



**ZONING BOARD OF APPEALS**  
 City Hall, Room 303  
 133 William Street,  
 New Bedford, MA 02740  
 (508)979-1488  
 www.newbedford-ma.gov

Registry of Deeds Use Only:

CITY OF NEW BEDFORD  
 JONATHAN F. MITCHELL, MAYOR

**NOTICE OF DECISION**

Case Number: #4191				
Request Type: Variance				
Address: 170 State Street				
Zoning: Residential B Zoned District				
Recorded Owner: Jose A. Vega, Trustee of the Hazard Street Nominee Trust				
Applicant: Jose A. Vega				
Applicant Address: 170 State Street New Bedford, MA 02740				
Application Submittal Date	Public Hearing Date			
June 10 <sup>th</sup> , 2015	July 30 <sup>th</sup> , 2015			
Decision Date				
July 30 <sup>th</sup> , 2015				
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
72	14	2542	0282	

CITY CLERK  
 2015 AUG 13 A 9:44  
 CITY CLERKS OFFICE  
 NEW BEDFORD, MA

Application: Variance under provisions of Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Appendix B- Table of Dimensional Regulations-Height of Buildings and Number of Stories); relative to property located at 170 State Street Assessor's Map 72, Lot 14 in a Residential-B Zoned District. To allow the petitioner to finish 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 August 13<sup>th</sup>, 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.

August 13, 2015  
 Date

Allen Decker  
 Clerk, Zoning Board of Appeals

### 1.) APPLICATION SUMMARY

The petitioner is seeking approval of finishing the basement as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning Sections 2700 (Dimensional Regulations), 2710 (General), and 2720 (Appendix B- Table of Dimensional Regulations-Height of Buildings and Number of Stories); relative to property located at 170 State Street Assessor's Map 72, Lot 14 in a Residential-B Zoned District.

### MATERIALS REVIEWED BY THE BOARD

#### Plans Considered to be Part of the Application

- Site Plan, drawn by unknown, not dated.
- Plan of Land in New Bedford, MA Drawn for Emerson Drumheiser, Recorded at the Registry of Deeds Bristol County Southern District April 1, 1988

#### Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office June 10<sup>th</sup>, 2015
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated July 10<sup>th</sup>, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated July 23<sup>rd</sup>, 2015.
- Communication from Mr. Vega, received by the Board July 30<sup>th</sup>, 2015.

### 2.) DISCUSSION

Board Members I. Comerford, A. Decker, R. Schilling, J. Mathes, and H. Tavares were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services), Kreg Espinola (Assistant City Solicitor), and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated July 10<sup>th</sup>, 2015; the Communication from the Office of City Planner dated July 23<sup>rd</sup>, 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. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Petitioner: Mr. Jose Vega (170 State Street New Bedford, MA) wished to submit a letter from a doctor as well as 270 signatures from the neighborhood. He also stated his mother was with him this evening.

A .Decker made a motion to receive and place on file the communication received from Mr. Vega by the Board July 30<sup>th</sup>, 2015. Seconded by J. Mathes. With all in favor, the motion carried. Mr. Vega presented that his late brother had started the project before his passing. Mr. Vega later hired a plumber and an electrician but due to money and health issues he put the project on hold. He further explained his other brother was doing work in the basement for him but also passed away before the work was finished. Mr. Vega expressed he previously had confusion about when he needed to get permits to do work in his home. So, he was present today trying to correct the situation. Mr. Vega explained the process he went through in filing paperwork with the City. Mr. Vega stated the finished basement is intended for his mother to live with him. He is trying to make the basement as comfortable as possible for his mother. He apologized for the mistakes he made in not getting the permits before. Mr. Vega stated he had filed for permits with the electrician and plumber at some point, but when he came back to find out about the permit to City Hall to two years later the City didn't have the paperwork. He filed paperwork again this year and is here today to straighten it out.

A .Decker asked for clarification from Mr. Vega that his intent for the space is living space. Mr. Vega stated yes, it is a single-family house and it will be all in one. He explained he didn't want his mother to have to go up and down the stairs, which is why he wanted to put a kitchen and a bathroom in the basement. A. Decker asked the petitioner to clarify why in the application he stated the space was for general use not as an apartment.

Mr. Vega explained that general because it's not a separate apartment as it is part of the one family house. He explained it was for his mother as part of the family.

Chairman I. Comerford stated regardless of what the application described, it's an apartment. He further stated it can't be an apartment and you can't just put a stove in the basement. Mr. Vega asked if it would be alright by the board if he took the kitchen out and left the bathroom. Chairperson I. Comerford stated the kitchen would have to go. He asked Commissioner Romanowicz if adding a kitchen would make it a two-family house. Commissioner Romanowicz stated the kitchen is already there. Mr. Vega stated he could take the kitchen out.

Chairperson I. Comerford believed this would make the property a multi-family. There was a discussion amongst the Board about the zoning of the property and if a two-family was an allowed use in the zone. It was identified as zoned residential B and two-family dwellings are allowed in that zone.

R. Schilling asked the petitioner about whom the two hundred signatures were from. Mr. Vega explained they were from all around the neighborhood and they were in support of it. R. Schilling stated that the kitchen would come out, the neighbors are in favor, and there will be accommodations for his mother in the basement, not a separate unit not to be rented out in the future.

Chairperson I. Comerford stated the petitioner may not want to charge his mother rent now but perhaps in the future she moves to Florida, for example, and then he wants to rent it.

Chairperson I. Comerford expressed concerns for parking and stated it doesn't work. Mr. Vega stated he could take out the kitchen.

Following the petitioner's testimony, Chairperson I. Comerford 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.

Chairperson I. Comerford invited to the podium anyone wishing to speak in opposition of the petition. No one else 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, Chairperson I. Comerford declared the hearing closed.

The Board members discussed making a condition of approval that the petitioner be required to remove the kitchen. Commissioner Romanowicz called the Board's attention to Massachusetts State Building Code that requires an escape window in the basement if there are to be any bedrooms in a basement. Therefore, he explained the petitioner will need to put an escape window. He also explained the petitioner will also need to add CO<sub>2</sub> alarms. The Board considered making a condition that the petitioner follows Massachusetts State Building Code.

J. Mathes explained the discussion between the Board Members to the Mr. Vega. He explained the petitioner will be required to remove the kitchen, put in an escape window that meets State Building Code, and put in carbon monoxide and smoke detectors in the basement, before the City will sign-off on any of the work. Mr. Vega and Mr. Mathes briefly conversed about the process to get permits to do the required work. Mr. Mathes encouraged Mr. Vega to work with the City to ensure he get the specific information about the type of escape window he will need. The Board briefly discussed and decided the criteria to grant the variance as noted in the findings below.

#### **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 relief from the number of stories allowed in a residential B zoned district is needed. The Board found the hardship to be the zoning code currently prohibits the ability to provide care for an elderly family member.

- 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 (Appendix B- Table of Dimensional Regulations-Height of Buildings and Number of Stories); relative to property located at 170 State Street Assessor's Map 72, Lot 14 in a Residential-B Zoned District. To allow the petitioner to finish the basement as plans filed.

#### 6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. That the removal of the existing kitchen in the basement be done;
- b. The project shall be set forth according to plans submitted with the application;
- c. 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;
- d. 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. Mathes to grant the requested Variance, the vote carried 5-0 with members A. Decker, J. Mathes, I. Comerford, H. Tavares, and R. Schilling, voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

August 13, 2015  
Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals