



ZONING BOARD OF APPEALS

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CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

Registry of Deeds Use Only:
 CITY CLERK
 2015 SEP 10 A 9:15
 CITY CLERKS OFFICE
 NEW BEDFORD, MA

NOTICE OF DECISION

Case Number: #4196				
Request Type: Variance				
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	

Application:

Variance under provisions of Chapter 9 Comprehensive Zoning 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Green Space-35%); 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 erect 10' x 10' shed 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 10' x 10' shed erected as plans filed, which will require a Variance under Chapter 9 Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Green Space-35%); 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 Variance 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. Teixeira constructed the shed himself and hired a contractor for the asphalt driveway. He

¹ A separated notice of decision was filed concurrently for Case #4195

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

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 current location is the optimal location for the shed in accommodating the asphalt parking area. The Board found the removal of improvements, or portions therefore, presents a hardship to the petitioner.

- 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 below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9 Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Table of Dimensional Requirements, Appendix-B-Green Space-35%); 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 erect a 10' x 10' shed erected 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 J. Walsh to grant the requested Variance, 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