

Jorge Elorza
Mayor

Marc Greenfield
Chair

FILED

2019 SEP 18 P 3: 50

DEPT. OF PUBLIC WORKS
PROVIDENCE, RI



Zoning Board of Review

RESOLUTION NO. 2019-22

September 16, 2019

IN RE: Application for Dimensional Variance
 (Table 4-1 – Minimum Lot Area)

PROPERTY: Tax Assessor's Plat 72, Lot 583
 23 Vaughan Street

OWNER/
APPLICANT: Clifford Yee
 23 Vaughan Street
 Providence, RI 02904

On August 14, 2019, the within matter came before the Zoning Board of Review (the "Board") for a duly noticed public hearing on the application of Clifford Yee, owner and applicant (the "Applicant") for a dimensional variance for the above-designated Property (the "Property"). The following members of the Board were present throughout the hearing: Chair Greenfield, Mr. Strother, Mr. Capellan, Mr. Wolf, Ms. Maniotes, and Mr. Mitchell sitting as a non-voting alternate.

WHEREAS, the Applicant sought relief from the dimensional requirements of Article 4, Table 4-1 of the Zoning Ordinance of 2014, as amended (the "Ordinance"), to legalize a third dwelling unit within an existing legal 2-family structure located in an R-3 zone; and

WHEREAS, the structure is located on a lot of 4,250 sq. ft., where 5,000 sq. ft. are required by the Ordinance in an R-3 Zoning District; and

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

WHEREAS, the Applicant presented the application, which was verbally opposed by abutters Ms. Kelly Murphy Gonsalves and Ms. Phola Phongsavath; and

WHEREAS, the Board received, and the Chair read into the record, the August 14, 2019 report of the Department of Planning and Development (“DPD”).

NOW, THEREFORE, after consideration of the application, the testimony, and all the evidence of record, upon motion by Ms. Maniotes, seconded by Mr. Wolf, the Board voted (4-1) to **DENY** the application based on the Applicant’s failure to provide substantial evidence to satisfy the criteria of R.I. Gen. Laws § 45-24-41(d)(2), (d)(4) and (e)(2).

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

1. The Property consists of a lot of 4,250 sq. ft. improved with a structure with a footprint of approximately 1,400 sq. ft. It is located in an R-3 Zoning District.
2. The Property has a legal use of two dwelling units – one on the first floor and one on the second floor. It provides for 3 parking places.
3. The Applicant seeks to legalize a third dwelling unit located in the basement. The Applicant purchased the property in June 2013, and testified that at the time of the purchase, the Property contained three dwelling units.
4. Section 402, Table 4-1 of the Ordinance requires a minimum lot area of 3,500 sq. ft. for a 2-family dwelling unit and of 5,000 sq. ft. for a 3-family dwelling unit in the R-3 zoning district. The Applicant seeks a dimensional variance of 750 sq. ft. to establish the third dwelling unit.
5. The Property currently exceeds the impervious surface limit coverage requirements of Table 4-1 of the Ordinance because over 50% of the rear yard is paved with pervious surface.
6. The hardship from which the Applicant seeks relief is due to the unique characteristics of the subject property - an undersized lot of 4,250 square feet while a lot of 5,000 sq. ft. is required for a 3-family dwelling unit
7. No physical or economic disability was asserted.
8. The hardship is not the result of any prior action of the Applicant, who purchased the property in its current configuration.

9. The Board finds that the substantial evidence demonstrates that the hardship from which the Applicant seeks relief results primarily from the desire of the Applicant to realize greater financial gain – additional rental income from a currently unleased dwelling unit. The Applicant testified that he has been leasing out the two legal dwelling units. He works in Boston and uses the third (illegal) dwelling unit in the basement on weekends. However, his intent is to lease the third dwelling unit to an outside party if the variance is granted.

10. The Applicant failed to provide evidence that the relief to be granted is the least relief necessary. The basement can be used consistent with its designated purpose as a laundry and common space area. In addition, the Applicant is not in compliance with the pervious surface requirements of the Ordinance.

11. The Applicant failed to provide evidence to the Board that the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan. The Board notes that the radius map submitted by the Applicant indicates that there is only one other 3-family dwelling unit within the 200 ft. radius of the Property. All other properties are 1 and 2-family dwelling units.

12. Finally, the Applicant did not provide substantial evidence that the hardship suffered if the relief is not granted will amount to more than a mere inconvenience. Section 45-24-41(e)(2) specifically states that the fact that a use may be more profitable or valuable after relief is granted is not grounds for relief. The Applicant can continue to use the Property for rental of 2 dwelling units.

WHEREFORE, on motion by Ms. Maniotes, seconded by Mr. Wolf, the Board voted (4-1) to **DENY the application for a dimensional variance**. Mr. Strother voted against the motion.

By Order of the Zoning Board of Review.



MARC GREENFIELD
CHAIR

NOTICE TO OWNERS/APPLICANTS:

A SECTION 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 DENY THE DIMENSIONAL VARIANCE

MADE BY: Maniotes

SECONDED BY: Wolf

MEMBERS VOTING IN FAVOR OF THE MOTION: Maniotes, Wolf, Capellan, Greenfield

MEMBERS VOTING AGAINST THE MOTION: Strother