



City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
 Massachusetts 02740
 Telephone: (508) 979.1488
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JONATHAN F. MITCHELL
 MAYOR

NOTICE OF DECISION

Case Number:	#4256			
Request Type:	Variance			
Address:	1053 Braley Road			
Zoning:	Residential A Zoned District			
Recorded Owner:	Edward J. Motyl and Jeanne M. Motyl			
Owner's Address:	1053 Braley Road New Bedford, MA 02745			
Applicant:	Edward J. Motyl and Jeanne M. Motyl			
Applicant's Address:	1053 Braley Road New Bedford, MA 02745			
Application Submittal Date	Public Hearing Date		Decision Date	
October 24 th , 2016	December 15 th , 2016		December 15 th , 2016	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
136	278	2991	185	

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

Variance is sought under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-b-side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 1053 Braley Road, assessor's map 136-1 lot 278 in a residential-A zoned district. To allow the petitioners to erect a 14'x36' addition 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 Parker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners propose to erect a 14'x36' addition as plans filed, which requires a Variance under Chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-b-side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 1053 Braley Road, assessor's map 136-1 lot 278 in a residential-A zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Proposed Site Plan, drawn by unknown, stamped received by City Clerk's Office October 24th, 2016.
- Existing Conditions Site Plan, drawn by unknown, not dated
- Sheet A2- Proposed Floor Plan, drawn by unknown, not dated

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office October 24th, 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 communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 21st, 2016; Staff Comments 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.

The petitioner: Ms. Jeanne Motyl (1053 Braley Road New Bedford, MA 02745) presented the petition is for an addition for her 87 year old mother in-law. The addition is for a bedroom and handicap accessible bathroom. She explained the addition meets the requirement in the front but the back is short due to the angle of the lot. Ms. Motyl stated no trees will be knocked down. She reiterated the

addition is intended to provide privacy and maintain dignity for her mother in-law. Further explaining the home currently has only one bathroom which is not handicap accessible except for installed handrails and such. It would be helpful to have a walk-in shower, she said.

Mr. Decker inquired if the petitioners had spoken with the abutter impacted. Ms. Motyl confirmed she had spoken with her neighbors on that side and they did not have a problem with it. Ms. Motyl added that they have a lot of land but the intent is to provide easy access for her mother in-law. Also, the upstairs is not an option for her mother in-law, she said.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the application.

City Councilor At-Large, Linda Morad (4162 Acushnet Avenue New Bedford, MA), spoke in support of the petition stating the petitioners have owned the home for some time and it is immaculate. The addition will be the same, she stated, and would increase the value of the property.

Chris Saunders (411 County Street New Bedford, MA) shared a positive personal sentiment about the senior Mrs. Motyl for whom the addition is planned. Further he stated that because of the unique shape of the lot he hoped the board would vote favorably on the variance.

No one else 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.

Acting Chair Schick closed the hearing and opened the floor for discussion amongst board members. 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 that the shape of the lot and the location of the existing improvements is such that the addition only works as proposed. The Board found that a literal enforcement would require abandonment of the application equating to a substantial hardship.

b.) *That desirable relief may be granted without substantial detriment to the public good;*

The Board found that relief may be granted without substantial detriment 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 desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

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 regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-b-side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 1053 Braley Road, assessor's map 136-1 lot 278 in a residential-A zoned district. To allow the petitioners to erect a 14'x36' addition 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 variance.

A motion was made by Mr. Decker and seconded by Ms. McTigue, as follows, to allow the petitioner to erect a 14' x 36' addition as plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-b-side yard), 2750 (yards in residence district) and 2755 (side yard); relative to property located at 1053 Braley Road, assessor's map 136-1 lot 278 in a residential-A 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 found that in respect to these sections the board grants the requested relief. In addition to the foregoing section, this petition was also found to be in accordance with M.G.L Chapter 40A, Section 10, relative to the granting of variances, because the board found:

First, that there are circumstances relating to the soil conditions, shape or topography which especially affect the land or structure in question, but which do not generally effect the zoning district in which the land or structure is located. In this case, the shape of the lot and the location of the existing improvements is such that the addition only works as proposed.

Second, due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the zoning ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant. In this case, literal enforcement would require abandonment of the application equating to a substantial hardship.

The desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance or by-law.

And, that the desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics noted within this motion, the board found that the material presented was complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that 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 Variance, the vote carried 5-0 with members S. McTigue, H. Tavares, R. Schilling, A. Decker, and L. Schick, 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