



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

133 William Street, New Bedford  
 Massachusetts 02740  
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**JONATHAN F. MITCHELL**  
 MAYOR

CITY CLERKS OFFICE  
 NEW BEDFORD, MA  
 2016 OCT 25 A 8:40  
 CITY CLERK

**NOTICE OF DECISION**

Case Number:	#4244			
Request Type:	Variance			
Address:	176 Shawmut Avenue			
Zoning:	Residential B Zoned District			
Recorded Owner:	Dennis and Sharon M. Costa			
Owner's Address:	176 Shawmut Avenue New Bedford, MA 02740			
Applicant:	Dennis Costa			
Applicant's Address:	176 Shawmut Avenue New Bedford, MA 02740			
<b>Application Submittal Date</b>	<b>Public Hearing Date</b>		<b>Decision Date</b>	
August 17 <sup>th</sup> , 2016	October 13 <sup>th</sup> , 2016		October 13 <sup>th</sup> , 2016	
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
76	126	1788	1085	

Variance under provisions of chapter 9 comprehensive zoning section 2330-2334 (accessory structures), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix b side yards), 2730 (dimensional variations), 2750 (yards in residential districts), and 2755 (side yards); relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district. To allow the petitioner to erect an 18'x20' prefabricated garage 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 October 25<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.

October 25, 2016  
 Date

*William P. Decker*  
 Clerk, Zoning Board of Appeals

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

The petitioner proposes to erect an 18'x20' prefabricated garage as plans filed, which requires a variance under provisions of chapter 9 comprehensive zoning section 2330-2334 (accessory structures), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix b side yards), 2730 (dimensional variations), 2750 (yards in residential districts), and 2755 (side yards); relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district.

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

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

- Proposed Site Plan, drawn by applicant, not dated
- Existing Conditions Plan, drawn by applicant, not dated

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

- Completed Petition for a Variance Form, stamped received by City Clerk's Office August 17<sup>th</sup>, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 2<sup>nd</sup>, 2016.
- Staff Comments to ZBA from Department of Planning, Housing and Community Development, dated September 15<sup>th</sup>, 2016.
- Letter to ZBA from Councillor At Large Linda Morad, dated September 14<sup>th</sup>, 2016.

### **3.) DISCUSSION**

On the evening of the October 13<sup>th</sup>, 2016 meeting, board members: Leo Schick, Horacio Tavares, Robert Schilling, Allen Decker, and Sherry McTigue 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. McTigue to receive and place on file the communications from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated September 2<sup>nd</sup>, 2016; Staff Comments from the Department of Planning, Housing & Community Development, dated September 15<sup>th</sup>, 2016; Communication from Councilor At Large Linda Morad dated September 14<sup>th</sup>, 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. Dennis Costa (176 Shawmut Avenue New Bedford, MA) presented his petition. Mr. Costa described he had purchased and repaired a project vehicle. After repairing and now enjoying the use of his project vehicle he has become concerned with maintaining it in the current condition. He

explained the car cover is not sufficient for the winter to protect the vehicle. In order to protect the investment of time and resources put into the vehicle he looked into purchasing a prefabricated garage to protect it.

Mr. Decker asked the petitioner why he was before the board this evening. Mr. Costa explained it was to receive a variance for the side yard setback required.

Following the petitioner's testimony, Acting Chair Schick invited to the podium anyone wishing to speak in favor of the application. City Councilor At Large Brian Gomes (66 Clara Street New Bedford, MA) spoke in favor of the proposal. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Acting Chair Schick 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.

Ms. McTigue asked if the garage will be oriented so that it was facing the driveway and if the petitioner planned on adding pavement in the future. Mr. Costa confirmed that is correct.

Mr. Decker inquired about the removal and moving of existing sheds on the property. Mr. Costa confirmed, explaining the small shed will be eliminated and the larger shed he stores a motorcycle in will remain.

Mr. Schilling wondered about the type of vehicle. Mr. Costa stated it is a 2000 BMW Z3.

Mr. Schick commented he once had a classic car which the cover did not work and he too had to get a garage for it.

With no further questions or concerns, Acting Chair Schick closed the hearing. 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 in this case given the location of the existing house, the only site for the proposed garage is as proposed per the plans submitted. The Board found the hardship in this

case to comply with the existing setbacks in placing the garage, there would be an extreme hardship in accessing the entrance of the garage given the location of the existing house.

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 section 2330-2334 (accessory structures), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix b side yards), 2730 (dimensional variations), 2750 (yards in residential districts), and 2755 (side yards); relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district. To allow the petitioner to erect an 18'x20' prefabricated garage 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 Ms. McTigue, as follows, to approve the variance to allow the petitioner to erect an 18'x20' prefabricated garage as plans filed, which requires a variance under provisions of chapter 9 comprehensive zoning section 2330-2334 (accessory structures), 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional requirements-appendix b side yards), 2730 (dimensional variations), 2750 (yards in residential districts), and 2755 (side yards); relative to property located at 176 Shawmut Avenue, assessor's map 76, lot 126 in a residential B [RB] zoned district. Having reviewed this petition in light of the City of New Bedford Code of Ordinances Chapter 9 comprehensive zoning sections, as stated, the board finds that in respect to these sections the requested relief is granted.

In addition to the foregoing sections, the petition has also been found to be in accordance with M.G.L. Chapter 40A, Section 10 relative to the granting of variances, because the board has 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 effect generally the zoning district in which the land or structure is located. In this case given the location of the existing house, the only site for the proposed garage is as proposed per the plans submitted.

Second, 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 to comply with the existing setbacks in placing the garage, there would be an extreme hardship in accessing the entrance of the garage given the location of the existing house.

And, 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 finding that the material presented is complete, and after its careful consideration of the petitioner's request, the Zoning Board of Appeals finds that the petition satisfactorily meets the criteria on the basis of the requested relief.

Therefore this motion is made and includes the following conditions:

- That the project be set forth according to plans submitted with the application, and
- 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 S. McTigue to grant the requested Variance, the vote carried 5-0 with members H. Tavares, R. Schilling, A. Decker, S. McTigue and L. Schick 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

October 25, 2016

Date