



**JONATHAN F. MITCHELL**  
MAYOR

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

133 William Street, New Bedford  
Massachusetts 02740  
Telephone: (508) 979.1488  
Facsimile: (508) 979.1576

Registry of Deeds Use Only:

CITY CLERKS OFFICE  
NEW BEDFORD, MA  
2016 JUL -7 A 9:21  
CITY CLERK

**NOTICE OF DECISION**

Case Number:	#4233			
Request Type:	Variance			
Address:	78 Moss Street			
Zoning:	Residential B Zoned District			
Recorded Owner:	Ronald F. Costa Jr. a/k/a Ronald Costa & Robert F. Dias			
Owner's Address:	78 Moss Street New Bedford, MA 02744			
Applicant:	Ronald F. Costa Jr. & Robert F. Dias			
Applicant's Address:	78 Moss Street New Bedford, MA 02744			
Application Submittal Date	Public Hearing Date	Decision Date		
May 19 <sup>th</sup> , 2016	June 23 <sup>rd</sup> , 2016	June 23 <sup>rd</sup> , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
10	152	7875	3	

Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (General), 2720 (table of dimensional requirements – appendix B-side yard), 2750 (yards in residential districts), 2755 (side yards), 3150 (size of parking space); relative to property located at 78 Moss Street assessor's map 10, lot 152 in a residential-B [RB] zoned district; to allow the petitioner to erect an addition as plans filed.

**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 July 7<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.

July 7, 2016  
Date

Allen O. Decker  
Clerk, Zoning Board of Appeals

### **1.) APPLICATION SUMMARY**

The petitioner proposes to erect an addition as plans filed which requires a variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulations), 2710 (General), 2720 (table of dimensional requirements – appendix B-side yard), 2750 (yards in residential districts), 2755 (side yards), 3150 (size of parking space); relative to property located at 78 Moss Street assessor's map 10, lot 152 in a residential-B [RB] zoned district.

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

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

- Site Plan, drawn by Farland Corporation, dated May 3<sup>rd</sup>, 2016; date stamped received by City Clerk's Office May 19<sup>th</sup>, 2016.
- Plan Set, prepared by J. Law Designs, including:
  - Sheet A-1.00 Existing conditions dated 11.27.15
  - Sheet A-1.01 Proposed conditions date 4.13.16
  - Sheet A-1.03 Proposed conditions dated 4.13.16
  - Sheet A-1.02 Proposed conditions dated 4.13.16

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

- Completed Petition for a Variance Form, stamped received by City Clerk's Office May 19<sup>th</sup>, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 3<sup>rd</sup>, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated June 15<sup>th</sup>, 2016.
- Letter to ZBA from Jeffery & Nancy Souza, dated June 23<sup>rd</sup>, 2016.
- Letters to ZBA from Kendra & Melanie Ventura; Sandy Lopes; Thomas & Wendy Mello; William Horrocks; Francisco & Celia Dossantos; date stamped received June 23<sup>rd</sup>, 2016.

### **3.) DISCUSSION**

On the evening of the June 23<sup>rd</sup>, 2016 meeting, board members: John Walsh, Allen Decker, Robert Schilling, Sherry McTigue, 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, Department of Planning, Housing, & Community Development) were present during proceedings for the subject case review.

Mr. Decker made a motion, seconded by Mr. Schick, to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated June 3<sup>rd</sup>, 2016; correspondence from the Office of the City Planner, dated June 15<sup>th</sup>, 2016; communication from Jeffery and Nancy Souza of 78 Moss Street dated June 23<sup>rd</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 the lots affected; and that the action of the Clerk in giving notice of the hearing as stated be and it hereby is ratified. With all in favor the motion passed.

Acting Chair Walsh then declared the hearing open.

The petitioners, Mr. Robert Dias and Mr. Ron Costa (78 Moss Street New Bedford, MA) presented their petition to the board. Mr. Costa explained they are trying to build a garage addition onto their home, but due to the size of the lot and the design of home structures on the entire road, it's difficult to meet the side setback that's required. He told the board he had a number of letters in support from all the abutters except for one. He explained the one abutter who did not submit a letter was not opposed but did have concerns. He commented that he and Mr. Dias disagree with the concern as the neighborhood is consistent with three foot setbacks, as is seen in the images supplied to the board [in the application packet] of properties in the neighborhood. Particularly, he called attention to 80 Swan Street as having a similar addition and house design as they propose. Mr. Dias offered the letters from the abutters to the board.

Mr. Decker made a motion, seconded by Ms. McTigue, that the communications from The Dossantos, Mr. Horrocks, The Mellos, Ms. Lopes, and The Venturas, all abutters or close neighbors, be receive and placed on file. With all in favor the motion carried.

Mr. Decker asked if the petitioners were aware of The DeSousas displeasure with proposal. Mr. Costa stated he was unaware of their letter submitted but he had spoken with them. He explained it wasn't a hostile conversation. The DeSousas have concern about the trees if they [applicants] were to move the driveway, he said. He explained they had not expressed any issue to him over how close the home would be to their home. He further stated their home is only three (3) feet or so from the property line. Mr. Costa then stated their petition is technically for four feet (4) not the three feet seven inches (3' 7") as they had a hard time providing all the information in a very short period of time to the board to make the meeting. He indicated they are willing to play with the number but still wish to erect their project.

Mr. Decker summarized the concerns of the DeSousas as written in the letter. He informed the petitioner the concerns are for the closeness of the house and airflow between the addition and that side of their property. He explained they wrote they already have existing issues with mold and mildew. Mr. Costa stated they have vinyl siding. Mr. Decker stated he would not argue over what they have, this is just what they are letting us know about.

Mr. Decker further spoke about the requirement for that side of the property as being a twelve foot (12') setback, and therefore the petition is for two-thirds of that. Mr. Dias stated when they were putting together the paperwork they were told it was a required ten (10') foot setback, then reading the materials online they then found out they have to meet twelve (12') feet. So, that was two feet (2'), he stated, he wasn't even aware of. Mr. Decker explained because your northside setback doesn't meet the ten (10') foot requirement the south side has to meet the twelve (12') foot setback. Mr. Decker expressed he had wanted to hear about the communication with the DeSousa's as they would be the abutters most affected by the proposal.

Mr. Dias stated they had put a lot of thought into the addition. Moving the driveway on that side the garage would reduce noise for them and visually not have to see cars, he explained. If the garage addition does not go through, he stated, they still request to put the driveway on the south side of the

house because of parking conditions. Mr. Costa added that there is a parking issue on Moss Street, primarily a single family neighborhood that has increased in size. Now there are children, younger people, parking cars all throughout the neighborhood. Mr. Dias added they are becoming the older people in the neighborhood, and has been a resident of New Bedford his whole life, and he would like to stay in New Bedford.

Ms. McTigue asked what kind of vehicle they are trying to park in the garage. Mr. Costa stated they designed the garage for two cars in depth, behind one another. Ms. McTigue asked to confirm the side clearance being requested. Mr. Dias and Mr. Costa stated it is four feet (4'). Ms. McTigue asked the petitioners what they are gaining in terms of space that they don't already have. Mr. Dias explained they are gaining the privacy of the garage, extra living space above it, and going back on the property a bit so gaining some space for the living room (currently 9'x8 to 9'x15'). He further added the upstairs now is an attic style living, and it is harder for them to get up there mobility wise.

Mr. Dias stated the lot is 7,500 square feet which is large but because the lot is so narrow it doesn't allow us to build. So in designing the project this is the best build without over taking the property, with only 18% of the property built on.

Mr. Dias also mentioned to the Board that the driveway would be crushed stone so that the tree could remain there on that side. Mr. Costa stated that the tree was the only concern Jeff and Nancy [DeSousa] had brought to their attention and their opposition due to the distance was new information.

Acting Chair Walsh asked, given that new information is there any way you could reduce the footprint? Mr. Costa said to have a garage they could go back five (5) feet and have the plans tweaked to accommodate that, but anything less than that you wouldn't be able to fit a car inside. Acting Chair Walsh confirmed five (5) feet would be acceptable to the petitioners. Mr. Costa confirmed that five (5) feet would be fine, however if there was a problem with that then they would request a ten (10) foot setback and they would not have a garage, just have a home addition.

Following the petitioner's testimony, Acting Chair Walsh invited to the podium anyone wishing to speak in favor of the application. Ward 6 City Councilor Joseph Lopes (75 Dudley Street New Bedford, MA) spoke in favor of the petition. He stated he knows the petitioners and the neighborhood, he has no relation to the Lopes who submitted a letter, but does know three of those who submitted letters in favor. The persons in opposition had not called him to say they were opposed to it, he said. Councilor Lopes stated, what they are proposing does meet the characteristics of the neighborhood, and if you go down that street it's very tight if you try to park. Parking is an issue, he explained, several petitions in the past have been request for driveways so they are trying to take some cars off the road. He further stated it is a tight knit neighborhood, it isn't what it was twenty years ago but it certainly fits the current character of the neighborhood; on that basis he indicated he was in favor of the petition. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Acting Chair Walsh 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 or concerns, Acting Chair Walsh closed the hearing, and opened the floor for discussion amongst board members.

Mr. Schick asked in regards to the one letter in opposition, is their wall that faces you on the north side of their house? Mr. Dias stated yes. Mr. Schick said then that negates the mold problem, as he stated, he has the same mold problem on the north side of his house. Also, he noted there is a tree near the north side wall which would add to the mold problem so he has to discount that issue. Mr. Costa noted they would be moving a tree in their yard which might help with that mold issue if that's a concern.

Ms. McTigue stated a four foot six inches (4'6") setback from the property line seemed reasonable to her. She explained that the plan submitted had three foot seven inches (3' 7") the petitioners said their revised plans are four feet (4'), and if the board thought it should be further back, then she proposed four foot six inches would be good.

The board briefly discussed conditioning the approval with a larger setback and debated if it should be four and a half feet (4.5') or five feet (5'). Acting Chair Walsh confirmed the petitioner would be able to accommodate a five (5') foot setback for the garage. The petitioners stated they would be satisfied with a five foot (5') or four foot six inch (4'6") setback. Board members agreed to condition the approval with a five (5') foot setback and 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 circumstances are that the proposed addition cannot be located elsewhere on the property. The board found the hardship is the literal enforcement would prevent the ability for the landowners to provide adequate on-site parking.

- b.) *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;

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 desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

#### **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), 2720 (table of dimensional requirements – appendix B-side yard), 2750 (yards in residential districts), 2755 (side yards), 3150 (size of parking space); relative to property located at 78 Moss Street assessor's map 10, lot 152 in a residential-B [RB] zoned district; to allow the petitioner to erect an addition as plans filed.

#### **6.) 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.

Mr. Decker made a motion, seconded by Mr. Schick, as follows, to approve the variance to allow the petitioner to erect an addition as per the plans filed, requiring a variance under provisions of chapter 9 comprehensive zoning sections 2700 (concerning dimensional regulations) , 2710 (concerning general regulations), 2720 (concerning the table of dimensional requirements – specifically, appendix B-concerning side yard), 2750 (concerning yards in residential districts), 2755 (concerning side yards), 3150 (concerning the size of parking space); all relative to property located at 78 Moss Street assessor's map 10, lot 152 in a residential-B [RB] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 sections 2700, 2710, 2720, 2750, 2755, and 3150; the board finds that in respect to these sections the relief requested is granted. And, in addition to the foregoing sections, this petition has also 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 which especially affect the land or structure in question, but which do not affect generally the zoning district in which the land or structure is located. The circumstances are that the proposed addition cannot be located elsewhere on the property. And, that 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. In this case the literal enforcement would prevent the ability for the landowners to provide adequate on-site parking. 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 noted within this motion,

the board's finding that the material presented is complete and with its careful consideration of the petitioner's request, the Zoning Board of Review finds that the petition satisfactorily meets the basis of the requested relief.

Therefore, this motion is made and includes the following conditions:

- a. That the project be set forth according to the plans submitted with the application.
- b. That the notice of decision be recorded at the Registry of Deeds and
- c. A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.
- d. And that the south side setback of the improvements be at least five (5) feet.

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

Filed with the City Clerk on:



Allen Decker, Clerk of the Zoning Board of Appeals

July 7, 2016

Date