



**JONATHAN F. MITCHELL**  
MAYOR

*City of New Bedford*  
**ZONING BOARD OF APPEALS**

133 William Street, New Bedford  
Massachusetts 02740  
Telephone: (508) 979.1488  
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Registry of Deeds Use Only:

**NOTICE OF DECISION**

Case Number:	#4224			
Request Type:	Variance			
Address:	133 Chestnut Street			
Zoning:	Residential B Zoned District			
Recorded Owner:	Maria S. Barros			
Owner's Address:	133 Chestnut Street New Bedford, MA 02740			
Applicant:	Amancio S. Ribeiro			
Applicant's Address:	464 Sawyer Street New Bedford, MA 02746			
Application Submittal Date	Public Hearing Date	Decision Date		
March 4 <sup>th</sup> , 2016	April 28 <sup>th</sup> , 2016	April 28 <sup>th</sup> , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
65	316	6786	190	

CITY CLERK  
 2016 MAY 15 4 05 PM  
 RECEIVED

Variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional requirements, appendix-B-height of buildings-# of stories); relative to property located at 133 Chestnut Street, assessor's map 65, lot 316 in a residential-B [RB] zoned district. To allow the petitioner to seek approval for a cottage style setup on the second and third floors 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 5<sup>th</sup>, 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.

May 5, 2016  
Date

*Allen D. Decker*  
Clerk, Zoning Board of Appeals

### **1.) APPLICATION SUMMARY**

The petitioners seek approval for a cottage style setup on the second and third floors as plans filed, which requires a Variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional requirements, appendix-B-height of buildings-# of stories). This petition is relative to property located at 133 Chestnut Street, assessor's map 65, lot 316 in a residential-B [RB] zoned district.

### **2.) MATERIALS REVIEWED BY THE BOARD**

#### **Plans Considered to be Part of the Application**

- Site Plan, drawn by Amancio Riberio, dated February 27<sup>th</sup>, 2016
- Floor plan labeled "3<sup>rd</sup> Floor Proposed", drawn by unknown, not dated
- Floor plan labeled "3<sup>rd</sup> Floor Existing", drawn by unknown, not dated

#### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office March 4<sup>th</sup>, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 30<sup>th</sup>, 2016.
- Staff Comments to ZBA from City Planning Division, dated April 1<sup>st</sup>, 2016.

### **3.) DISCUSSION**

On the evening of the April 28<sup>th</sup>, 2016 meeting, board members: Leo Schick, Allen Decker, Sherry McTigue, John Walsh 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, Department of Planning, Housing & Community Development) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated March 30<sup>th</sup>, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated April 1<sup>st</sup>, 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 Schick then declared the hearing open.

The petitioner: Mr. Amancio S. Ribeiro (464 Sawyer Street New Bedford, MA) presented the petition to the board. Mr. Rebeiro explained he plans to move into the second floor with his family, as he is the primary caregiver for his mother. His mother lives on the first floor and owns the property. Mr. Ribeiro explained while seeking a permit to do work on the second floor, he was informed by the building department the third floor needed to be fixed. Therefore, they are trying to fix the third floor as a cottage setup connected to the second floor apartment of the two-family property. He explained that while he was in Afghanistan his mother had the third floor finished with a number of bedrooms. Now,

he and his family are moving into the home and wish to fix the third floor to include a family room, one bedroom, and one computer room/office, and to keep the existing bathroom. There will not be a kitchen on the third floor but instead, it would be located on the second floor, he noted.

Board members clarified and confirmed that the third floor was already finished, and that the petitioner proposed to bring it up to code by removing some of the bedrooms. Mr. Ribeiro confirmed it was to open up the space and bring it into code.

Following the petitioner's testimony, Acting Chair Schick 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.

Acting Chair Schick 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, Acting Chair Schick closed the hearing, and opened the floor for discussion amongst board members.

The board members noted the petitioner is bringing the third floor up to code and 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 that because of the location of the structure on the lot the lot cannot support outward expansion; so, upward improvement is the only option. The board found the hardship to be that without the variance, compliance with the zoning code could not be performed, and the property would not be brought into compliance with current zoning code.

- 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 requirements, appendix-B-height of buildings-# of stories); relative to property located at 133 Chestnut Street, assessor's map 65, lot 316 in a residential-B [RB] zoned district. To allow the petitioner to seek approval for a cottage style setup on the second and third floors 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 J. Walsh to grant the requested Variance, the vote carried 5-0 with members S. McTigue, A. Decker, L. Schick, J. Walsh and R. Schilling voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

May 5, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals