained the criteria for granting a variance. He also stated he had driven through the neighborhood and saw that other house in the neighborhood have a similar set up, so he felt there wasn't a substantial detriment to the public good. He explained he understood there were circumstances related to the shape of the lot, that if you wanted to put a garage there you can only go so far. I. Comerford inquired about the hardship for the applicant in this case.

Mr. Coutinho explained that Mr. Alves and his wife are getting older and it would be nice for them to have a safe and secure place to store their car, as well, as an easier way to get into the house protected.

Chairperson I. Comerford offered a rebuttal to those in opposition. Ms. Morris stated the petitioner did not answer her concern and stated that the representative of the petitioner did not appear to be an expert on the issue. Ms. Morris explained she has lived in the area for her entire life, sixty-four (64) years, and with more and more building in the North End and in that area the flooding just increases. She explained her house abutting the petitioner's home has flooding in the basement and she doesn't need any further water on her property. She requested again a study be done by Conservation and DEP before any permits are granted tell her where all that water is going to go, and that it won't be onto my property. Chairperson I. Comerford explained that if the Board granted the variance that everything would have to be addressed including water issues pursuant to whatever the building code is. Ms. Morris asked, well, if that is the case, why has the flooding increased in that area? Chairperson I. Comerford stated he could not answer that. Mr. John Lavender (947 Elliot Street New Bedford, MA), stated he is Ms. Morris' life partner, and he can attest that there is a big issue with flooding. He explained Ms. Morris owns three properties in the area. The basement of the property adjacent to the petitioner's property floods constantly, he said. Mr. Lavender explained Mr. Ron Labelle has been out to address the issue multiple times but nothing has changed. He said whenever something new is built or anything is put down, it displaces the water, and the water table rises. He questioned where does it go? It goes to the lowest level; we're at the lowest level, Mr. Lavender explained. He acknowledged the statement made by the petitioners are elderly and need a garage to walk out of their house. Mr. Lavender stated they already have a driveway to walk out of their house. Mr. Lavender stated his and Ms. Morris age, and stated if there's anyone who need relief it's them. They need a relief from the flooding, as their sump pumps can't even keep up with the flooding. Mr. Lavender again reiterated his concerns for the rise of the water table.

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

The Board members discussed the case. Chairperson I. Comerford stated he did see there were circumstances related to the shape of the lot, he thought the hardship was kind of a stretch but then again he drove through the neighborhood and did not think it to be a detriment to the public good. H. Tavares stated he thought the water table would be the same regardless, he would vote yes. A. Decker asked the applicant for clarification concerning if the driveway was paved and non-pervious, and if the garage was to go over the paved driveway. Mr. Coutinho

confirmed the driveway was paved and non-pervious. A. Decker talked about the current runoff from the driveway and how water would runoff the proposed building. A. Decker asked if the Board would like to condition the approval in respects to the concerns for runoff. J. Walsh indicated who would not be in favor of such a condition. Chairperson I. Comerford indicated his disagreement with such a condition as well. Chairperson I. Comerford confirmed the square footage of the building with the petitioner. R. Schilling asked for clarification that the garage was to be placed on a slab on an existing driveway already. Mr. Coutinho indicated yes. Someone from the audience indicated no, to which R. Schilling asked for further clarification. Mr. Coutinho clarified it will be five (5) feet further than where the existing home is on the back and forward twenty-six (26) feet. J. Walsh stated it was his belief that there was no evidence before the board that building of this garage was going to impact the preexisting drainage problem. He further stated in his point of view, it is whether or not the applicant has met the criteria, which he believed had been presented. Chairperson I. Comerford indicated agreement with J. Walsh's comments. Chairperson I. Comerford stated he didn't believe the garage would have much of an impact on the flooding issue, which is preexisting. A. Decker confirmed the motion with Chairperson I. Comerford, and then made the motion.

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 shape of the lot, given the existing structure would not support an additional structure such as a garage without a variance. The Board found the hardship to be that the residents are aging and need the protection and safety of a garage.

- 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 Regulations-Appendix-B-Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property at 935 Stratford Street, Assessor's Map 130 Lot 451 in a Residential-A Zoned District. To allow the petitioner to erect a 20'-4" x 26'-0" attached garage addition 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 J. Walsh to grant the requested Variance, the vote carried 5-0 with members A. Decker, J. Walsh, I. Comerford, R. Schilling, and H. Tavares voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

July 9, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals