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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:	#4184			
Request Type:	Special Permit			
Address:	1052 Leroy Street			
Zoning:	Residential A Zoned District			
Recorded Owner:	Joseph Irwin Trottier			
Applicant:	JC Engineering, Inc. c/o John L. Churchill; and Joseph I. Trottier			
Applicant Address:	2854 Cranberry Highway E. Wareham, MA 02538; and 25 Barends Way Middleboro, MA			
Application Submittal Date	Public Hearing Date	Decision Date		
May 21 st , 2015	June 25, 2015	June 25, 2015		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
137	41	3098	0156	

Application:

Special Permit under Chapter 9, Comprehensive Zoning sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2440 (Non conforming Single and Two Family Structures), and 5300-5330 & 5360-5390 (Special Permit); relative to property at 1052 Leroy Street, Assessor's Map 137 Lot 41 in a Residential-A zoned district. To allow the petitioner to demolish the existing dwelling and reconstruct 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 July 9th, 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.

July 9, 2015
 Date

Allen Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to demolish the existing dwelling and reconstruct as plans filed, which will require a Special Permit under Chapter 9, Comprehensive Zoning sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2440 (Non conforming Single and Two Family Structures), and 5300-5330 & 5360-5390 (Special Permit); relative to property at 1052 Leroy Street, Assessor's Map 137 Lot 41 in a Residential-A zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan entitled "Plot Plan", drawn by JC Engineering, INC, Stamped Received by City Clerk's Office May 21st, 2015
- Proposed Architectural Plans, dated March 18, 2015 including:
 - A1- Front Elevation
 - A2-First Floor Plan
 - A3-Second Floor Plan

Other Documents & Supporting Material

- Completed Petition for a Special Permit Form, Stamped Received by City Clerk's Office May 21st, 2015
- Ten Pictures of Existing Dwelling and Property, not dated
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, dated June 1st, 2015.
- Letter to ZBA from City Planner Jill Maclean, dated June 19th, 2015.
- Recorded Easement, recorded in 2006 concerning this property, received June 25th, 2015.

3.) DISCUSSION

Board Members I. Comerford, A. Decker, R. Schilling, J. Walsh, 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 read and motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated June 1st, 2015; the Communication from the Office of City Planner dated June 19th, 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. Walsh. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

Representative of the petitioner: John Churchill (2854 Cranberry Highway E. Wareham, MA 02538) presented on behalf of the property owner Mr. Joseph I. Trottier, who was also present at the meeting. Mr. Churchill explained the existing single family home was built in the 1930's and had suffered water damage last summer.

Mr. Churchill explained the property required reconstruction due to the damage. He further explained the zoning code requirements for the property, located in a residential A zoned district. He explained the district requires: a minimum lot size of 8,000 square feet, lot frontage of seventy-five (75) feet, front setback of twenty (20) feet, and side setback of ten (10) one side and twelve (12) on the other, a rear yard setback of thirty (30) feet, and a lot coverage of building of 30% and a minimum green space of thirty-five percent (35%). Mr. Churchill explained the existing lot has 5376 square feet a frontage of 46.3 feet. He explained the existing structure has a front yard setback of 17 feet, and side setback of 3.7 feet on one side and 0.6 feet on the other, a rear-yard setback of 49.4 feet, lot coverage of 15.6% and green space of 81.5%. Mr. Churchill stated the existing structure does not meet the front yard setback or either side setback. The lot does not meet the existing area or frontage requirements. Mr. Churchill explained the proposed structure meets all zoning requirements; the lot does not meet the area or lot frontage requirements. Mr. Churchill state the proposed structure will be more conforming than the existing structure. He explained the front setback will be 38.4 feet, the side setbacks of 10.1 feet and 12.1 feet, rear yard setback of 30.1, lot coverage will be reduced to 13.4%, and green space of 65.9%. Mr. Churchill explained the structure will be a 24 x 32 colonial style with a six foot farmer's porch on the front. He stated the proposed dwelling will have a higher tax value and generate more revenue. He state it will increase property values and overall appeal of the neighborhood it is located in. He asked the Board to look at the pictures and drawing submitted in the application packets. The picture he said showed the existing property needs to be reconstructed. He finished his presentation by restating the proposed structure does not increase the nonconforming nature of the dwelling, it creates a more valuable property and creates a more valuable neighborhood, for these reasons they request the Board grant the Special Permit, and the proposed will not be more detrimental to the neighborhood than the existing structure.

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. Mr. Scott Franklin (1052 ½ Leroy Street New Bedford, MA, owner) spoke in opposition. Mr. Franklin explained he has an easement across Mr. Trottier's property in order to access his property. He further explained he bought the property from Mr. Trottier in 2005. He stated at that time Mr. Trottier had the right to take the proper square footage he would have needed to build today. He said by the look of the plans the applicant is ignoring the right of way. Mr. Franklin explained his right of way

measurements and described the rights as for passage and utilities. He explained he has a tenant located behind and emergency vehicle have to be able to get there. Mr. Franklin questioned the amount of frontage presented. He also had concerns for the narrowness of Leroy Street at this point. Mr. Franklin presented his recorded easement. He state he has concerns as a driveway is shown on his easement, on which he is concerned cars will be parking and therefore blocking access to his property for his tenants. He explained people can't see his property dwelling behind the property and people, such as visitors, park there not realizing there is a house behind. His tenants have to then knock on the door and ask people to move their cars, he said. He explained his previous tenant moved out because they had a problem with Mr. Trottier's tenant and friends constantly blocking his driveway. Mr. Franklin showed the Board and then submitted a copy of his easement recorded signed by Mr. Trottier to the Board. Mr. Franklin showed the Board on the proposed plan what his concerns were. Chairperson I. Comerford asked if the easement is currently paved. Mr. Franklin stated no. A. Decker motioned to receive the recorded easement recorded in 2006 concerning this property, motion seconded by J. Walsh, with all in favor motion passed. Mr. Franklin submitted to the board the letter from his tenant about the blocked driveway and explained his concern and the monetary damage to him from losing tenants due to the obstruction of the driveway. A. Decker read the letter and questioned Mr. Franklin about a wall reference in the letter. A. Decker stated the wall referenced that narrows the driveway was not on the property in question tonight. Mr. Franklin explained he is concerned overall about obstruction to his property and for emergency vehicles to access his property. A. Decker asked about how the Board members felt. J. Walsh stated he felt the project did not affect the easement.

Chairman I. Comerford asked the petitioner to address the easement. Mr. Churchill presented that plans pushed the structure further away from the easement for the concerns of access. Mr. Churchill stated they are willing to work with neighbors and are open to any conditions the Board may place on the project to maintain the neighbors access to his property. A. Decker stated he felt a paved driveway in no way inhibits the access to Mr. Franklin's property in and of itself. He explained the concern is cars parking on the driveway which is a problem as Mr. Franklin has an easement for access across the property. Mr. Churchill explained the driveway was designed to have room to park in front of the house providing the access across the easement. Chairman I. Comerford stated you cannot park in front of a house under City code. Chairman I. Comerford asked Mr. Franklin if there was a house on his property. Mr. Franklin stated yes, and explained the history of the property transfers and length of time his driveway has been across Mr. Trottier's property. Mr. Franklin stated there are also concerns for runoff and drainage in the area.

Chairperson I. Comerford invited to the podium anyone else wishing to speak in opposition of the petition. Mr. William Markey (1520 Morton Avenue New Bedford, MA) spoke in opposition. He agreed the existing cottage does need work. He explained that the reason zoning changed for the area around Sassaquin Pond, which increased the minimum lot size to 8,000 square feet was to reduce the run-off to the pond. He stated that the area was originally all cottages that were built up but not to this extent around

the pond. He stated there are similar house up the road but they have the necessary 8,000 square feet. He was opposed to the two-story building. He also expressed concern for runoff and drainage in the area due to the height of the building and the removal of trees in the plan. Clifton Hathaway (1033 Meadow Street New Bedford, MA) stated he is concerned about Sassaquin Pond. He stated the building itself would be an improvement but had concerns for pollution in the pond from runoff from the building, driveway, and lawn. He stated he has a problem with drainage in the neighborhood. No one else in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson I. Comerford offered opportunity for rebuttal from the petitioner. The petitioner declined the offer for rebuttal.

With no further stated questions or concerns, Chairperson I. Comerford declared the hearing closed.

The Board discussed if they needed to make the easement a condition of approval. The Board decided they did not need to make it a condition of approval. Solicitor Espinola introduced a point of information. Solicitor Espinola and Commissioner Romanowicz pointed out to Chairperson I. Comerford about the location of the driveway and that a condition that could be placed on the driveway in regards to parking. Chairperson I. Comerford explained the condition about parking to A. Decker and the Board Members. The Board Members indicated agreement with the condition.

4.) FINDINGS

The Board found that the applicant met all the requirements listed under Chapter 9, Comprehensive Zoning sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2440 (Non conforming Single and Two Family Structures), and 5300-5330 & 5360-5390 (Special Permit);

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 property owner needs to raze and rebuild the residence damaged by a previous fire.

- *Traffic flow and safety, including parking and loading;*

- The Board found these concerns to be neutral as proposed.
- *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 the rebuild as a single family residence fits with the character of the neighborhood.
- *Impacts on the natural environment;*
 - The Board found the impacts on the natural environment are neutral as proposed.
- *Potential fiscal impact, including impact on City services, tax base, and employment*
 - The Board found that the maintenance of a property with a structure on it paying taxes.

Additionally the board found that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

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 sections 2400 (nonconforming uses and structures), 2410 (Applicability), 2440 (Non conforming Single and Two Family Structures), and 5300-5330 & 5360-5390 (Special Permit); relative to property at 1052 Leroy Street, Assessor's Map 137 Lot 41 in a Residential-A zoned district. To allow the petitioner to demolish the existing dwelling and reconstruct as plans filed.

6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY

- a. That no parking is to be permitted in front of the residence;
- 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 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 petition for a 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 I. Comerford, A. Decker, J. Walsh, R. Schilling, H. Tavares, and I. Comerford voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

July 9, 2015
Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals