



City of New Bedford

ZONING BOARD OF APPEALS

133 William Street, New Bedford

Massachusetts 02740

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JONATHAN F. MITCHELL

MAYOR

NOTICE OF DECISION

| | | | | |
|-----------------------------------|---|-------------|----------------------------------|--------------------|
| Case Number: | #4251 | | | |
| Request Type: | Variance | | | |
| Address: | NS Holden Street | | | |
| Zoning: | Residential B Zoned District | | | |
| Recorded Owner: | Mario B. Amaral and Kristinal C. Amaral | | | |
| Owner's Address: | 208 Tarkiln Hill Road New Bedford, MA 02745 | | | |
| Applicant: | Steven D. Gioiosa for Sitec Inc. | | | |
| Applicant's Address: | 449 Faunce Corner Dartmouth, MA 02747 | | | |
| Application Submittal Date | Public Hearing Date | | Decision Date | |
| September 23 rd , 2016 | November 17 th , 2016 | | November 17 th , 2016 | |
| Assessor's Plot Number | Lot Number(s) | Book Number | Page Number | Certificate Number |
| 118 | 223 | 10669 | 167 | |

CITY CLERK'S OFFICE
 NEW BEDFORD, MA
 2016 NOV 30 A 8:40
 CITY CLERK

Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard-ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 in a residential B [RB] zoned district. To allow the petitioner to construct a 32'x28' single family dwelling with a 24'x24' attached garage 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 November 30th, 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.

Nov. 30, 2016
Date

Allan Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to construct a 32'x28' single family dwelling with a 24'x24' attached garage as plans filed, which requires a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard-ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 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 SITEC, INC, dated 6-18-16, stamped received by City Clerk's Office September 23rd, 2016.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office September 23rd, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 3rd, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated October 20th, 2016.
- Letters of support signed by neighbors, dated October 18th, 2016, submitted by petitioner November 17th, 2016.

3.) DISCUSSION

On the evening of the November 17th, 2016 meeting, board members: Leo Schick, John Walsh, Sherry McTigue, 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 explained that Case #4250 & Case #4251 were interrelated and therefore the board would hear both cases concurrently.

Mr. Decker made a motion in regards to Case #4250, seconded by Ms. McTigue to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 3rd, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated October 20th, 2016; two letters submitted by the petitioner dated October 18th, 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.

Mr. Decker made a motion in regards to Case #4251, seconded by Mr. Walsh to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 3rd, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated October 20th, 2016; two letters submitted by the petitioner dated

October 18th, 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 petitioners, Mr. Steve Gioiosa (449 Faunce Corner Road Dartmouth, MA) of SITEC, INC presented the petition on behalf of Mr. Mario Amaral and Ms. Kristen Amaral whom he acknowledged were also present at the meeting. Mr. Gioiosa described the first variance request as allowing the petitioner to divide the lot into two different parcels. Mr. Gioiosa used an exhibit to display and describe the existing parcel as spanning between Tarkiln Hill Road and Holden Street with frontage on both streets. He noted the location of the existing house as being close to Tarkiln Hill Road.

Mr. Gioiosa informed the board the Amaral's purchased the property in 2013. He called the board's attention to the deed submitted with the petition which has the property described as four parcels. Historically, he explained, this part of the city had smaller lots. Over time, many of the smaller lots were combined. However, he told the board that this case was somewhat unique as the petitioners receive two separate tax bills from the city for the parcels. Using the diagram again, Mr. Gioiosa showed the division of the lot as proposed, which is how it exists for tax purposes. He informed the board for the 2015 tax rate the vacant lot adjacent to Holden Street was taxed at approximately \$86,100, and \$153,700 for the parcel on Tarkiln Hill Road therefore arguing that the City has historically looked at this as two separate parcels for a taxation standpoint. He explained, when the Amarals purchased the property they were looking for a long-term investment for their family. He informed the board that Ms. Amaral's mother is now ill and the petitioners' intentions all along were to build a home on the Holden Street lot. When they submitted plans to build the Zoning Enforcement Officer deemed the parcels merged or considered one lot under zoning, he explained; therefore, the petitioners wish to reestablish these two parcels at two separate lots. The petitioners intend to keep the existing house on the Tarkiln Hill Road side and use the vacant lot on the Holden Street side to construct a new dwelling. The Amarals will move into the new home and Ms. Amaral's mother would move into the existing home on Tarkiln Hill Road. Mr. Gioiosa explained Ms. Amaral is a nurse so she will be able to provide long term care services for her mother close by while maintaining separate independent living arrangements.

In regards to the criteria necessary to grant the appeal Mr. Gioiosa began by explaining it is a unique parcel of land in the zoning district; as the shape of the lot spans two streets and therefore has two front yards. Associated with that is the on-going taxation and the fact the initial investment was based on a two parcel configuration, he noted. Further elaborating that not getting this relief would create a substantial financial hardship for the petitioner. He then pointed out, the shape and size of the lots in the resulting configuration would be compatible with the surrounding lots in the neighborhood. As the lots would be compatible with the neighborhood they would not be detrimental to the district, he claimed. Lastly, Mr. Gioiosa called attention to the letter of support submitted by the Ms. Amaral signed by the neighbors indicating their support for the petition.

Mr. Gioiosa finished his points in regards to the first case #4250 and then indicated he was moving on to the second petition case #4251.

In the second petition, he explained, the petitioners proposed to create a single-family home with an attached garage on the Holden Street parcel. Using another exhibit, Mr. Gioiosa pointed out the proposed location of the house. The attached garage, he explained, was intended so that they are not impacting negatively on the neighborhood with on-street parking. Further he described the process of deciding the location of the house on the property was a consideration between placing the house closer to the street to meet the rear setback or set it further back to provide more off-street parking for the house to reduce any potential parking impacts on the neighborhood. He indicated the petitioners felt setting the house closer to the street would have been more detrimental to the neighborhood than the rear yard setback relief. The rear yard setback proposed is 25' where 30' is required. He highlighted the petitioners are the impacted property owners to the rear. Lastly, he showed an example rendering of the house the petitioners are evaluating for construction. Mr. Gioiosa finished his presentation by stating they believe the project would be a net benefit to the neighborhood and be in keeping with the intent of the zoning ordinance maintaining proper buffers to adjacent properties.

Ms. McTigue asked the dimensions for the proposed parking space on the Tarkiln Hill Road property. Mr. Gioiosa responded that it is one standard parking space size being 20' in depth and it will be paved.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the applications. No one in attendance spoke in support of the petitions or wished to be recorded in favor of the petitions.

Acting Chair Schick invited to the podium anyone wishing to speak in opposition of the petitions. No one in attendance spoke in opposition of the petitions or wished to be recorded in opposition of the petitions.

Acting Chair Schick closed the hearing and opened the floor for discussion amongst board members. Mr. Decker noted a concern had been voiced about the location of a pool and swing set currently located on the proposed shared property line. Mr. Gioiosa stated the petitioner would relocate the items so there wouldn't be a violation in that regard.

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 shape of the newly created lot does not permit the necessary lot size and rear yard setbacks for placement of the proposed residence. The Board found that the petitioner would not be able to proceed with plans resulting in a financial hardship because of the family member needing direct family care.

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), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard-ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 in a residential B [RB] zoned district. To allow the petitioner to construct a 32'x28' single family dwelling with a 24'x24' attached garage 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 Mr. Walsh, as follows, to allow the petitioner to construct a 32'x28' single family dwelling with a 24'x24' attached garage as plans filed, which requires a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2711 (lot change), 2720 (table of dimensional requirements-appendix B- minimum lot size, rear yard-ft.) 2750 (yards in residence district), and 2753 (rear yards); relative to property located at NS Holden Street, assessor's map 118, lot 223 in a residential B [RB] 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

requested relief is granted. 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 effect generally the zoning district in which the land or structure is located. In this case, the shape of the newly created lot does not permit the necessary lot size and rear yard setbacks for the placement of the proposed residence.

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, the petitioner would not be able to proceed with plans resulting in a financial hardship because of the family member needing direct family care.

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 J. Walsh to grant the requested Variance, the vote carried 4-0 with members J. Walsh, A. Decker, S. McTigue, and L. Schick, and voting in the affirmative, no member voting in the negative. (Tally 4-0)

Filed with the City Clerk on:



Allen Decker, Clerk of the Zoning Board of Appeals

Nov. 30, 2016
Date