



ZONING BOARD OF APPEALS

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NEW BEDFORD, MA

2015 SEP 23 A 9:00

CITY CLERK

CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:	#4200			
Request Type:	Variance			
Address:	273 Ryan Street			
Zoning:	Residential A Zoned District			
Recorded Owner:	Terceira Construction LLC			
Applicant:	Terceira Construction LLC c/o Jorge Verissimo			
Applicant Address:	1 Cookie Way Dartmouth, MA 02747			
Application Submittal Date	Public Hearing Date	Decision Date		
July 24 th , 2015	September 10 th , 2015	September 10 th , 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
38	387	11246	75	

Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulation), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix B-Height of Building, # of stories); relative to property located at 273 Ryan Street, Assessor's Map 38 Lot 387 in a Residential A zoned district. To allow the petitioner to create habitable space in the basement 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 September 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.

Sept. 23, 2015
Date

Allen Parker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to create habitable space in the basement as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulation), 2710 (General), 2720 (Table of Dimensional Requirements, Appendix B-Height of Building, # of stories). The petition is relative to property located at 273 Ryan Street, Assessor's Map 38 Lot 387 in a Residential A zoned district.

MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan —“As Built Foundation Plan” drawn by Romanelli Associates Inc., last revision dated July 22, 2015

Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office July 24th, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated August 6th, 2015.
- Staff Comments to ZBA from the City Planning Department, dated September 9th, 2015.
- Letter to ZBA from Ward Two City Councilor Steven Martins, dated September 10th, 2015
- Letter to ZBA from Ward Five City Councilor Kerry M. Winterson, dated September 10th, 2015.

2.) DISCUSSION

Board Members: J. Mathes, A. Decker, R. Schilling, J. Walsh, and L. Schick were present on the evening of the public hearing. City of New Bedford Staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

Mr. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated August 6th, 2015; the Communication from the Office of City Planner dated September 9th, 2015; the Communication from Ward Two City Councilor Martins dated September 10th, 2015, and the Communication from Ward Five City Councilor Winterson 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. Motion seconded by Mr. Walsh. With all in favor, the motion carried.

Acting Chairperson Mathes then declared the hearing open.

Representative of the Petitioner: Mr. Jason Braz (42 Bush Street Dartmouth, MA), stated general contractor who build the house, presented that no matter how you design additional living area space on the building the property would need relief. Mr. Braz stated they can't build living space into the existing attic.

The Board asked Commissioner Romanowicz about the 2.5 story limit under zoning code. Commissioner Romanowicz explained by making a space habitable it is then determined a story.

Mr. Braz clarified that the petitioner proposes to finish the front half of the basement space.

A brief discussion ensued about what is considered a half story.

Mr. Mathes asked if the space was to be a family room. Mr. Braz confirmed yes.

Following the petitioner's testimony, Acting Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. Mr. Peter Kelly (273 Ryan Street New Bedford, MA), stated he is the owner of the property, as he recently purchase it from the applicant. Mr. Kelly explained he is a manager of a medical technology sales force based out of Brockton and he is in need of the ability to work from home in the winter and therefore the home office space in the basement. 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 stated questions or concerns, Acting Chairperson Mathes declared the hearing closed. The Board members discussed amongst themselves the criteria necessary to grant the variance.

3.) 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 creating habitable space by adding to the first floor would violate setbacks from the property lines. The Board found the hardship is the application provides home office space and play space for family which would not be possible elsewhere in the existing structure.

- 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 not 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 be minimal, and would not substantially derogate from the intent of the zoning ordinance.

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 in Section 6 of this Decision.

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-Height of Building, # of stories); relative to property located at 273 Ryan Street, Assessor's Map 38 Lot 387 in a Residential A zoned district. To allow the petitioner to create habitable space in the basement as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. The project shall be set forth according to plans submitted with the application;
- b. That 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. And that the rights authorized by the granted Variances 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 Variance.

On a motion by A. Decker, seconded by L. Schick to grant the requested Variance, the vote carried 5-0 with members J. Mathes, A. Decker, L. Schick, R. Schilling, and J. Walsh, voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Sept. 23, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals