

Jorge O. Elorza
Mayor

Marc Greenfield
Chair



Zoning Board of Review

RESOLUTION NO. 2022-32

December 15, 2022

IN RE: Application for Dimensional Variance
(Lot area required for a 2-family dwelling)

PROPERTY: Tax Assessor's Plat 64, Lot 844
28 Mount Pleasant Avenue
(R-3 Residential Zoning District)

OWNER/
APPLICANT: Abraham Nunez/Smart Homes, LLC
PO Box 413
Seekonk, MA 02771

COUNSEL: Dylan Conley, Esq.
123 Dyer Street
Providence, RI 02903

FILED
2022 DEC 15 A 11: 13
DEPT. OF CITY CLERK
PROVIDENCE, R.I.

On November 9, 2022, the within matter came before the Zoning Board of Review (the "Board") for a duly noticed public hearing on the request by the Owner and Applicant (together the "Applicant"), for a dimensional variance at the above-designated Property. The following members of the Board were present throughout the hearing: Chair Greenfield, Mr. Wolf, Ms. Maniotes, Ms. Rodriguez, and Mr. Scott. Mr. Mitchell was not present for this matter.

WHEREAS, the Applicant sought dimensional relief from the requirements of Table 4-1 of the Providence Zoning Ordinance of November 24, 2014, as amended (the "Ordinance") to construct a 2-Family Dwelling on a lot with 3,276 sq. ft. of lot area; and

WHEREAS, prior to the hearing, the members of the Board individually made inspections of the Property and of the surrounding neighborhood; and

WHEREAS, Attorney Dylan Conley presented the application, and testimony of Carlos Rodriguez, a member of the owner LLC, with respect to the reasons for the relief sought; and

WHEREAS, there was no written or oral comment on the matter; and

WHEREAS, the Board received, and the Chair read into the record, the November 9, 2022 recommendation of the Department of Planning and Development (“DPD”) recommending the granting of the dimensional variance.

NOW, THEREFORE, after consideration of the application, the testimony, and all the evidence of record, upon motion by Mr. Wolf, seconded by Ms. Maniotes, the Board voted (5-0) to APPROVE the application for dimensional variance.

**THE BOARD HEREBY MAKES THE FOLLOWING
FINDINGS OF FACT AND CONCLUSIONS OF LAW:**

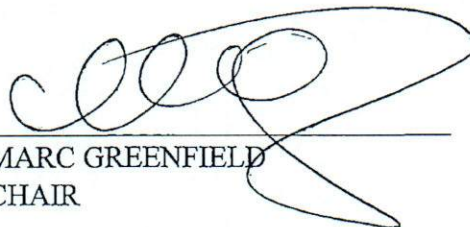
1. The Property is located in an R-3 Residential District and consists of a vacant lot of 3,276 square feet.
2. Table 4-1 of the Ordinance requires 3,500 square feet of lot area to construct a 2-family dwelling in an R-3 zoning district. The Applicant seeks a variance of 224 square feet, which is within 10% of the requirement.
3. Prior to applying for a dimensional variance, the Applicant requested an Administrative Modification pursuant to Ordinance Section 1903. The Zoning Official made a positive determination pursuant to Section 1903.C.2, which would allow the modification. Upon notice to abutters, the Zoning Official received an objection from an abutter, and was required to deny the application for an Administrative Modification. The Applicant therefore applied to this Board for a dimensional variance.
4. The Board finds that the relief sought is due to the unique characteristics of the subject Property, more specifically the unique layout of the lot, and the fact that the lot area is within the 10% administrative modification range (only 224 square feet short of the lot area required).
5. The Board finds that the relief is not sought primarily from the desire of the Applicant to realize greater financial gain, but rather to develop the Property in accordance with the zoning district designation, and a use permitted by right.
6. There was no evidence presented or elicited that the relief sought is due to a physical or economic disability of the Applicant. Nor is it the result of any prior action of the Applicant, who purchased the property in its current form.
7. The Board agrees with, and incorporates, the findings and the recommendation of the DPD and likewise finds that granting the requested dimensional variance will not alter the general

character of the surrounding area or impair the intent or purpose of the Ordinance or the Comprehensive Plan.

8. The substantial evidence demonstrates that the relief sought is the least relief necessary to relieve the hardship because the dimensional relief sought is minimal – less than 10% of the lot size required for a 2-family dwelling. The 2-family dwelling will otherwise be in full compliance with the Ordinance.
9. The Board concludes that the hardship suffered by the Applicant of the subject property, if the dimensional variance is not granted, will amount to more than a mere inconvenience, because it is minimal for a reasonable enjoyment of the permitted use of a 2-family dwelling allowed in an R-3 Zone, and the Applicant otherwise would not be able to build the 2-family dwelling.

WHEREFORE, upon motion by Mr. Wolf, seconded by Ms. Maniotes, the Board voted (5-0) to APPROVE the application for dimensional variance for 224 square feet of lot area required to construct a 2-family dwelling.

By Order of the Zoning Board of Review.



MARC GREENFIELD
CHAIR

NOTICE TO OWNERS/APPLICANTS:

- A SECTION 1901/1902 OF THE ORDINANCE REQUIRES THAT ANY VARIANCE OR SPECIAL USE PERMIT GRANTED BY THE BOARD SHALL EXPIRE SIX MONTHS AFTER THE DATE OF THE FILING OF THE RESOLUTION IN THE OFFICE OF THE BOARD UNLESS THE APPLICANT SHALL, WITHIN THE SIX MONTHS, OBTAIN A LEGAL, COMPLETE BUILDING PERMIT AND PROCEED WITH CONSTRUCTION; IF NO CONSTRUCTION IS REQUIRED, THE APPLICANT SHALL OBTAIN A LEGAL BUILDING PERMIT FOR THE USE, OR A CERTIFICATE OF OCCUPANCY. DEMOLITION AND FOUNDATION PERMITS ARE NOT BUILDING PERMITS FOR PURPOSES OF THIS REQUIREMENT. NO PERMIT OR CERTIFICATE OF OCCUPANCY WILL ISSUE UNTIL THE OWNER AND/OR ITS REPRESENTATIVE COMPLIES WITH PARAGRAPH B BELOW.
- B. THE ORIGINAL RESOLUTION IS ON FILE IN THE OFFICE OF THE ZONING BOARD OF REVIEW. THE OWNER OR THEIR REPRESENTATIVE MUST OBTAIN THE ORIGINAL RESOLUTION FROM SAID OFFICE, RECORD THE RESOLUTION IN THE CITY'S LAND EVIDENCE RECORDS, AND PROVIDE COPIES OF THE RECORDED RESOLUTION TO BOTH THE OFFICE OF THE ZONING BOARD OF REVIEW AND THE DEPARTMENT OF INSPECTION AND STANDARDS.

MOTION TO APPROVE THE DIMENSIONAL VARIANCE

MADE BY: Wolf

SECONDED BY: Maniotes

MEMBERS VOTING IN FAVOR: Maniotes, Wolf, Rodriguez, Scott, Greenfield

MEMBERS VOTING AGAINST: None

RECEIVED:
Providence
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John A Murphy
Recorder of Deeds