



**ZONING BOARD of APPEALS**  
City Hall, Room 303  
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New Bedford, MA 02740  
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[www.newbedford-ma.gov](http://www.newbedford-ma.gov)

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JPM CLERK

**CITY OF NEW BEDFORD**

**JONATHAN F. MITCHELL, MAYOR**

## NOTICE OF DECISION

Case Number:	#4424			
Request Type:	Variance			
Address:	176 Pine Grove Street			
Zoning:	Residential A (RA) Zoned District			
Recorded Owner:	Antonio M. Pimentel Jr., & Karen Pimentel			
Owner Address:	176 Pine Grove Street, New Bedford, MA 02745			
Applicant:	Antonio M. Pimentel Jr., & Karen Pimentel			
Applicant Address:	176 Pine Grove Street, New Bedford, MA 02745			
Application Submittal Date	Public Hearing Date	Decision Date		
September 23, 2020	October 15, 2020	October 15, 2020		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
127E	328	3016	306	

A Variance under Chapter 9 Comprehensive Zoning Sections 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 **176 Pine Grove Street**, Assessors' map 127E lot 328 in a Residential A [RA] zoned district. The petitioner proposes to convert an existing attached garage into an accessory dwelling unit 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 October 20, 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.

October 19, 2020

Date

Stephen Brown, Clerk of the Zoning Board of Appeals

## **APPLICATION SUMMARY**

The petitioner is proposing to convert an existing attached garage into an accessory dwelling unit per plans filed, which requires a Variance under Chapter 9 Comprehensive Zoning Sections 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 **176 Pine Grove Street**, Assessors' map 127E lot 328 in a Residential A [RA] zoned district.

### **1.) MATERIALS REVIEWED BY THE BOARD**

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

- Plan Set, drawn by Zenith Land Surveyors, LLC, plans dated August 7, 2020, date stamped September 23, 2020 by City Clerk's Office.
  - Certified Plot Plan
- Plan Set, drawn by unnamed, date stamped September 23, 2020 by City Clerk's Office.
  - Proposed Site Plan

#### **Other Documents & Supporting Material**

- Completed Petition for a Variance Form, stamped received by City Clerk's Office September 23, 2020.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 29, 2020.
- Staff Comments to the ZBA from the Office of the City Planner, dated October 5, 2020.

### **2.) DISCUSSION**

On the evening of the October 15, 2020 meeting, board members Laura Parrish, 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 #4423 and Case #4424 Clerk Brown made a motion, seconded by Mrs. Paleologos to hold the public hearings concurrently as they both were in regard to the same project at 176 Pine Grove Street. With all in favor, the motion carried.

In regards to Case #4424, Clerk Brown made a motion, seconded by Mrs. Paleologos to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 29, 2020; staff comments from the Department of City Planning, dated October 5, 2020; 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.

Acting Chairperson Parrish then declared the hearing open.

The petitioner: Antonio & Karen Pimentel, proprietors, ( 176 Pine Grove Street) presented the case at the hearing. Mr. Pimentel began the presentation with a visual slide show briefly describing the subject property, history of ownership and the family members who currently reside at 176 Pine Grove Street.

The property is situated in the north end of the city, north of Tarklin Hill Road, east of Pine Grove cemetery, and west of Acushnet Avenue. The 1,794 SF, single family, cape cod style, two story residential property is located on the corner of Pine Grove Street and Pontiac Street in a residential A [RA] zoned district.

The site's parcel encompasses a 5,980 SF corner lot, with 66' of frontage on Pine Grove Street and 81.76' of frontage on the adjacent Pontiac Street. The subject property currently hosts a single family, multi-level, residential dwelling with an attached rear garage.

Mr. Pimentel continued the presentation stating the proposal is to allow for the conversion of an existing 440 SF garage to an accessory dwelling for use as an in-law apartment. Mr. Pimentel notes the attached garage has been used for occupant storage since ownership in March 1993 and there would be no change to the exterior dimensions of the structure. Additionally, Mr. Pimentel states the accessory dwelling would be occupied by his elderly mother, who would be relocating from Florida to be closer to family after the passing of her husband.

**The proposal is to convert an existing attached garage into an accessory dwelling unit per plans filed.**

**Under the zoning ordinance, the conversion of the attached garage into an accessory dwelling unit requires a special permit from the Zoning Board of Appeals.**

**Additionally, the conversion of the existing garage into an accessory dwelling unit 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".**

Mr. Pimentel proceeded with his presentation referencing the site plan presentation. Depicted on the plan; Mr. Pimentel provided details relative to an aerial photo of the site, plot plan and the floorplan of the proposed in-law accessory dwelling.

The proposed accessory dwelling unit would include (1) one bedroom, (1) one bathroom and an open concept kitchen/living area. Additionally, (6) six storage/closet spaces are depicted throughout the proposed accessory dwelling unit.

Mr. Pimentel concluded the presentation by briefly summarizing the relief needed to grant the special permit and variance. Mr. Pimentel notes there are no exterior changes proposed, no new utilities required and no impact in traffic and parking. Additionally, Mr. Pimentel mentions a signed affidavit that the accessory dwelling will not be made available for rent, during home ownership. Mr. Pimentel noted that they are long-time residents of New Bedford and the proposal would allow for the care of their elderly mother. Mr. Pimentel thanks the board for their support and approval of the petition.

In response to an inquiry from Board Member Decker relative to the frontage of the proposed accessory dwelling, Mr. Pimentel replied it is located on Pontiac Street.

Following the petitioner's testimony, Acting Chairperson Parrish invited anyone wishing to speak in favor or be recorded in favor of the petition of the application. Ward 1, Councilor Brad Markey (1520 Morton Avenue) spoke in favor of the proposal. Councilor Markey stated he drove by the subject property and that the proposal would not negatively impact the neighborhood. Councilor Markey also notes the proposal would allow the family to take care of their elderly mother.

Councilor Linda Morad (4162 Acushnet Avenue) also spoke in favor of the proposal. Councilor Morad supports the project and commends steps taken to sign an affidavit.

Acting Chairperson Parrish invited anyone else wishing to speak in favor or be recorded in favor of the petition of the application. There was no response to Acting Chairperson Parrish's invitation to speak or be recorded in favor.

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

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

The Board had a brief discussion. Board member Brown entertained the notion to include a special condition for the accessory dwelling to not be used as a rental. Board member Schilling inquired if the affidavit would be sufficient. Acting Chair Parrish and board member Decker agree with the special condition proposed by clerk Brown.

The Commissioner of Building and Inspectional Services, Danny D. Romanowicz, noted the special condition would not be necessary and referenced the Special Permit under Chapter 9 Comprehensive Zoning Section 2346.

***2346. The initial term and subsequent terms of a special permit for an accessory dwelling unit shall expire after two (2) years. In the event such special permit is not renewed, the Board of Appeals shall promptly notify the Inspector of Buildings. Subsequent special permit issuances for existing accessory dwelling unit, if any, shall be granted after certification by affidavit is made by the applicant that the accessory dwelling unit has not been extended, enlarged, or altered to increase its original dimensions, as defined in the initial special permit application, and that the need for the special permit still exists and there has been no change in the use or circumstances for which the special permit was originally granted.***

Additionally, Board member Decker engaged with the Commissioner of Building and Inspectional Services, Danny Romanowicz regarding the Variance. Mr. Romanowicz stated the variance is 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 attached garage, would not negatively affect the proposal to convert the attached garage into an accessory dwelling 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 the petitioner would not be able to relocate his elderly mother from Florida back to her hometown of New Bedford.

- 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 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 **176 Pine Grove Street**, Assessors' map 127E lot 328 in a Residential A [RA] 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 Mr. Schilling as follows:

In regard to Case #4424 **Antonio M. Pimentel, Jr. & Karen Pimentel**, (176 Pine Grove Street, New Bedford, MA 02745); relative to property located at **176 Pine Grove Street**, Assessors' map 127E lot 328 in a Residential A [RA] zoned district. The petitioner proposes to convert an existing attached garage into an accessory dwelling unit per plans filed, which requires a **Variance** under Chapter 9 Comprehensive Zoning Sections 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 R. Schilling to grant the requested Variance, the vote carried 5-0-0 with members A. Decker, S. Brown, C. Paleologos, Robert Schilling and L. Parrish voting in the affirmative; no members voting in the negative or abstaining. (Tally 5-0-0).

Filed with the City Clerk:

October 19, 2020

  
\_\_\_\_\_  
Stephen Brown

\_\_\_\_\_  
Date

Clerk of the Zoning Board of Appeals