



ZONING BOARD OF APPEALS

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

CITY OF NEW BEDFORD
 JONATHAN F. MITCHELL, MAYOR

NOTICE OF DECISION

Case Number: #4165	
Request Type: Variance	
Address: 119 Acushnet Avenue	
Zoning: Residential C Zoned District	
Recorded Owner: Jose Teixeira and Aulinda Teixeira	
Applicant: Jose Teixeira and Aulinda Teixeira	
Applicant Address: 119 Acushnet Avenue New Bedford, MA 02704	
Application Submittal Date	Public Hearing Date
December 4 th , 2014	January 22 nd , 2015
Assessor's Plot Number	Lot Number(s)
37	330
Book Number	Page Number
6018	48
Decision Date	Certificate Number
January 22 nd , 2015	2015 JAN 31 10:15 AM

CITY CLERK'S OFFICE
 NEW BEDFORD, MA
 CITY CLERK
 2015 JAN 31 10:15 AM

Application:

Variance under provisions of Chapter 9, Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 Table of Dimensional Requirements Appendix-B (Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property located at 119 Acushnet Avenue, Assessor's Map Plot 37 Lot 330 in a Residential C Zoned District. To allow the petitioner to erect a 16'x20' covered patio 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 February 3rd, 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.

February 3, 2015
 Date

Allen Baker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioner is proposing to erect a 16'x20' covered patio as plans filed, which will require a Variance under Chapter 9, Comprehensive Zoning sections 2700 (Dimensional Regulations), 2710 (General), 2720 Table of Dimensional Requirements Appendix-B (Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property located at 119 Acushnet Avenue, Assessor's Map Plot 37 Lot 330 in a Residential C 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 December 4th, 2014.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, dated December 23rd, 2014.
- Letter to ZBA from City Planner Jill Maclean, dated January 9th, 2015.
- Pictometry aerial photos from Commissioner of Building & Inspectional Services, stamped received by City Planning January 22nd, 2014.

3.) DISCUSSION

Board Members I. Comerford, J. Mathes, A. Decker, D. Trahan, and R. Schilling 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.

A .Decker read and motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated December 23rd, 2014; to have the appeal be received and placed on file; to have the plan be received and placed on file; that the owners of the lots as indicated are the ones deemed by the Board to be affected; and that the Communication from the Office of City Planner dated January 9th, 2015 be received and placed on file. Motion seconded by D. Trahan. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

The Petitioner: Jose Teixeira (119 Acushnet Avenue New Bedford, MA 02704) described the reasoning for the requested relief. Mr. Teixeira explained they are proposing to cover his existing patio area to protect his kids and family from the animals -wild cats and

squirrels –who get into his patio area. Mr. Teixeira explained the lot next to the patio has been vacant for approximately twelve (12) years and has become a dumping ground where animals make a mess, which is impacting his patio area.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. No one else 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 in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

Chairperson I. Comerford asked if the board members had any questions or concerns. A. Decker asked the petitioner to confirm that the lot abutting the project is vacant. Chairperson I. Comerford had Mr. Teixeira approach the board to explain on a aerial view where the proposed covered patio area would be. Mr. Teixeira identified the area for the board. Chairperson I. Comerford inquired why the patio was on the side yard instead of the backyard. Mr. Teixeira explained the door is located on the side not the back of the house. D. Trahan stated she believed the City owned the abutting vacant lot. Chairman Comerford informed the applicant the City had and may still have a program for abutters to purchase vacant property in certain cases. He recommended the applicant inquire about the program with the City. Chairperson I. Comerford expressed concern that something could be built on the abutting land in the future. He then stated a house wouldn't be on the property line though.

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

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 a literal enforcement of the dimensional requirements of the zoning district would constitute a hardship for the applicant.

- 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), 2720 Table of Dimensional Requirements Appendix-B (Side Yard), 2750 (Yards in Residence Districts) and 2755 (Side Yards); relative to property located at 119 Acushnet Avenue, Assessor's Map Plot 37 Lot 330 in a Residential C-Zoned District. To allow the petitioner to erect a 16'x20' covered patio 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.

City of New Bedford, MA • Zoning Board of Appeals Decision
ZBA # 4165 • 119 Acushnet Avenue

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

Filed with the City Clerk on:

February 3, 2015
Date

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