



JONATHAN F. MITCHELL
MAYOR

City of New Bedford

ZONING BOARD OF APPEALS

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

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 NEW BEDFORD, MA

NOTICE OF DECISION


Case Number: #4213				
Request Type: Special Permit				
Address: 124 Locust Street				
Zoning: Residential B Zoned District				
Recorded Owner: Marcio J Brito & Lindsey Freire				
Owner's Address: 124 Locust Street New Bedford, MA 02740				
Applicant: Marcio J Brito & Lindsey Freire				
Applicant's Address: 124 Locust Street New Bedford, MA 02740				
Application Submittal Date	Public Hearing Date	Decision Date		
November 16 th , 2015	December 17 th , 2015	December 17 th , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
70	111	10929	185	

Special Permit under provisions of Chapter 9 Comprehensive Zoning sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2430-2432 (non-conforming structures other than single and two family structures), 5300-5330 & 5360-5390 (Special Permit); relative to property located at 124 Locust Street, Assessor's Map 70, Lot 111 in a Residential B [RB] zoned district. To allow the petitioner to legalize the third floor 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, 2015. 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.

12/23/2015
Date


Acting Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner proposes to legalize the third floor apartment as plans filed, which requires a Special Permit under provisions of Chapter 9 Comprehensive Zoning sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2430-2432 (non-conforming structures other than single and two family structures), 5300-5330 & 5360-5390 (Special Permit). This petition is relative to property located at 124 Locust Street, Assessor's Map 70, Lot 111 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 Lindsey Freire, not dated
- Floor plans, labeled *File No.:prot3587*, not dated

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office November 16th, 2015
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated November 30th, 2015.
- Staff Comments to ZBA from City Planning Division dated December 11th, 2015.

3.) DISCUSSION

On the evening of the December 17th, 2015 meeting, board members: James Mathes, John Walsh, Debra Trahan, Sherry McTigue, and Bob 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, Planning Division) were present during proceedings for the subject case review.

Acting Clerk Walsh made a motion, seconded by Ms. Trahan, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated November 30th, 2015; the Communication from the Department of Planning, Housing and Community Development, dated December 11th, 2015; 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 Chairperson Mathes then declared the hearing open.

The petitioner: Ms. Lindsey Freire (124 Locust Street New Bedford, MA) presented her petition to the board. Ms. Freire stated she is trying to legalize her third floor apartment. She explained that when she bought the property in 2013 she thought it was a legal apartment, adding that the gentleman living upstairs has been living there for approximately 12 years. She further explained that she found out the apartment was *not* legal when she pulled a permit to replace the roof. Ms. Freire indicated that to the best of her knowledge everything in the apartment is up to date and correct in the third floor. Ms. Lindsey noted there is an entrance and an exit to the apartment.

Acting Chairman Mathes confirmed with the applicant that all the work that had been done was completed long before the petitioner bought the property. Ms. Freire indicated that was correct.

Mr. Schilling asked who lived on the third floor and if it was a separate apartment. Ms. Freire said it is a gentleman who has lived there for 12 years and it is a separate apartment.

Ms. Trahan informed the other board members that the previous owners were denied by the board for the third floor apartment, but seemed to have made it into an apartment, anyway.

Mr. Schilling asked about the parking situation on the property. Ms. Freire stated it is in the driveway. Acting Chairman Mathes noted the staff comments indicated sufficient parking was on site.

Ms. McTigue confirmed with the applicant that there were two sets of stairs to the third level.

Following the petitioner's testimony, Acting Chairperson Mathes 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 Chairperson Mathes 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 Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members. The board members indicated readiness to vote.

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 the proposal provides safe housing and additional living space in the city.
- *Traffic flow and safety, including parking and loading;*
 - The Board found the proposal does not affect traffic flow and safety, as there is a driveway on the property that can fit three cars.
- *Adequacy of utilities and other public services;*
 - The Board found that the utilities are existing and therefore adequate.

- *Neighborhood character and social structures;*
 - The Board found that it would not affect the neighborhood as the majority of the neighborhood is multifamily.
- *Impacts on the natural environment;*
 - The Board found it would be a positive impact on the environment by adding additional housing.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found that the additional apartment space means for increasing the tax base.

Additionally, in accordance with the City of New Bedford Code of Ordinances Chapter 9 Section 2430, the Board of Appeals finds that the proposed change will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

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 2400 (nonconforming uses and structures), 2410 (Applicability), 2430-2432 (non-conforming structures other than single and two family structures), 5300-5330 & 5360-5390 (Special Permit); relative to property located at 124 Locust Street, Assessor's Map 70, Lot 111 in a Residential B [RB] zoned district. To allow the petitioner to legalize the third floor apartment as plans filed with conditions.

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 Special Permit 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

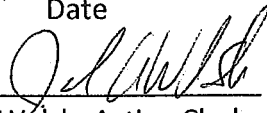
Based on a review of the application documents, testimony given at the public hearing and the findings described above, the Zoning Board of Appeals hereby **GRANTS, WITH CONDITIONS**, the requested Special Permit.

On a motion by J. Walsh seconded by R. Schilling to grant the requested Special Permit, the vote carried 5-0 with members R. Schilling, J. Walsh, S. McTigue, D. Trahan, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

12/23/2015

Date



John Walsh, Acting Clerk of the Zoning Board of Appeals