



**ZONING BOARD OF APPEALS**  
 City Hall, Room 303  
 133 William Street,  
 New Bedford, MA 02740  
 (508)979-1488  
 www.newbedford-ma.gov

CITY OF NEW BEDFORD  
 JONATHAN F. MITCHELL, MAYOR

**NOTICE OF DECISION**

Case Number: #4194				
Request Type: Variance				
Address: 118 East Clinton Street				
Zoning: Residential A Zoned District				
Recorded Owner: Mathew J. Arruda and Robert T. Torres				
Applicant: Mathew J. Arruda				
Applicant Address: 118 E. Clinton Street				
Application Submittal Date	Public Hearing Date			
July 2 <sup>nd</sup> , 2015	July 30 <sup>th</sup> , 2015			
Decision Date				
July 30 <sup>th</sup> , 2015				
Assessor's Plot Number	Lot Number(s)	Book Number	Page Number	Certificate Number
45	451	11263	134	

CITY CLERK  
 2015 AUG 13 A 9:44  
 CITY CLERK'S OFFICE  
 NEW BEDFORD, MA

**Application:**

Variance under Chapter 9 Comprehensive Zoning section 3000 (General Regulations), 3100 (Parking and Loading), and 3145 (Open air off street parking facilities may be located in a residential district, no open air off street parking space shall be located in front of the dwelling or principle building); relative to property located at 118 East Clinton Street, Assessor's Map 45, Lot 451 in a Residential A Zoned District. To allow the petitioner to construct a driveway in front of a dwelling 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 August 13<sup>th</sup>, 2015. 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.

August 13, 2015  
 Date

*Allan Decker*  
 Clerk, Zoning Board of Appeals

### 1.) APPLICATION SUMMARY

The petitioner is proposing to construct a driveway in front of a dwelling as plans filed, which will require a Variance under Ch. 9 Comprehensive Zoning section 3000 (General Regulations), 3100 (Parking and Loading), and 3145 (Open air off street parking facilities may be located in a residential district, no open air off street parking space shall be located in front of the dwelling or principle building); relative to property located at 118 East Clinton Street, Assessor's Map 45, Lot 451 in a Residential A Zoned District.

### MATERIALS REVIEWED BY THE BOARD

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

- Certified Plot Plan-118 East Linton Street, Drawn by Thompson Farland, dated June 26<sup>th</sup>, 2015

#### Other Documents & Supporting Material

- Completed Petition for a Variance Form, Stamped Received by City Clerk's Office July 2<sup>nd</sup>, 2015.
- Letter to ZBA from the Commissioner of Buildings & Inspectional Services, Danny D. Romanowicz, dated July 10<sup>th</sup>, 2015.
- Letter to ZBA from City Planner, Jill Maclean, dated July 22<sup>nd</sup>, 2015.
- Photo submitted by Mr. Dufresne, received by ZBA July 30<sup>th</sup>, 2015.

### 2.) DISCUSSION

Board Members I. Comerford, A. Decker, R. Schilling, J. Mathes, and H. Tavares were present on the evening of the public hearing.

City of New Bedford Staff Danny D. Romanowicz (Commissioner of Buildings & Inspectional Services) and Jennifer Gonet (Assistant Project Manager) were present during proceedings for the subject case review.

A. Decker motioned to receive and place on file the communications from Commissioner and Inspector of Buildings, Danny D. Romanowicz, dated July 10th, 2015; the Communication from the Office of City Planner dated July 22<sup>nd</sup>, 2015; 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. Motion seconded by J. Mathes. With all in favor, the motion carried.

Chairperson Comerford then declared the hearing open.

Representative of Petitioner: Nick Dufresne (398 County Street New Bedford, MA) of Thompson Farland Engineers and Land Surveyors, representing Mr. Mathew Arruda, explained the Variance request. He explained the applicant has requested a variance as the driveway will be located in the front of the house due to the shape of the lot there is no space on either side of the house to place a driveway. Therefore, he explained, they propose to have the driveway in front of the house.

Chairperson I. Comerford asked Mr. Dufresne if he knew why the zoning code does not allow you to park in front of a home. He further explained for safety purposes. Chairperson I. Comerford asked how this would be different. Mr. Dufresne explained the driveway is intended for the two owners to use and they will use caution at their property. Chairperson I. Comerford asked if Mr. Dufresne thought the driveway fit in the neighborhood. Mr. Dufresne stated he believed it does fit within the neighborhood, as the property is in the minority of properties without a driveway on the block. Mr. Dufresne further noted that another property in the neighborhood has a driveway in front of a dwelling as well and submitted a photograph.

A. Decker made a motion to receive and place on file the photograph submitted by the representative of the petitioner. Seconded by J. Mathes. With all in favor the motion passed.

Chairperson I. Comerford remarked that the driveway did not look too bad in front of the house in the photo submitted. He asked how many stories is the house. The property owner stated it is a two story cottage style. Chairperson I. Comerford stated he thought it is tough to find homes in New Bedford with driveways, for that fact he would be willing to vote in favor if the petitioner meets the criteria to grant the appeal. He asked the petitioner to address the criteria necessary to grant the appeal.

Mr. Dufresne stated due to the shape of the lot they are not able to put the driveway on either side of the house and it is a small lot, therefore he believes the shape of the lot applies in this case. Chairperson I. Comerford asked if there was a hardship. Mr. Dufresne expressed the hardship as difficulty in wintertime finding a parking space on the street.

J. Mathes asked Commissioner Romanowicz if there would be any review by other departments in regards to any requirement about the distance away from a fire hydrant for the driveway, after the meeting if approved tonight. Commissioner Romanowicz explained that before the final building permit is issued, the Department of Public Infrastructure (DPI) will receive information about the proposed curb cut. At that time if the curb cut isn't adequate for the fire hydrant, DPI will require the applicant to make the curb cut smaller. A. Decker confirmed with Commissioner Romanowicz that it could be required by DPI after the approval tonight. Commissioner Romanowicz confirmed yes.

Following the petitioner's testimony, Chairperson I. Comerford invited to the podium anyone wishing to speak in favor of the application. Mr. Bruce Feno (117 Clinton Street New Bedford, MA) stated he lives across the street. He explained the street isn't plowed well in the winter and side mirrors are broken all the time, therefore he was in favor of getting cars off the street into a driveway. Mr. Mathew Arruda and Robert Torres (118 E. Clinton Street New Bedford, MA) were recorded in favor. No one else in attendance spoke in support of the petition or wished to be recorded in favor of the petition.

Chairperson I. Comerford 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 stated questions or concerns, Chairperson Comerford declared the hearing closed.

Chairperson I. Comerford stated he believed there was a need for the driveway and he had no problem with it and asked what the Board Members thought. A. Decker asked for clarification about a comment that parking is only on one side of the street. It was clarified that during winter parking is limited to one side of the street. A. Decker confirmed all members understood DPI could still adjust the required curb cut if needed for the fire hydrant. The Board members all indicated they understood.

#### 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 size of the lot does not allow for placement of the driveway on the side of the structure. The Board found the hardship is parking on the street is difficult and crowded from large demand of other users on the street.

- 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 3000 (General Regulations), 3100 (Parking and Loading), and 3145 (Open air off street parking facilities may be located in a residential district, no open air off street parking space shall be located in front of the dwelling or principle building); relative to property located at 118 East Clinton Street, Assessor's Map 45, Lot 451 in a Residential A Zoned District. To allow the petitioner to construct a driveway in front of a dwelling as plans filed.

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

- a. The project shall be set forth according to plans submitted with the application;
- b. That 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. And that 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 J. Mathes to grant the requested Variance, the vote carried 5-0 with members J. Mathes, A. Decker, H. Tavares, R. Schilling, and I. Comerford,. voting in the affirmative, no member voting in the negative. (Tally 5-0)

Filed with the City Clerk on:

August 13, 2015

Date

Allen Decker

Allen Decker, Clerk of the Zoning Board of Appeals