



**JONATHAN F. MITCHELL**  
MAYOR

# City of New Bedford

## ZONING BOARD OF APPEALS

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CITY CLERK  
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CITY CLERK'S OFFICE  
NEW BEDFORD, MA

### NOTICE OF DECISION

Case Number:	#4221			
Request Type:	Variance			
Address:	2 Merrimac Avenue			
Zoning:	Residential B Zoned District			
Recorded Owner:	Marco D. Sousa and Dina Fogue			
Owner's Address:	3 Merrimac Avenue			
Applicant:	Marco D. Sousa			
Applicant's Address:	3 Merrimac Avenue			
Application Submittal Date	Public Hearing Date	Decision Date		
January 25 <sup>th</sup> , 2016	February 18 <sup>th</sup> , 2016	February 18 <sup>th</sup> , 2016		
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
72	218	9700	55	

Variance under provisions of Chapter 9, Comprehensive Zoning section 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, side yards), 2750 (yards in residential districts) and (side yards); relative to property located at 2 Merrimac Avenue, assessor's map 72, lot 218 in a residential-B [RB] zoned district. To allow the petitioner to erect a 14' x 12' 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 February 29<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.

February 29, 2016  
Date

*Ellen Parker*  
Clerk, Zoning Board of Appeals

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

The petitioner proposes to erect a 14' x 12' addition as plans filed, which requires a Variance under provisions of Chapter 9, Comprehensive Zoning section 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, side yards), 2750 (yards in residential districts) and (side yards); relative to property located at 2 Merrimac Avenue, assessor's map 72, lot 218 in a residential-B [RB] zoned district.

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

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

- Plot Plan, drawn by Leon C. Halle, dated 12/10/15, date stamped received by City Clerk's Office January 25<sup>th</sup>, 2016.

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

- Completed Petition for a Variance Form, stamped received by City Clerk's Office January 25<sup>th</sup>, 2016.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated January 29<sup>th</sup>, 2016.
- Staff Comments to ZBA from City Planning Division, dated February 12<sup>th</sup>, 2016.

### **3.) DISCUSSION**

On the evening of the February 18<sup>th</sup>, 2016 meeting board members: James Mathes, Allen Decker, Sherry McTigue, Debra Trahan, and Robert Schilling 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 29<sup>th</sup>, 2016; the Department of Planning, Housing and Community Development, dated February 12<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 petitioner: Mr. Marco Sousa (3 Merrimac Avenue New Bedford, MA) presented his request indicating that his house and lot were both very small. He noted his property has almost no yard but that there is an existing deck with mold issues due to little sunlight on the property. Therefore, to provide a useable and safe outdoor space, Mr. Sousa proposed to fully enclose the deck with windows around its perimeter along with a slider door. However, he learned after the construction was complete that he does not have the required side yard for his proposal. He stated he needed 12 feet and has roughly 9 feet, only, of side yard.

Mr. Decker confirmed with Mr. Sousa that the structure was already constructed. Chairperson Mathes asked Commissioner Romanowicz if Merrimack Avenue was a city street or private street. Commissioner Romanowicz confirmed Merrimack Avenue is a city street and noted it is a small dead end. Mr. Mathes commented that it looks very narrow. Ms. Trahan inquired if the construction was built to building code standards. Commissioner Romanowicz confirmed the current work completed was up to building code standards. He explained the petitioner had an existing building permit on the property which is how this structure was caught.

Mr. Sousa indicated there is still enough room in the side yard for him to park his car on the property. He noted his abutters were present. Mr. Sousa expressed he was trying to improve the neighborhood. He also owns the house in front of this property, he stated. He expressed there are properties boarded up in the surrounding area and that he and his neighbors are working to improve their neighborhood with improvements to their homes. Mr. Sousa further explained the he intends to live in the house with his daughter. He expressed there is no space outside for them to use.

Following the petitioner's testimony, Chairperson Mathes invited to the podium anyone wishing to speak in favor of the application. Mr. Aaron Mann (81 Merrimac Street New Bedford, MA), explained he is the owner of 3 Merrimac Avenue, which, in addition to the house he is residing in, abuts Mr. Sousa's property. He stated he was in favor of the proposal. Ms. Nakita Barros (81 Merrimac Street New Bedford, MA) stated her parents own 81 Merrimac Street and she spoke on their behalf. Ms. Barros stated her family felt any improvements or enhancement to properties are a benefit to the community. Therefore, she indicated they were in favor of the proposal. Attorney Matthew Thomas (4 Park Place, Suite 101 New Bedford, MA) on behalf of Our Lady of Purgatory Church, the rear abutter, expressed his client does not oppose the project as long as there is no additional runoff onto their property. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Mr. Sousa interjected to let the board know he also own two other properties on Merrimac Avenue. He described the properties as 77 ½ Merrimac Avenue, the house directly in front of this property, where his mother lives and the vacant lot in front of his mother's home. He indicated the runoff would likely go onto the vacant lot, and he plans to plant trees and other plantings there.

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 or concerns, Chairperson Mathes closed the hearing, and opened the floor for discussion amongst Board members.

Ms. Trahan suggested the Board could condition the approval that if runoff becomes a problem the applicant be required to correct that issue. Chairperson Mathes questioned whether the applicant would be amenable to such a condition.

Mr. Sousa indicated he would be amendable to the condition. The Board members commented positively on the neighborhood support. Mr. Sousa responded that he has lived in the neighborhood for thirty years and has known his neighbors for about fifteen years. He noted that he bought this property because it had become a problem for the neighborhood and he didn't want any more problems in their neighborhood.

The Board indicated their readiness to vote.

#### **4.) FINDINGS**

##### **Criteria for Approval of Dimensional Variation (Ch. 9, Sect. 2730)**

The Zoning 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 shape of the undersized lot only supports enclosing the existing deck as additional living space. The Board found the hardship is the homeowner has no other reasonable use of the deck due to mold/mildew issues and a lack of sunlight.

- 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 section 2700 (dimensional regulations), 2710 (general), 2720 (table of dimensional regulations-appendix-b, side yards), 2750 (yards in residential districts) and (side yards); relative to property located at 2 Merrimac Avenue, assessor's map 72, lot 218 in a residential-B [RB] zoned district. To allow the petitioner to erect a 14' x 12' addition as plans filed.

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

- a. Any issues with water runoff creating problems for abutters will be resolved by the property owner;
- b. The project shall be set forth according to plans submitted with the application, with conditions;
- c. 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;
- d. 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 D. Trahan to grant the requested Variance, the vote carried 5-0 with members D. Trahan, R. Schilling, S. McTigue, A. Decker, and J. Mathes voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

February 29, 2016

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals