



ZONING BOARD OF APPEALS

City Hall, Room 303
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New Bedford, MA 02740
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CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number:		#4195		
Request Type:		Special Permit		
Address:		273 Cleveland Street		
Zoning:		Residential B Zoned District		
Applicant/ Owner:		Hermelinda Soler		
Applicant Address:		273 Cleveland Street		
Application Submittal Date		Public Hearing Date		Decision Date
July 9 th , 2015		August 27 th , 2015		August 27 th , 2015
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
12	110	11242	114	

Registry of Deeds Use Only:

CITY CLERK

2015 SEP 10 A 9:15

CITY CLERKS OFFICE
NEW BEDFORD, MA

Application:

Special Permit under Chapter 9 Comprehensive Zoning Section 3100(Parking and Loading), 3110(Applicability), 3149(Vehicular Access to a building from a public way that does not constitute frontage of the lot), and 5300-5330 & 5360-5390 (Special Permits); relative to property located at 273 Cleveland Street, Assessor's Map 12 Lot 110 in a Residential-B Zoned District; to allow the petitioner to install a driveway 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 10th, 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. 10, 2015
Date

Allen Decker
Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is seeking approval of a driveway that was installed as plans filed, which would require a Special Permit under provisions of Chapter 9 Comprehensive Zoning Section 3100(Parking and Loading), 3110(Applicability), 3149(Vehicular Access to a building from a public way that does not constitute frontage of the lot), and 5300-5330 & 5360-5390 (Special Permits); relative to property located at 273 Cleveland Street, Assessor's Map 12 Lot 110 in a Residential-B Zoned District.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn by unknown, not dated

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, Stamped Received by City Clerk's Office July 9th, 2015
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated August 5th, 2015
- Staff Comments to ZBA from City Planner, Jill Maclean, dated August 20th, 2015

3.) DISCUSSION

Board Members J. Mathes, A. Decker, R. Schilling, L. Schick, and J. Walsh 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. Also, present was Dr. Joseph F. Souza who provided translation services for the subject case hearing.

Case #4195 & #4196 were heard concurrently as they both were in regards to property at 273 Cleveland Street.¹

Mr. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated August 5th, 2015; the Communication from the Office of the City Planner dated August 20th, 2015; the appeal packet as submitted; the plan as submitted; 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.

The Petitioners: Ms. Hermelinda Soler and Mr. Emilio Teixeira (273 Cleveland Street New Bedford, MA) husband and wife, addressed the board with translation assistance provided by Dr. Souza. Mr. Teixeira explained there was bad communication between him and his wife. Mr.

¹ A separated notice of decision was filed concurrently for Case #4196

Teixeira constructed the shed himself and hired a contractor for the asphalt driveway. He thought they had a permit to do the work but he found out they didn't when the building inspector came. Mr. Teixeira explained he's a truck driver so he does not have that much time so his wife filed for the permit. He put the permit his wife got in the window but it was not the permit for the shed or driveway. He received a notice on his door and came to city hall where he found out he did not have the right permits.

Acting Chairperson Mathes confirmed the board members understood the situation. He confirmed with the applicant that he thought he had the right permits to do the work but in actuality he did not. Mr. Teixeira confirmed that was the case. The board members indicated they understood what had happened.

Acting Chairperson Mathes asked if the board members had any questions for the petitioners.

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 stated questions or concerns, Acting Chairperson Mathes declared the hearing closed.

Mr. Schick stated the applicant thought he had a permit. Mr. Mathes confirmed the petitioner thought he had the right permit but did not, it was a communication issue. Mr. Decker expressed concerns about the size of the driveway. Mr. Decker asked the petitioner to explain why so much asphalt? Ms. Soler explained they have three cars and a motorcycle so they need the space to park. Mr. Decker asked the Board about the staff comments. Mr. Mathes had some confusion about the comments on green space and asked about whether or not gravel was considered green space since it's permeable. Commissioner Romanowicz said gravel is permeable but green space is green space. Mr. Mathes expressed if the petitioner had gotten the correct permits it is likely this would have been done correctly. He further stated while it is in the power of the Board to make some of that work be undone such as remove some of the asphalt he was not in favor of that this evening. Mr. Mathes expressed it was clear a communication issue happened, the family is a hardworking family trying to improve their property, and there were not any abutter present so the neighborhood would seem to not have a problem with the project. He encouraged the family to be sure they get the correct permits before starting work in the future.

The Board members discussed the motion and criteria to grant the appeals.

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 makes parking available for other users of the street.
- *Traffic flow and safety, including parking and loading;*
 - The Board found the proposal provides for the removal of vehicles from parking on the street.
- *Adequacy of utilities and other public services;*
 - The Board found that the adequacy of utilities and other public service were neutral as proposed.
- *Neighborhood character and social structures;*
 - The Board found that this proposed use fits within the existing character of the neighborhood.
- *Impacts on the natural environment;*
 - The Board found the impacts on the natural environment are not out of line.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found that impact is neutral as proposed.

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 a Special Permit under Chapter 9 Comprehensive Zoning Section 3100(Parking and Loading), 3110(Applicability), 3149(Vehicular Access to a building from a public way that does not constitute frontage of the lot), and 5300-5330 & 5360-5390 (Special Permits); relative to property located at 273 Cleveland Street, Assessor's Map 12 Lot 110 in a Residential-B Zoned District; to allow the petitioner to install a driveway 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 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 A. Decker, seconded by J. Walsh to grant the requested Special Permit, the vote carried 5-0 with members J. Mathes, A. Decker, J. Walsh, R. Schilling, and I. Comerford, voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Sept. 10, 2015
Date

Allen Decker
Allen Decker, Clerk of the Zoning Board of Appeals