



**JONATHAN F. MITCHELL**  
MAYOR

*City of New Bedford*  
**ZONING BOARD OF APPEALS**

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Registry of Deeds Use Only:

CITY CLERK'S OFFICE  
 NEW BEDFORD, MA  
 2016 FEB -4 A 10:42  
 CITY CLERK

**NOTICE OF DECISION**

Case Number: #4216				
Request Type: Variance				
Address: 117 Swan Street				
Zoning: Residential B Zoned District				
Recorded Owner: Bruce M. Foucart, Trustee of Marcia O. Foucart Irrevocable Trust				
Owner's Address: 813 Beverley Drive Alexandria, VA 22302				
Applicant: Peter Cruz				
Applicant's Address: 133 Butler Street New Bedford, MA 02744				
Application Submittal Date	Public Hearing Date			
December 18 <sup>th</sup> , 2015	January 21 <sup>st</sup> , 2016			
Decision Date				
January 21 <sup>st</sup> , 2016				
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
10	134	9930	33	

Variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2750 (yards in residential district), and 2755 (side yards); relative to property located at 117 Swan Street, assessor's map 10, lot 134 in a residential B zoned district. To allow the petitioner to build an attached one car garage with a master bedroom above the garage as plans filed, with conditions.

**Action: GRANTED, WITH CONDITIONS, for the reasons set forth in the attached decision with the Conditions as described in the attached decision. (See Attachment)**

A copy of this Decision was filed with the City Clerk of the City of New Bedford on February 4<sup>th</sup>, 2016. 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.

Feb. 4, 2016  
Date

*Allen Decker*  
Clerk, Zoning Board of Appeals

## **1.) APPLICATION SUMMARY**

The petitioner proposes to build an attached one car garage with a master bedroom above the garage as plans filed, which requires a variance under provisions of Chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2750 (yards in residential district), and 2755 (side yards). This petition is relative to property located at 117 Swan Street, assessor's map 10, lot 134 in a residential B zoned district.

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

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

- Existing Conditions Plan, drawn by Thompson Farland, dated November 23<sup>rd</sup>, 2015
- Plan Set, drawn by RJF Development Inc., date stamped received by City Clerk's Office December 18<sup>th</sup>, 2015, including:
  - New Site Plan, dated 12/4/15
  - Existing Front & Rear Elevation, dated 12/3/15
  - Existing Left & Right Elevation, dated 12/3/15
  - Existing House Plan, dated 12/3/15
  - Wall Demolition Plan, dated 12/3/15
  - Foundation Plan, dated 12/3/15
  - 1<sup>st</sup> Floor Plan, dated 12/3/15
  - Second Floor Plan, dated 12/3/15
  - Front Elevation, dated 12/3/15
  - Rear Elevation, dated 12/3/15
  - Left Side Elevation, dated 12/3/15
  - Right Side Elevation, dated 12/3/15
  - Cross Section-A, dated 12/3/15
  - Cross Section-B, dated 12/3/15
- Revised First Floor Plan, drawn by RFJ Development, dated 1/4/16, date stamped received by Zoning Board January 21<sup>st</sup>, 2016.

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

- Completed Petition for a Variance Form, stamped received by City Clerk's Office December 18<sup>th</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 4<sup>th</sup>, 2016.
- Staff Comments to ZBA from City Planning Division, dated January 13<sup>th</sup>, 2016.
- Letter to ZBA from Ward Six City Councilor Joseph P. Lopes dated January 7<sup>th</sup>, 2016.
- Letter to ZBA from Karen Morris, date stamped received January 19<sup>th</sup>, 2016.
- Letter to ZBA from Patience J. Butler, date stamped received January 19<sup>th</sup>, 2016.
- Letter to ZBA from Jose & Benedita Cruz, date stamped received January 19<sup>th</sup>, 2016.
- Letter to ZBA from Sandra Nunes, date stamped received January 19<sup>th</sup>, 2016.
- Letter to ZBA from Diana Tenney and Gerard Laperriere, received January 19<sup>th</sup>, 2016.

### 3.) DISCUSSION

On the evening of the January 21<sup>st</sup>, 2016 meeting, board members: James Mathes, Allen Decker, John Walsh, Debra Trahan, and Leo Schick were present for the public hearing. City of New Bedford staff: Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager, Planning Division) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Ms. Trahan, to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated January 4<sup>th</sup>, 2016; the Department of Planning, Housing and Community Development, dated January 13<sup>th</sup>, 2016; Ward Six City Councilor Joseph P. Lopes dated January 7<sup>th</sup>, 2016; communications from Karen Morris, date stamped received January 19<sup>th</sup>, 2016; Patience J. Butler, date stamped received January 19<sup>th</sup>, 2016; Jose & Benedita Cruz, date stamped received January 19<sup>th</sup>, 2016; Sandra Nunes, date stamped received January 19<sup>th</sup>, 2016; and Diana Tenney and Gerard Laperriere, received January 19<sup>th</sup>, 2016; the appeal packet; 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 Mathes then declared the hearing open.

The representative of the petitioner: Mr. Gustavo Raposa (411 Gulf Road W. Dartmouth, MA), engineer at Raposa Engineering, presented to the Board. Mr. Raposa explained the petitioner seeks a variance for side yard setbacks from the required 12 feet to 9 feet. He noted the application site plan drawing has 9 feet and 5/16 inches as the drawing was made with computer which can be that exact. He explained that during construction it most likely won't be exactly 5/16" so he petitioned the board for 9 feet as the side yard setback. The Board indicated their understanding for the 9 feet consideration. Mr. Raposa then submitted a revised first floor plan to the board. He described the revised first floor plan included a deck in the rear of the proposed home, that had been accidentally left off the previous drawing. Mr. Decker made a motion, seconded by Ms. Trahan to receive and place on file the revised plan as submitted. With all in favor the motion passed. Mr. Raposa stated the proposed side yard would have no impact on the neighborhood and that the neighbors were in favor of the proposal. He indicated he would not reiterate any further the reasoning the petition should be granted as it was in the materials submitted for their consideration.

Following the petitioner's testimony, Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. No one in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson Mathes invited to the podium anyone wishing to speak in opposition of the petition. No one in attendance spoke in opposition of the petition or wished to be recorded in opposition of the petition.

With no further questions of concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst board members. Board members indicated their readiness to vote.

#### **4.) 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 placement of the existing house makes the side yard setback very difficult to comply with. The board found the hardship is that adhering to the ordinance prevents utilizing the full available useable square footage of the lot.

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

The Board found that sufficient information and testimony had been given to determine that granting the required relief would not result in substantial negative impact to the public good.

- c.) *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 the impact of the dimensional relief would be minimal, and would not substantially derogate from the intent of the zoning ordinance.

#### **5.) 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 below in Section 6.

The Board grants the Applicant's request for relief from Chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (general), 2750 (yards in residential district), and 2755 (side yards); relative to property located at 117 Swan Street, assessor's map 10, lot 134 in a residential B zoned district. To allow the petitioner to build an attached one car garage with a master bedroom above the garage as plans filed, with conditions.

#### **6.) THE FOLLOWING CONDITIONS AND RESTRICTIONS SHALL APPLY**

- a. The project shall be set forth according to plans submitted with the application, with conditions;
- b. The applicant shall ensure that a copy of this decision, bearing the certification of the City of New Bedford Clerk's Office, is recorded in the Registry of Deeds;

- c. The rights authorized by the granted Variances must be exercised, by issuance of a Building Permit by the Department of Inspectional Services and acted upon within one year from the date they were granted or they will lapse.

#### 7.) 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.

On a motion by A. Decker, seconded by L. Schick to grant the requested Variance, the vote carried 5-0 with members D. Trahan, L. Schick, J. Walsh, A. Decker, and J. Mathes and voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

Feb. 4, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals