



City of New Bedford
ZONING BOARD OF APPEALS

133 William Street, New Bedford
 Massachusetts 02740
 Telephone: (508) 979.1488
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JONATHAN F. MITCHELL
MAYOR

NOTICE OF DECISION

Case Number:	#4253			
Request Type:	Variance			
Address:	11 Nautilus Street			
Zoning:	Residential A Zoned District			
Recorded Owner:	Nicki E. LaRoca and Nitza N. LaRoca			
Owner's Address:	11 Nautilus Street New Bedford, MA 02745			
Applicant:	Nicki E. LaRoca and Nitza N. LaRoca			
Applicant's Address:	11 Nautilus Street New Bedford, MA 02745			
Application Submittal Date	Public Hearing Date	Decision Date		
October 11 th , 2016	November 17 th , 2016	November 17 th , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
5	197	8262	118	

CITY CLERK'S OFFICE
 NEW BEDFORD, MA
 2016 NOV 30 A 8:40
 CITY CLERK

Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor's map 5 lot 197 in a residential A [RA] zoned district. To allow the petitioners to locate a generator installed 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 November 30th, 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.

Nov. 30, 2016
 Date

Allen Decker
 Clerk, Zoning Board of Appeals

1.) APPLICATION SUMMARY

The petitioners seek approval of the location of a generator installed as plans filed, which requires a Variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor's map 5 lot 197 in a residential A [RA] zoned district.

2.) MATERIALS REVIEWED BY THE BOARD

Plans Considered to be Part of the Application

- Site Plan, drawn by petitioner, not dated.

Other Documents & Supporting Material

- Completed Petition for a Variance Form, stamped received by City Clerk's Office October 11th, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 28th, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated November 17th, 2016.
- Photos submitted by petitioner, not dated.

3.) DISCUSSION

On the evening of the November 17th, 2016 meeting, board members: Leo Schick, John Walsh, Sherry McTigue, Horacio Tavares, and Allen Decker 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 Mr. Walsh to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated October 28th, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated November 17th, 2016; the appeal packet as submitted; 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 Chair Schick then declared the hearing open.

The petitioner: Mr. Nick LaRoca (11 Nautilus Street New Bedford, MA) explained to the board he was before the board for a generating system on the south side of the house which was installed without a permit. He explained he and his wife had hired a contractor to install it but later learned it had been installed without a permit. Mr. LaRoca explained in regards to concerns for the variance the generator system is barely visible from the street. It is located where the utilities come into the house so the hook-up is easily available there. Further, he stated there was no other place on the back of property, which is the preferred area for these units, he said. He explained in the rear there is a large deck with

stairs on both sides and a rear door that leads to the basement; therefore there is no five (5) foot span anywhere in the rear where they could locate the generator and he noted there was a driveway on the north side of the house. Mr. LaRoca apologized for not getting the proper permits due to ignorance on his part. Mr. Walsh responded that even if he did they would probably be before the board anyway as there isn't anywhere else to put it. Mr. LaRoca agreed.

In response to a question about visibility of the unit from the street Mr. LaRoca explained it is barely visible from the street. He indicated they would be amenable to putting a fence up if the board wanted them to do so. Mr. Decker stated he was thinking more like shrubbery or landscaping. Mr. LaRoca stated his wife wanted him to plant tall grass there. Mr. Decker agreed it was barely visible and stated he understood the placement of the unit.

In response to a question from Acting Chair Schick as to whether the unit was gas powered, Mr. LaRoca said "yes, city gas". Mr. LaRoca confirmed it was strictly for emergencies and shared that he was a disabled veteran with breathing problems. He has a breathing machine and without the power he could be in trouble, he said.

In response to an inquiry from Ms. McTigue, Mr. LaRoca confirmed the property is above the floodplain.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the applications. No one in attendance spoke in support of the petitions or wished to be recorded in favor of the petitions.

Acting Chair Schick invited to the podium anyone wishing to speak in opposition of the petitions. No one in attendance spoke in opposition of the petitions or wished to be recorded in opposition of the petitions.

Acting Chair Schick closed the hearing and opened the floor for discussion amongst board members.

Board members commented the petitioner should have pulled a permit but they indicated they had no problems with the petition. The board briefly discussed whether or not to make landscaped screening a condition of approval, deciding it was an unnecessary condition for approval.

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 the placement of the house necessitates the generators location as proposed. The Board found that literal enforcement would require removal of the generator and the concrete pad resulting in a financial hardship to the petitioner.

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 regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor's map 5 lot 197 in a residential A [RA] zoned district. To allow the petitioners to locate the generator installed 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.

A motion was made by Mr. Decker and seconded by Mr. Walsh, as follows, to allow the petitioner to locate a generator installed as plans filed which requires a variance under provisions of chapter 9 comprehensive zoning sections 2700 (dimensional regulation), 2710 (general), 2720 (table of dimensional requirements-appendix-B-side yard), 2750 (yards in residence district), and 2775 (side yard); relative to property located at 11 Nautilus Street, assessor's map 5 lot 197 in a residential A [RA] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances, Chapter 9, comprehensive zoning sections as cited, the board found that in respect to these sections the board grants the relief requested. In addition to the foregoing section, this petition was also found to be in accordance with M.G.L Chapter 40A, Section 10, relative to the granting of variances, because the board found:

First, 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 effect generally the zoning district in which

the land or structure is located. In this case, the placement of the house necessitates the generators location as proposed.

Second, 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, literal enforcement would require removal of the generator and the concrete pad resulting in a financial hardship to the petitioner.

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

And, that the 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 found that the material presented was complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the basis of the requested relief. Therefore, this motion was made and included the following conditions:

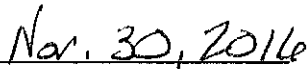
- That the project be set forth according to plans submitted with the application;
- That the Notice of Decision be recorded at the Registry of Deeds; and
- A building permit be issued by the Department of Inspectional Services and acted upon within one year from the date of the decision.

On a motion by A. Decker, seconded by J. Walsh to grant the requested Variance, the vote carried 5-0 with members H. Tavares, J. Walsh, A. Decker, S. McTigue, and L. Schick, and 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



Date