



JONATHAN F. MITCHELL
MAYOR

City of New Bedford
ZONING BOARD OF APPEALS

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2016 APR 22 A 8:29
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NEW BEDFORD, MA

NOTICE OF DECISION

Case Number:		#4223		
Request Type:		Variance		
Address:		72 Topham Street		
Zoning:		Residential B Zoned District		
Recorded Owner:		Cheryl Giovannini		
Owner's Address:		72 Topham Street New Bedford, MA 02740		
Applicant:		Cheryl Giovannini		
Applicant's Address:		72 Topham Street New Bedford, MA 02740		
Application Submittal Date		Public Hearing Date		Decision Date
February 19 th , 2016		April 14 th , 2016		April 14 th , 2016
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
89	150	2587	51	

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-residential); relative to property located at 72 Topham Street, Assessor's map 89 lot 150 in a Residential-B [RB] zoned district. To allow the petitioner to seek approval of a family room, full bathroom, and a closet in the 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 April 22nd, 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.

April 22, 2016
Date

Allan Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is seeking approval of a family room, full bathroom, and a closet in the 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-residential). This petition is relative to property located at 72 Topham Street, assessor's map 89 lot 150 in a Residential-B [RB] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, including:
 - Basement interior layout, dated revised 2/17/16
 - Mortgage Inspection Plan drawn by MM, dated 1/15/16

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office February 19th, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 4th, 2016.
- Staff Comments to ZBA from City Planning Division, dated March 9th, 2016.

3.) DISCUSSION

The case hearing was originally scheduled for March 24th, 2016, considered to be "Holy Thursday", which under City Code §2-8 is prohibited. Therefore, the Zoning Board of Appeals March 24th meeting was rescheduled to April 14th, 2016.

On the evening of the April 14th, 2016 meeting board members: Debra Trahan, Allen Decker, Sherry McTigue, Leo Schick, and Horacio Tavares 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. McTigue, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 4th, 2016; Staff Comments from the Department of Planning, Housing and Community Development, dated March 9th, 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.

Acting Chair Trahan then declared the hearing open.

The petitioner: Ms. Cheryl Giovannini (72 Topham Street New Bedford, MA) presented her case to the board. Ms. Giovannini explained she was seeking relief for a finished basement. She stated the finished basement does not infringe upon the street as the changes are all interior. She explained to the board

she needed to sell her home as she can no longer live in her home due to health issues. She further explained due to health issues she has fallen down the stairs. She is in the process of selling her home which she has lived in for 38 years. She now lives at another location. She testified that having the two homes is a financial hardship. She explained they had finished the basement as a family room in 1985 and added a bathroom and closet for storage in 2011 when her daughter was living with her. She didn't realize it wasn't permitted until she went to sell the house. She has had it inspected since and the electrical is correct. In regards to plumbing she explained she had to fix the venting of the shower and the sump pump. Acting Chair Trahan inquired if the basement also had a kitchen. Ms. Giovannini said there is no kitchen in the basement, and that her house was a single family home. Ms. McTigue confirmed there was a bulkhead and no living arrangements/bedrooms in the basement.

Following the petitioner's testimony, Acting Chair Trahan invited to the podium anyone wishing to speak in favor of the application. Ms. Maria Boisvert (696 Ashley Boulevard New Bedford, MA), stated she is the real estate agent for the petitioner. Ms. Boisvert explained that unbeknownst to the home owner the contractor had never obtained the required permits. It wasn't until Ms. Boisvert went to list the house that she found out the basement wasn't permitted. Ms. Leigh Giovannini (217 Deane Street Apt. 148 New Bedford, MA), stated she is the petitioner's daughter, and wished to be recorded in favor. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Acting Chair Trahan 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.

Acting Chair Trahan asked if there was anything else the petitioner wished to add. Ms. Cheryl Giovannini expressed she is in dire need of relief. She needs to be able to sell her home. She is on disability and indicated she doesn't have much money at this time.

With no further questions or concerns, Acting Chair Trahan closed the hearing, and opened the floor for discussion amongst board members.

The board briefly discussed that the relief was for an existing condition in the basement. Ms. McTigue expressed this issue comes up a lot and it is the building owners responsibility to ensure permits have been issued for work on their property. Ms. McTigue confirmed there are no bedrooms downstairs. The board discussed if they should make a condition that there be no bedrooms in the basement, Mr. Romanowicz stated that will already be listed on the building permit.

The discussion ended and board members indicated their readiness to vote.

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 the changes are to the interior only and will not affect the zoning district. The board found the hardship to be that work has already been completed and removal would be an extreme hardship on the owner.

- 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-residential); relative to property located at 72 Topham Street, assessor's map 89 lot 150 in a Residential-B [RB] zoned district. To allow the petitioner to seek approval of a family room, full bathroom, and a closet in the basement 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, with conditions;
- b. 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. 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 S. McTigue to grant the requested Variance, the vote carried 5-0 with members H. Tavares, S. McTigue, L. Schick, A. Decker, and D. Trahan voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

April 22, 2016
Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals