



City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
 Massachusetts 02740
 Telephone: (508) 979.1488
 Facsimile: (508) 979.1576

JONATHAN F. MITCHELL
 MAYOR

CITY CLERKS OFFICE
 NEW BEDFORD, MA
 2016 DEC 23 A 9:37
 CITY CLERK

NOTICE OF DECISION

Case Number:	#4255			
Request Type:	Special Permit			
Address:	44 Fruit Street			
Zoning:	Residential C Zoned District			
Recorded Owner:	Paunor Realty, LLC			
Owner's Address:	8 Burgess Point Road Wareham, MA 02571			
Applicant:	Paunor Realty, LLC c/o Norman Shurtleff			
Applicant's Address:	8 Burgess Point Road Wareham, MA 02571			
Application Submittal Date	Public Hearing Date		Decision Date	
October 21 st , 2016	December 15 th , 2016		December 15 th , 2016	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
28	262	10741	39	

Special Permit requested under Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430 (nonconforming structures other than single and two family structures), 2431 (reconstructed, extended, or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 and 5360-5390 (special permit); relative to property located at 44 Fruit Street, assessor's map 28 lot 262 in a residential C [RC] zoned district; to allow the petitioner to obtain approval to allow the third floor to be used as an apartment 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 December 23rd, 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.

Dec. 23, 2016
 Date

Allen Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners seek approval to allow the third floor to be used as an apartment as plans filed which requires a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430 (nonconforming structures other than single and two family structures), 2431 (reconstructed, extended, or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 and 5360-5390 (special permit); relative to property located at 44 Fruit Street, assessor's map 28 lot 262 in a residential C [RC] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan drawn by unknown, date stamped received by City Clerk's Office October 21st, 2016
- Interior layout plans, including:
 - First floor
 - Second floor
 - Third floor

Other Documents & Supporting Material

- Completed Petition for a Special Permit, stamped received by City Clerk's Office October 21st, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 21st, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated December 15th, 2016.

3.) DISCUSSION

On the evening of the December 15th, 2016 meeting, board members: Leo Schick, Robert Schilling, Sherry McTigue, Horacio Tavares, and Allen Decker 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 communication from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 21st, 2016; communication from the Department of Planning, Housing & Community Development, dated December 15th, 2016; the appeal packet as submitted; 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.

Representative of the petitioner: Attorney Christopher Saunders (700 Pleasant Street New Bedford, MA) presented the petition on behalf of Mr. Norman Shurtleff, manager of Paunor Realty, LLC, who he indicated was also present at the meeting. Attorney Saunders informed the board Paunor Realty, LLC purchased the property in 2013. At that time the MLS listing as well as the City of New Bedford Assessor's card had the property identified as a three-family dwelling with two bedrooms on each floor. Attorney Saunders indicated the application included copies of both items from 2013. He further explained the house was built in 1902 and is located in a residential C zoned district where other two- and three-family dwellings are present and an allowed use by right. Mr. Shurtleff recently went to get a permit to modernize the property, Attorney Saunders informed the board, and that is when he found out while the Assessor's Office had it listed as a three-family the Building Department had it listed as a two-family. The property is considered non-conforming, he explained, as it does not meet the 15,000 sq. ft. minimum for a three-family house, nor the required 10,000 sq. ft. minimum for a two-family. He indicated the petitioner had done the right thing in pulling permits for the renovations. Since finding out it was a considered a nonconforming two-family the petition is to change it to a nonconforming three-family.

Attorney Saunders, referencing the Staff Comments from the Planning Office, indicated he agreed with the summary of the criteria necessary to grant the appeal. In regards the social, economic, or community needs which are served by the proposal, that the use is consistent with the residential C neighborhood. In regards to the traffic flow and safety, including parking and loading, parking is available. With respect to the adequacy of utilities and other public services, Attorney Saunders stated it was already constructed prior to purchasing the property. He went on to note that regarding the neighborhood character and social structures criteria, the neighborhood was a residential C zoning district so it wouldn't be inconsistent with other structures in the area. Further, he offered the construction was already done so there isn't any impact on the environment. In regards to the nonconforming structure, he said "the structure is what it is what it is and it's not going to change". Further explaining they are not expanding the footprint or adding any additional floors. They are simply taking a structure that is already built and the remedying the mistakes of previous owners, he stated.

Ms. McTigue inquired about the availability of parking at night. Attorney Saunders clarified that the staff comments did specify they visited during the daytime. He indicated the impact would be minimal on parking due to one apartment in an urban environment.

Mr. Tavares inquired if there would be two means of egress from the third unit and whether they would be interior or exterior. Attorney Saunders indicated yes, but that egress was a building code issue.

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 petitions or wished to be recorded in opposition of the petition.

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

Mr. Schilling stated it was sold as a three unit and was assessed as a three unit.

4.) FINDINGS

The Board found that in accordance with City of New Bedford Code of Ordinances Chapter 9 Section 5320, the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site. This determination included consideration of each of the following:

- *Social, economic, or community needs which are served by the proposal;*
 - The board found that the use of the property as a three family is consistent with the immediate neighborhood.
- *Traffic flow and safety, including parking and loading;*
 - The board found that the proposed use would not have an undue burden on parking or traffic flow.
- *Adequacy of utilities and other public services;*
 - The board has found that the petition is neutral as to these.
- *Neighborhood character and social structures;*
 - The board found the use as a three-family is consistent with the immediate neighborhood.
- *Impacts on the natural environment;*
 - The board has found this petition neutral as to those.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The board has found that the petition is neutral as to these.

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 in Section 6.

The Board grants the Applicant's request for relief from chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430 (nonconforming structures other than single and two family structures), 2431 (reconstructed, extended, or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 and 5360-5390 (special permit); relative to property located at 44 Fruit Street, assessor's map 28 lot 262 in a

residential C [RC] zoned district; to allow the petitioner to obtain approval to allow the third floor to be used as an apartment as plans filed.

6.) 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 special permit.

A motion was made by Mr. Decker and seconded by Ms. McTigue, as follows, to allow the petitioners to obtain approval to allow the third floor to be used as an apartment as plans filed, which requires a Special Permit under Chapter 9 comprehensive zoning sections 2400 (nonconforming use and structures), 2410 (applicability), 2430 (nonconforming structures other than single and two family structures), 2431 (reconstructed, extended, or structurally changed), 2432 (altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent), and 5300-5330 and 5360-5390 (special permit); relative to property located at 44 Fruit Street, assessor's map 28 lot 262 in a residential C [RC] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, comprehensive zoning sections as cited, the board finds that in respect to these sections the board finds the petition is in compliance.

In addition to the foregoing sections, this petition was also been found to be in accordance with City of New Bedford Code of Ordinances, Chapter 9, sections 5300-5330 and 5360-5390, relative to the granting of special permits, because the board found that the benefit to the city and the neighborhood outweighs the adverse effects of the proposed use, taking into account the characteristics of the site and of the proposal in relation to that site.

In consideration of the following sections, the board has found that in connection with the social, economic or community needs served by this proposal that the use of the property as a three family is consistent with the immediate neighborhood.

Concerning traffic flow and safety, including parking and loading, the board found the proposed use would not have an undue burden on parking or traffic flow.

Third in regards to the adequacy of utilities and other public services, the board found that the petition is neutral as to these.

Fourth, the neighborhood's character and social structures, the board found use as a three-family is consistent with the immediate neighborhood.

Concerning impacts on the natural environment, the board has found this petition neutral as to those.

Lastly, as to potential fiscal impact, including impact on city services, tax base and employment, the board has found this petition neutral as to those.

In light of the review of the specifics noted within the motion, the board finding that the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board found the petition satisfactorily meets the basis of the requested relief.

Therefore this motion was made and included the following conditions:

- That the project be set forth according to plans submitted with the application;
- That the Notice of Decision be recorded at the Registry of Deeds; and
- A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by S. McTigue to grant the requested Special Permit, the vote carried 5-0 with members A. Decker, L. Schick, R. Schilling, S. McTigue, and H. Tavares and voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:



Allen Decker, Clerk of the Zoning Board of Appeals

Dec. 23, 2016

Date