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STAFF COMMENTS

ZONING BOARD OF APPEALS MEETING

December 15th, 2016

Case # 4255: SPECIAL PERMIT
44 Fruit Street
Map: 28, Lot: 262

Owner: Panour Realty, LLC
8 Burgess Point Road
Wareham, MA 02571

Applicant: Christopher T. Saunders, Esq.
700 Pleasant Street
New Bedford, MA 02740

Overview of Request: The petitioner has submitted an application for a **Special Permit** relative to the subject property located within a Residential C [RC] zoning district. The property is an existing nonconforming use and structure under the city's code of ordinances with a three story, two-family house on an undersized lot. The petitioner proposes to make legal an existing third floor apartment changing the use from a two-family house to a three-family house. A change to an existing nonconforming property requires a Special Permit from this board.



44 Fruit Street

Looking southeast from Fruit Street

As with all Special Permits, the ZBA must determine that the benefit to the City and the neighborhood outweighs the adverse effects of the proposed use. To this end the board shall consider each of the following in its determination:

- a.) social, economic, or community needs which are served by the proposal;
- b.) traffic flow and safety, including parking and loading;
- c.) adequacy of utilities and other public services;
- d.) neighborhood character and social structures;
- e.) impacts on the natural environment; and potential fiscal impact, including impact on city services, tax base, and employment.

Additionally, the ZBA must determine that the proposed change to the nonconforming structure shall not be:

- f.) substantially more detrimental than the existing nonconforming structure to the neighborhood.

Existing Conditions: The subject lot has 35' of frontage on Fruit Street and a depth of 80'. The property currently has a 25'x 36' two and a half story house with a small side and rear yard. There is a roof dormer on the west side of the house providing additional space on the third level. The house currently is on record as having two units, each with two bedrooms.

The 2,800 sq. ft. property is significantly undersized for multifamily dwellings under current zoning which requires 10,000 sq. ft for two-family units and 15,000 sq. ft. for three or more family units. The surrounding neighborhood is, itself, a dense residential neighborhood comprised of multiple undersized lots ranging 1,919 sq. ft. - 6,800 sq. ft. (See Assessor's map to the right.)



The neighborhood, a block northwest of Ashley Park, is comprised of a mixed of single and multi-family housing. Directly abutting this property is a single family to the west, a two family house and a three family house to the east, and a two-family directly behind. This section of Fruit Street becomes a dead end near this property.

Proposal: As previously noted, the house currently is on record as having two units, however, a third unit was discovered when the petitioner applied for a building permit to renovate and repair the building. As a result, the petitioner now comes before the ZBA for a special permit to legalize the existing third unit. The application explains that the petitioner purchased the property as what was thought to be a legal three-family house as it was listed with the assessor's office as such at the time of purchase. The applicant provided a copy of an assessor's parcel information printout dated 1/28/13 and the Assessor's Card dated 07/2009; both items describe the property as a three family with six bedrooms. The existing and proposed conditions are considered nonconforming as the property does not meet the requirements for minimum lot size (15,000 sq. ft.), frontage (150'), front yard setback (20'), side yard setback (12'), or parking requirements (2 spaces per unit). The three-family use, itself, is an allowed use in the residential c zoning district.

In regards to the criteria necessary to grant the special permit, staff offers the following:

- a.) **Social, economic or community needs which are served by the proposal.** The use as a three family is an allowed use in the zoning district and is a use consistent within the immediate neighborhood in which it is located.
- b.) **Traffic flow and safety including parking/unloading.** The petitioners' application does not directly address this criterion. Staff finds that the property does not have any parking spaces although it is required to have six (6) parking spaces (2 per residential unit) as a three-family dwelling. Fruit Street and the surrounding neighborhood streets are dense residential streets. Upon a daytime site visit there staff noted little traffic and multiple available on street parking spaces. Staff assumes, though has not confirmed, that nighttime on-street parking in this residential neighborhood would not be as plentiful with folks returning to their respective dwellings in the evening.
- c.) **Adequacy of utilities and other public services.** The application notes the third unit was already constructed and used as a separate unit prior to purchasing the property.
- d.) **Neighborhood character.** The application states "The entire area surrounding the property is also located in a Residence "C" zoning district that allows for three family dwellings and three family dwelling exist in the

neighborhood.” Staff notes the proposal creates an intensity of use on the site that is higher than is allowed under the current zoning ordinance yet the surrounding neighborhood is comprised of residential properties of similar dimensions and scale. In this respect, the proposal would not necessarily be inconsistent with the existing neighborhood character.

- e.) **Impacts on the natural environment/potential fiscal impact, etc.** The petitioner’s application does not directly address these criteria. Staff notes that if the third unit is already in use, the legalization of such a use through the requested special permit would not necessarily change existing conditions related to natural environment/potential fiscal impact, etc.
- f.) **Nonconforming structures.** The applicant writes “this permitting of the third floor of an existing structure will not be substantially more detrimental to the existing neighborhood as it will fit in the neighborhood as an additional three family structure that is allowed by zoning.”

For Board Member Consideration: The lot is extremely undersized for the proposed use under current zoning requirements for multifamily dwellings. The required lot size is 15,000 sq. ft. for three or more units, whereas the petitioner has only 2,800 sq. ft. accounting for less than 20% of the required lot size. Also, there is no parking on site where the proposal is required to have six spaces.

Staff is concerned with the possibility of an increased intensity of use and lack of parking onsite given the parcel size, further adding to an already-densely populated neighborhood. However, staff is mindful of the argument that the unit is an existing (though unpermitted) unit and that therefore, the real impact to the neighborhood would likely remain unchanged from that which is experienced today.



Image Landsat / Copernicus

44 Fruit Street Map: 28, Lot: 262

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

Google Earth

41°37'12.47" N 70°55'55.03" W elev 62 ft eye alt 672 ft