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# **STAFF COMMENTS**

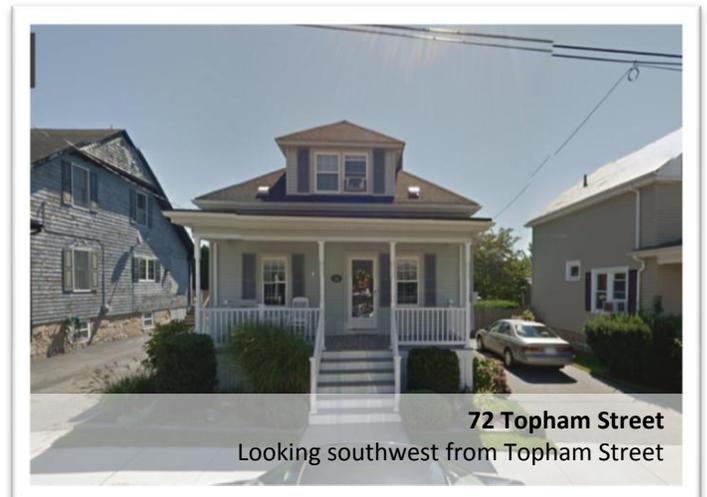
## **ZONING BOARD OF APPEALS MEETING**

**March 9, 2016**

**Case # 4223:**           **VARIANCE**  
72 Topham Street  
Map: 89, Lot: 150

**Owner/Applicant:**   Cheryl Giovannini  
72 Topham Street  
New Bedford, MA 02740

**Overview of Request:** The petitioner has submitted an application for a **Variance** relative to the subject property located within a Residential B [RB] zoning district. The petitioner proposes to legalize an existing finished basement that was installed without the required permits. The proposal requires relief from the zoning code for the number of stories. The petitioner proposes three (3) stories, where two and a half (2 ½) stories is allowed under zoning ordinance.



As with all variances, the board must find that there are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located. The ZBA must find that if the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner. And, in granting the desired relief it would not take away from the purpose of the zoning ordinance and be without substantial detriment to the public good.

**Existing Conditions:** The 3,442 sq. ft. subject lot, located two blocks south of Carlos Pacheco elementary school, has 43' frontage on Topham Street and is 80' in depth. The property has a single family house, driveway (10'± x 30'±), and a shed. The house prior to the basement renovation had two bedrooms and one full bath. The neighborhood is primarily single and two family houses on similarly-sized lots.

**Proposal:** The applicant petitions the board for a variance in order to bring the existing finished basement into compliance with the city's zoning ordinance. The basement is currently finished with a full bathroom with "stand-up" shower, family room, laundry room, walk-in closet, and unfinished space as described on the plans submitted.

In regards to criteria necessary to grant a variance, the petitioner states in the application that there will be no changes to the exterior and the house will continue to be used as a single family home. The changes were made in the basement

because the lot is too small to increase anywhere else, the petitioner writes. In the application, the homeowner states her hardship is that she is trying to sell her home as she can no longer climb stairs within her existing house due to fibromyalgia. Her request is made to bring the existing finished basement into compliance so that she may sell the property as is and move to more suitable living space to accommodate her medical needs.

**For Board Member Consideration:** Although not directly correlating to the requested relief regarding height, it is nonetheless important for the ZBA to note that the subject lot does not meet current dimensional requirements of zoning and is therefore considered “nonconforming.” As noted, the 3,442 square feet lot area noted is under the 8,000 sq. ft. minimum lot size. The ZBA may wish to note that neighborhood properties have similar lot sizes and housing styles.

The ZBA may also wish to consider the importance of future property owners ensuring that adequate egress be available in case of an emergency in compliance with the building code. Any change of use to a bedroom in the basement, should be confirmed to meet code requirements for egress by the City Building and Inspectional Services department.



## 72 Topham Street Map: 89, Lot: 150

NOTE: Property line is approximate; for discussion purposes, only.

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Google earth

41°39'17.17" N 70°56'28.13" W elev. 163 ft eye.alt 838 ft