



ZONING BOARD OF APPEALS

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 NEW BEDFORD, MA 02740

CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4209			
Request Type:	Special Permit			
Address:	15 Junior Street			
Zoning:	Residential A Zoned District			
Recorded Owner:	Ernest J. Beauregard and Joyce Beauregard Life Estate			
Owner's Address:	15 Junior Street New Bedford, MA 02740			
Applicant:	Ernest J. Beauregard and Kevin Beauregard			
Applicant's Address:	15 Junior Street New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
September 22 nd , 2015	October 22 nd , 2015	October 22 nd , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
44	357	9741	59	

Variance under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2220 (applicability), 2230 (table of use regulations-appendix A- animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of the net area of the lot), 2700 (dimensional regulations), 2710 (general), 2720 (table of use regulations-appendix-B-side yard), 2750 (yards in residence districts), and 2755 (side yard); relative to property located at 15 Junior Street, assessor's map 44 lot 375 in a residential-A zoned district. To allow the petitioner to erect a chicken coop and raise six chickens as plans filed.

Action: Denied, 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 4th, 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.

Nov. 4, 2015
 Date

Allen Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to erect a chicken coop and raise six chickens as plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2220 (applicability), 2230 (table of use regulations-appendix A- animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of the net area of the lot), 2700 (dimensional regulations), 2710 (general), 2720 (table of use regulations-appendix-B-side yard), 2750 (yards in residence districts), and 2755 (side yard). This petition is relative to property located at 15 Junior Street, assessor's map 44 lot 375 in a residential-A zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Existing Conditions Site Plan, drawn by unknown, dated stamped received by City Clerk's Office September 22nd, 2015.
- Proposed Site Plan, drawn by unknown, dated stamped received by City Clerk's Office September 22nd, 2015.

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, stamped received by City Clerk's Office September 22nd, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 28th, 2015.
- Staff Comments to ZBA from the Office of Planning, Housing and Community Development, dated October 9th, 2015.
- Letter to ZBA from Ward Six City Councilor Joseph P Lopes, dated October 8th, 2015
- Communication (e-mail) from Mr. Steven Warn, date stamped received City Planning, October 22nd, 2015.

3.) DISCUSSION

On the evening of the October 22nd, 2015 meeting board members: James Mathes, John Walsh, Allen Decker, Sherry McTigue, and Robert 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.

Mr. Decker made a motion, seconded by Mr. Walsh, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated September 28th, 2015; the Communication from the Office of Planning, Housing and Community Development, dated October 9th, 2015; communication from Ward Six City Councilor Joseph P. Lopes dated October 8th, 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: Mr. Kevin Beauregard (15 Junior Street New Bedford, MA) presented the petition to the Board. Mr. Beauregard began his presentation by explaining how he had acquired the chickens as eggs, how they had hatched, and later reproduced. He clarified that the original set of chickens, hatched from the eggs, unknowingly included roosters as well as hens. He currently does not have any roosters as they are not allowed to be kept in the City. He currently has two adult hen and one baby hen, a total of three hens. He also explained how and when he purchased the chicken coop. Mr. Beauregard detailed the lessons learned in keeping chickens, as well as city rules and regulations since acquiring the eggs for hatching. He detailed visits from the health department due to concerns raised about the smell of the coop, and the building department in regards to the location of the coop and the number of chickens. Mr. Beauregard indicated the concerns about the smell had been addressed as he had adopted the methods of maintenance as suggested by the health department. He was before the board for the number of chickens and the location of the coop, due to the notice by the building department.

Board members inquired if the chickens were laying hens, if the neighbors had complained, how the chickens were kept in the yard, and if any roosters were currently or in the future will be on site. Board members wished to know the necessity for more than the one chicken, as under zoning ordinance based on the lot size the petitioner can keep one by right.

Mr. Beauregard confirmed the chicken as laying hens intended for producing eggs for the family. Mr. Beauregard explained the neighbors previously had concerns about the smell, which he has addressed since with the methods suggested by the health department. He said the roosters are gone and he will not have any in the future. Mr. Beauregard explained that chickens are social creatures so at minimum it is recommended at least two are kept together. He explained they wished to have more to provide enough eggs for the family members living at the address. He also stated the chicken coop was large enough for six chickens so he wished to be able to utilize the coop. Mr. Beauregard showed digital images of the coop on his cell phone to the board members.

Acting Chairman Mathes spoke about the request in relation to the zoning code. Acting Chairman Mathes pointed out that the petitioner is very close under zoning code to the square footage required to be able to legally keep two chickens. The zoning code allows for one chicken per 1,000 square feet of net yard area, he explained. Mr. Mathes indicated it therefore would seem reasonable for the petitioner to keep two chickens. Acting Chairman Mathes expressed his feeling that zoning ordinances were designed with well thought out reasons for public health and neighborhood concerns. He expressed a concern for the transfer of a hardship from petitioners to neighbors. He expressed confidence in the zoning ordinance as drafted to appropriately allow or limit conditions in residential neighborhoods.

Acting Chairman Mathes informed the petitioner that the board would condition the approval, if granted, that no roosters are to be kept on the property. Mr. Beauregard agreed to this condition. Acting Chairman Mathes then offered the petitioner an opportunity to amend his petition, if desired, to a lower number of chickens. Mr. Beauregard agreed to reduce the initial request; Mr. Beauregard asked to keep the three chickens he currently has. At the suggestion of reducing the number to two

Mr. Beauregard explained it is difficult to give away one chicken as they aren't accepted easily into another flock.

Acting Chairman Mathes expressed the petitioners lot was simply too small for the number of chickens requested. He would be willing to bump up the allowed amount to two but not anymore than that on that size lot. He expressed he would be in favor of two due to the size of the lot. Mr. Schilling wished to know more about what the Board of Health thought. Ms. McTigue expressed she thought the relocation of the coop was good. She expressed she felt the coop seemed too small for the well being of animals if six were kept inside of it. She felt they needed room to roam, and therefore was in favor of a reduced number of chickens.

Following the petitioner's testimony, Acting Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. Mr. Jason Oliveira (238 Reed Street New Bedford, MA) the abutter to the rear spoke in favor. He initially was concerned with the roosters and the smell. He explained he no longer had these concerns because the roosters are gone, and the petitioner has taken measures to alleviate the smell. Since the roosters are gone and he can no longer smell the coop he is in support of the petition. No one else 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 of concerns, Acting Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members.

Board members discussed the number of chickens the vote was currently for if a motion was made.

Mr. Schilling expressed he would not be able to vote positively for six chickens. He felt there was enough space for one chicken.

Acting Chairman Mathes explained the role of the Board in determining what reasonable relief from the zoning code is. He expressed that zoning ordinances were designed with well thought out reasons.

There was a brief discussion about when Mr. Beauregard would need to get rid of his chickens if his petition is not granted.

Mr. Walsh stated he saw no other complaints except for the letter from Mr. Warn, who complained about the rooster. Since the issue of roosters had been addressed and there were no other complaints made by neighbors. He also expressed that if new odor issues arise in the future there are remedies available to the neighbors such as the Board of Health. Mr. Walsh expressed he would be ok with three if the petitioner wants three. Acting Chairman Mathes agreed the concerns expressed were primarily with the roosters. He expressed that allowing three would exceed the amount allowed by a significant

percentage. Ms. McTigue expressed she thought some agricultural experience was a good thing for the residents of the city.

The board confirmed with Mr. Beauregard the number of chickens he wished to petition the board for before the vote was taken. Mr. Beauregard stated he wished to amend it to three chickens.

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 lot is undersized for the intended number of poultry. The Board found the hardship is the lot and the existing house better supports the placement of the coop as proposed.

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

The Board found that sufficient information and testimony had been given to determine that granting the required relief would result in substantial negative impact 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 the impact of the dimensional relief would substantially derogate from the intent of the zoning ordinance.

5.) RELIEF

With respect to the relief requested by the Applicant, the Board had not been presented with sufficient information at the hearing to justify the relief described below.

The Board denies the Applicant's request for relief from Chapter 9 comprehensive zoning sections 2200 (use regulations), 2210 (general), 2220 (applicability), 2230 (table of use regulations-appendix A- animals or head of poultry, not to exceed one animal or head of poultry per one thousand (1,000) square feet of the net area of the lot), 2700 (dimensional regulations), 2710 (general), 2720 (table of use regulations-appendix-B-side yard), 2750 (yards in residence districts), and 2755 (side yard); relative to property located at 15 Junior Street, assessor's map 44 lot 375 in a residential-A zoned district; to allow the petitioner erect a chicken coop and raise three chickens as plans filed.

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 **Denies**, the requested Variance.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Variance, the vote failed 2-3 with members S. McTigue and J. Walsh voting in the affirmative; members R. Schilling, A. Decker, and J. Mathes voting in the negative. (Tally 2-3)

Filed with the City Clerk on:

Nov. 4, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals