



PATRICK J. SULLIVAN
DIRECTOR

City of New Bedford

Department of Planning, Housing & Community Development

608 Pleasant St, New Bedford, Massachusetts 02740

Telephone: (508) 979.1500 Facsimile: (508) 979.1575

STAFF COMMENTS

ZONING BOARD OF APPEALS MEETING

January 19, 2017

Case #4265: VARIANCE

42 Briarwood Court
Map: 136-C, Lot: 79

Owner/ Ryan Pina
Applicant: 42 Briarwood Court
New Bedford, MA 02740

Overview of Request: The petitioner has submitted an application for **Variances** relative to the subject property located within a Residential A [RA] zoning district. The petitioner proposes finishing the attic and basement making both habitable stories, bringing the total number of stories to four (4), where 2.5 stories is the maximum allowed under zoning ordinance. Additionally, the property requires a second variance for a deck installed without the required permits that is setback five inches (5"±) from the edge of an in-ground pool, where three feet (3') is required.

As with all variances, the board must find:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner.
- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good.

Existing Conditions: The applicant recently purchased the property (September 2016) which is an existing 10,337 sq. ft. lot with 85'± frontage on Briarwood Court and is 126' in depth on the east side and 116' on the west side.



The property is slightly angled in the rear. The property has a two-story garrison colonial style single-family house (24'± x 48'±). There is a small porch on the east side of the house serving a side door off the driveway, a large second story deck off the rear western half of the house, and a ground story deck on the rear east side that wraps around a sunroom. The rear east side deck has a walkway portion that directly abuts an in-ground swimming pool. The walkway portion is in violation of the zoning ordinance. There is also a slide on the south side of the pool and an outdoor fireplace in the rear yard. Wooden and vinyl gated fencing surrounds the rear yard.

The property on record has three bedrooms and one full and one half-bathroom. The plans submitted show existing conditions of four bedrooms with two full bathrooms and one half bathroom.

The plans submitted show the existing first floor has two bedrooms, one full and one half-bathroom, living room, kitchen, dining room and sunroom.

The existing second floor is depicted as having a fitness room (staff considered this space a bedroom in the count above), bedroom, family room, and a full bathroom with laundry.

The existing basement is described as unfinished on the application. Plans submitted show a few walls, a counter, and shelving units to be removed.

Existing conditions of the attic space were not submitted and are described as unfinished in the application. However, Planning Staff note the proposed attic plans submitted state “existing framing to remain”, the board may wish to inquire if any prior work was begun in this space.

Located in a north end residential neighborhood off of Braley Road the surrounding neighborhood consists of single family houses and is bound by Route 140 to the west and Acushnet Avenue to the east. There are five almost identical garrison colonials and four ranch style homes on the cul-de-sac.

Proposal: The petitioner proposes, for approval by this board, to finish the basement and the attic of the property and make legal an existing ground level deck located in the rear. Specifically:

- The basement is proposed to be finished with a storage area, mechanical room, and a 23'±x16'± room.
- The attic is proposed to have two finished rooms and a half bathroom which is proposed in an existing small rear dormer space.
- The board may wish to note, though it is not part of this appeal, that proposed interior renovations include a reconfiguration of the first floor bedrooms into one larger master bedroom with a larger full bathroom.

In regards to the rear deck, when the petitioner applied for a building permit to make renovations to the newly purchased property (back in the Summer of 2016) he was informed the existing sunroom and attached ground level deck were never permitted and that the deck was in violation of the zoning ordinance. Google Earth historic aerials reveal that the sunroom structure is visible in an aerial image dated 4/30/2010.

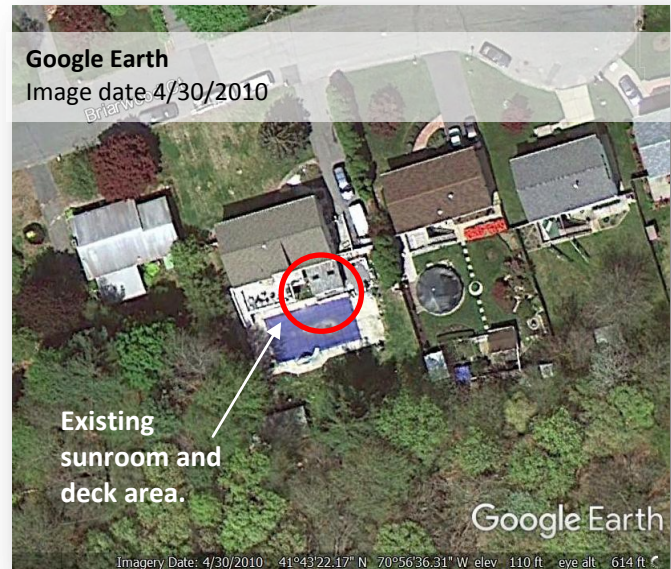


The petitioner is also making other as-of-right renovations to other portions of the property at this time.

For Consideration: In considering each criteria necessary to grant the appeal, staff offers the following for the board's consideration:

- There are circumstances relating to the soil conditions, shape or topography which especially affect the land in question, but which do not affect generally the zoning district in which the land or structure in question is located. The petitioner's application commented on the project's ability to meet this hardship because the request is to increase the living space of the dwelling while making no changes to the exterior of the dwelling by finishing the basement and attic. While this information addresses the look and functionality of the requested change germane only to the first variance about number of stories allowed, it does not address the hardship criteria related to soils/shape/topography nor does it speak to the second variance necessitated because of the less-than-required distance between the installed deck and pool. Staff notes that the shape of the applicant's lot is consistent with other surrounding properties and soil conditions and topography similarly do not appear incongruous with the neighborhood in which it is located. The size of the house is currently the largest houses in terms of square footage in the neighborhood.
- If the city were to literally enforce the zoning ordinance, due to these circumstances unique to this land or structure, it would mean substantial hardship to the petitioner. In regards to the hardship criteria, the petitioner has cited in his application that he would not be able to use the home in the way he would like which would cause a loss in living space and loss of ability to increase the property value. Staff notes that it remains unclear from the application why the additional amount of living space which would exceed that which is allowed in this zoning district would be needed in this instance and why the applicant's inability to do so would pose a true hardship. Staff notes this property is the second highest in value in the neighborhood with an assessed value of \$288,400. The neighboring property values range \$220,100-\$358,000. It also has the largest square footage coverage (roof cover) over five abutting neighbors' properties. The Board may wish to review the need for such additional living space given the existing size of the property in comparison with abutting properties which are smaller.

Staff notes that again the applicant has addressed only one of the two variances being sought and that as such, the Board may wish to further enhance its understanding of hardship relative to literal enforcement and the deck/pool separation with testimony from the applicant. With respect to the location of the existing deck walkway, the petitioner only notes in the application that the guard rail acts as a safety feature to prevent people from falling into the pool while walking by the sunroom. While staff acknowledges there is some safety achieved by the guard rail, there is, at the same time, an additional danger posed by having a structure located so close to the edge of the pool with sliding doors from the sunroom opening directly out onto this narrow walkway. The Board may also wish to consider whether the existing walkway deck and railing better serves safety concerns between the structure and the pool than would having no doorway and no walkway in this location but only a properly installed pool fence for safety.



- The granting of the variance would not take away from the purpose of the zoning ordinance nor would it cause substantial detriment to the public good. The petitioner suggests that the added value to the property is good for the neighborhood and city. With respect to the public good they claim “no one would get hurt as it expanding the interior living space in a house already exists.” Staff concurs there is no increase upon the land in terms of additional building on the site for the interior renovation though the additional living space could increase the intensity of use on the site. The zoning ordinance restricts the height of buildings to within reasonable and standard heights within districts; for life and safety reasons habitable space is encouraged where there is ease of egress in case of emergency.



42 Briarwood Court Map:136-C, Lot: 79

NOTE: Property line is approximate; for discussion purposes, only.

© 2016 Google

Google Earth

Imagery Date: 8/22/2016 41°43'21.65" N 70°56'34.64" W elev 113 ft eye alt 1171 ft