



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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NOTICE OF DECISION

Case Number:	#4219			
Request Type:	Variance			
Address:	7 Eastland Terrace			
Zoning:	Residential A Zoned District			
Recorded Owner:	Marcel Vieira			
Owner's Address:	7 Eastland Terrace New Bedford, MA 02740			
Applicant:	Richard J. Manning Jr., Esq.			
Applicant's Address:	167 William Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
January 21 st , 2016	February 18 th , 2016	February 18 th , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
74	10	6750	91	

Variance under provisions of Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-B, height of buildings-# of stories); relative to property located at 7 Eastland Terrace, assessors map 74, lot 10 in a residential-a [RA] zoned district. To allow the petitioner to seek the approval needed to obtain the necessary permits for the finished basement 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 February 29th, 2016. 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.

February 29, 2016
Date

Alan Parker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to seek the approval needed to obtain the necessary permits for the finished basement as plans filed, which requires a Variance under provisions of Chapter 9 Comprehensive Zoning sections 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-B, height of buildings-# of stories); relative to property located at 7 Eastland Terrace, assessors map 74, lot 10 in a residential-a [RA] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn unknown, date stamped received by City Clerk's Office January 21st, 2016.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office January 21st, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 29th, 2016.
- Staff Comments to ZBA from City Planning Division, dated February 12th, 2016.
- Letter to ZBA from Ward Five City Councilor Kerry M. Winterson, dated February 4th, 2016.

3.) DISCUSSION

On the evening of the February 18th, 2016 meeting, board members: James Mathes, Allen Decker, Sherry McTigue, Debra Trahan, and Robert Schilling were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Ms. Trahan, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated January 29th, 2016; the Department of Planning, Housing and Community Development, dated February 12th, 2016; Ward Five City Councilor Kerry M. Winterson, dated February 4th, 2016; 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. With all in favor, the motion carried.

Chairperson Mathes then declared the hearing open.

Representative of the petitioner: Attorney Richard Manning (167 Williams Street New Bedford, MA) presented to the Board on behalf of Mr. Marcel Vieira (7 Eastland Terrace) who was also in attendance. Attorney Manning described the property as a single family cape-style home with two bedrooms and two bathrooms. He explained seven years ago the petitioner was married and had his daughters living in the home. At that time, he hired a contractor to finish the basement at a cost of approximately \$20,000 in order to provide more room for his daughters and family. The finished basement has a kitchen area, two rooms, and a bathroom with a standing shower.

Attorney Manning submitted five photos of the finished basement to the Board. Mr. Decker made a motion, seconded by Ms. Trahan, to receive and place on file the five photos submitted by the representative of the petitioner. With all in favor, the motion carried.

Attorney Manning pointed out there is no separate entrance to the basement other than a bulk head. Attorney Manning told the Board the petitioner went to rent the house after his divorce and it was inspected for a Section 8 voucher. At that time it was learned that the finished basement was not permitted. Attorney Manning informed the Board the petitioner is not seeking to make the house a two family and the petitioner has since moved back in with his daughters. The finished basement causes the property to be considered 3 stories thereby exceeding the 2.5 story maximum allowed under the zoning ordinance, Attorney Manning explained.

In regards to the criteria necessary to grant, Attorney Manning explained the shape of the lot is rounded at the corner and the petitioner couldn't duplicate the same anywhere else on the lot. There are no changes made to the exterior and it is to remain a single family structure, he noted.

Attorney Manning presented that the petitioner unknowingly created the situation at his house, which he thought had been done correctly. He indicated if the appeal is granted, the petitioner will still be required to have inspections and comply with any identified code issues if found out of compliance.

Following the petitioner's testimony, Chairperson Mathes 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 Mathes 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 questions or concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst Board members.

Ms. Trahan commented that for similar cases in the past the Board has made a stipulation that the building inspector can inspect the property at some later time such as every two years. Chairperson Mathes asked the petitioner if he would be acceptable to that condition. Attorney Manning and Mr. Vieira indicated that would be acceptable to the petitioner. Board members briefly discussed the condition. Ms. Trahan explained that her main concern is that if they sold the property, the next owner might be using the basement for a bedroom, and without a door there is no way to get out of the basement safely in an emergency. Mr. Decker asked about the Planning Staff Comments that reiterated the property is zoned for single family use, only. Mr. Romanowicz interjected that single family use would be listed and noted on the building permit. The Board briefly discussed the responsibility of homeowners to ensure that a contractor has obtained the permits for their property.

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 lot is undersized and adding to the existing structure for living space is not possible. The Board found that the removal of the prior construction would be expensive and create a loss of use that would result in a hardship.

- 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, height of buildings-# of stories); relative to property located at 7 Eastland Terrace, assessors map 74, lot 10 in a residential-a [RA] zoned district. To allow the petitioner to seek the approval needed to obtain the necessary permits for the finished basement as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. At the discretion of the City, the Building Inspector may inspect the premises as to the use every two (2) years.
- b. The project shall be set forth according to plans submitted with the application, with conditions;

- c. 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;
- d. 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 D. Trahan to grant the requested Variance, the vote carried 5-0 with members D. Trahan, R. Schilling, S. McTigue, A. Decker, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

February 29, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals