



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:	#4421			
Request Type:	Variance			
Address:	335 Rockdale Avenue			
Zoning:	Residential B (RB) Zoned District			
Recorded Owner:	Antoinette T. Pacheco, Thomas S. Pacheco			
Owner Address:	335 Rockdale Avenue, New Bedford, MA 02740			
Applicant:	Antoinette T. Pacheco, Thomas S. Pacheco			
Applicant Address:	335 Rockdale Avenue, New Bedford, MA 02740			
Application Submittal Date	Public Hearing Date	Decision Date		
June 12, 2020	July 16, 2020	July 16, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
26	107	6471	313	

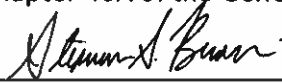
A Variance under Chapter 9 Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking & loading), 3110 (applicability) and 3145 (open air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open air off street parking space shall be located in front of the dwelling or principal building); relative to property located at **335 Rockdale Avenue**, Assessors' map 26 lot 107 in a Residential B [RB] zoned district. The petitioner proposes to convert a commercial space into an in-law apartment per plans filed.

Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the Conditions as described therein.

A copy of this Decision was filed with the City Clerk of the City of New Bedford on July 24, 2020. 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 24, 2020

Date


Stephen Brown, Clerk of the Zoning Board of Appeals

APPLICATION SUMMARY

The petitioner is proposing to convert a commercial space into an in-law apartment per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking & loading), 3110 (applicability) and 3145 (open air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open air off street parking space shall be located in front of the dwelling or principal building); relative to property located at 335 Rockdale Avenue, Assessors' map 26 lot 107 in a Residential B [RB] zoned district.

1.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Plan Set, drawn by unnamed, plans dated June 12, 2020, date stamped June 12, 2020 by City Clerk's Office.
 - Existing Site Plan
 - Proposed Site Plan
 - Property Dimensions

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office June 12, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 22, 2020.
- Staff Comments to the ZBA from the Office of the City Planner, dated July 6, 2020.

2.) DISCUSSION

On the evening of the July 16, 2020 meeting, board members Leo Schick, Stephen Brown, Allen Decker, Robert Schilling and Celeste Paleologos were present for the virtual public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Angela Goncalves (Assistant Project Manager) were present during proceedings for the subject case review.

In regard to Case #4420 and Case #4421 Clerk Brown made a motion, seconded by Mr. Schilling to hold the public hearings concurrently as they both were in regard to the same project at 335 Rockdale Avenue. With all in favor, the motion carried.

In regards to Case #4421, Clerk Brown made a motion, seconded by Mr. Schilling to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 22, 2020; staff comments from the Department of City Planning, dated July 6, 2020; letter in support of the proposal by Milton Cardoza Jr., dated June 29, 2020; the appeal packet as submitted; 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. With all in favor, the motion carried.

Chairperson Schick then declared the hearing open.

The petitioner: Antoinette T. Pacheco, Proprietor, (335 Rockdale Avenue, New Bedford) presented the case at the hearing. Mrs. Pacheco began her presentation by stating she is the owner of the subject property, which consists of a residential dwelling with an attached commercial photography studio.

The subject property currently hosts a single family, multi-level, residential unit with an attached single story, commercial photography studio, known as "Pacheco Studio." The 3,164 SF colonial structure is a multi-story, mixed-use commercial/residential property located on the corner of Rockdale Avenue and Luke Street in a residential B [RB] zoned district.

Mrs. Pacheco continued the presentation with a brief background of the property. Mrs. Pacheco purchased the subject property in 1975 and established the attached commercial photography studio in 1983. Mrs. Pacheco noted that after 40 years in business, she is retiring and seeking to convert the commercial studio space into an in-law apartment.

The petitioner is proposing to convert a commercial space into an in-law apartment per plans filed. The proposal to convert a commercial space into an in-law apartment requires a Special Permit and Variance from the Zoning Board of Appeal.

Under the zoning ordinance, a change to an existing, nonconforming structure for a substantially different purpose requires a special permit from the Zoning Board of Appeals.

Additionally, the conversion of the commercial space into an in-law apartment would require a variance, due to the location of the existing driveway. "No open air off street parking space shall be located in front of the dwelling or principal building".

Mrs. Pacheco proceeded with her presentation noting the necessity for the proposal. Mrs. Pacheco stated she is on a fixed income and the conversion of the commercial property to an all residential property would alleviate the burden of a \$1900 quarterly commercial tax on the property. Additionally, Mrs. Pacheco mentioned the proposal would allow her daughter to move into the multi-level residential unit and she would reside in the proposed single level, in-law unit.

Mrs. Pacheco concluded her presentation by expressing her comfort and safety level in her existing neighborhood. Mrs. Pacheco noted to the board; if the relief is granted it would give her the opportunity to reside in the current neighborhood throughout her retirement years.

In response to an inquiry from Board Member Decker relative to exterior changes, Mrs. Pacheco noted the rear of the existing photography studio has no existing windows; the proposal would include two new windows located in the rear of the building (westerly); one window in the kitchen, and the other window in the proposed bedroom. Additionally, a sliding door leading into the bedroom would be located on the north side of the building.

Following the petitioner's testimony, Chairperson Schick invited anyone wishing to speak in favor or be recorded in favor of the petition of the application. There was no response to Chairperson Schick's invitation to speak or be recorded in favor.

Chairperson Schick invited anyone wishing to speak in opposition of the petition. There was no response to Chairperson Schick's invitation to speak or be recorded in opposition.

Chairperson Schick asked the Board if there were any further questions. With no further questions, Chairperson Schick closed the hearing.

The Board had a brief discussion. Board member Schick stated the conversion to an all residential property would be a good change. Board member Schilling concurred and stated the proposal makes sense.

Board member Decker engaged with the Commissioner of Building and Inspectional Services, Danny D. Romanowicz regarding the special permit and variance; Mr. Romanowicz stated the special permit is to allow for the change of use, stating the change would be less detrimental to the neighborhood. Additionally, Mr. Romanowicz noted the variance is required due to the location of the existing driveway.

With no further questions. The board indicated their readiness to vote.

3.) 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 the location of the existing parking area, located directly in front of the existing commercial studio space, would not negatively affect the proposal to convert a commercial space into an in-law apartment.

The Board found that if the city were to literally enforce the Zoning Ordinance due to circumstances unique to this land or structure, it would mean a substantial hardship to the petitioner. In this case, without the relief it would cause a substantial hardship for the petitioner. In order to be compliant with current parking requirements for a residential property, the existing driveway would require a substantial modification.

- b.) *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 relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

c.) *That desirable relief may be granted without substantial detriment to the public good;*

The board found that relief may be granted without substantial detriment to the public good.

4.) 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 in Section 6.

The Board grants the applicant's request for relief from Chapter 9 Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking & loading), 3110 (applicability) and 3145 (open air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open air off street parking space shall be located in front of the dwelling or principal building); relative to property located at **335 Rockdale Avenue**, Assessors' map 26 lot 107 in a Residential B [RB] zoned district.

5.) 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.

A motion to approve was made by Clerk Brown and seconded by Mrs. Paleologos as follows:

In regard to Case #4421 **Antoinette T. Pacheco & Thomas S. Pacheco**, (335 Rockdale Avenue, New Bedford, MA 02740); relative to property located at **335 Rockdale Avenue**, Assessors' map 26 lot 107 in a Residential B [RB] zoned district. The petitioner proposes to convert a commercial space into an in-law apartment per plans filed, which requires a **Variance** under Chapter 9 Comprehensive Zoning Sections 3000 (general regulations), 3100 (parking & loading), 3110 (applicability) and 3145 (open air off-street parking facilities may be located in required front, rear and side yards, except that in a residential district, no open air off street parking space shall be located in front of the dwelling or principal building). Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 Comprehensive Zoning sections as cited; the board finds that in respect to these sections the application has made sufficient arguments.

In addition to the foregoing section this petition has been found to be in accordance with Massachusetts General Law Chapter 40A section 10 relative to the granting of variances because the board found:

- That there are circumstances relating to the soil conditions, shape or topography especially affecting the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located;
- And due to those circumstances especially affecting the land or structure, literal enforcement of the provisions of the Zoning Ordinance or By Law would involve substantial hardship, financial or otherwise, to the petitioner or appellant;
- And that desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the Zoning Ordinance or Bylaw;
- And that desirable relief may be granted without substantial detriment to the public good.

In light of its review of the specifics of this case, the applicable sections of the city's zoning ordinance, the findings subsequently made based on these items along with all properly submitted materials and testimony made, and the board's careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief.

General Conditions on this decision shall include:

- That the project be set forth according to the plans submitted with the application.
- That the applicant shall ensure a copy of the Notice of Decision bearing the certification of the city of New Bedford City Clerk's Office be recorded at the Registry of Deeds.
- The rights authorized by the granted variance must be exercised by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date the decision was granted, or the approval will lapse.

On a motion by S. Brown seconded by C. Paleologos to grant the requested Variance, the vote carried 5-0-0 with members A. Decker, S. Brown, C. Paleologos, Robert Schilling and L. Schick voting in the affirmative; no members voting in the negative or abstaining. (Tally 5-0-0).

Filed with the City Clerk:



Stephen Brown
Clerk of the Zoning Board of Appeals

July 24, 2020

Date