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TOWN OF DEDHAM
ZONING BOARD OF APPEALS
DECISION

Applicant:	**Lynn Gardiner**
Property Address:	**64 Etna Road**
Case #:	***VAR-07-16-2110***
Property Owner:	Randy J. Cochrane and Lynn M. Gardiner
Map/Lot, Zoning District:	156/138, General Residence
Application Date:	July 15, 2016
Present and Voting:	J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jared F. Nokes, J.D.
Representative:	Lynn Gardiner
Legal Notice:	To be allowed to subdivide two existing lots identified as Lots 198 and 199 into two new lots identified as Lot 1 containing a single family dwelling, which would have a lot area of 6,450 square feet and frontage on Etna Road of 64.50 feet, and Lot 2, which would have a lot area of 5,916 square feet and frontage on Etna Road of 60.50 feet for a proposed single family dwelling. Lot size requirement for each lot is 7,500 square feet.
Section of Zoning Bylaw:	*Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements*
Date Filed with Town Clerk:	***AUGUST 22, 2016***

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts, held public hearings on Wednesday, August 17, 2016, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, J. Gregory Jacobsen, Vice Chairman, Scott M. Steeves, and E. Patrick Maguire, LEED AP. Chairman McGrail was not present for the meeting due to a work commitment. Mr. Jacobsen appointed Associate Member Jared F. Nokes, J.D., to sit in Mr. McGrail's stead.

The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11. Legal ads were placed for two consecutive

weeks in *The Dedham Times*. In addition, abutters within 300 feet of the property in question received notification of the hearings, and notification regarding each hearing was sent to the neighboring towns (Boston, Needham, Canton, and Westwood).

The Applicant, Lynn Gardiner, represented herself. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference. Mr. Jacobsen announced that, since Mr. McGrail was not present and there were only four members sitting on the hearings, applicants would need a unanimous vote for approval or may choose to re-schedule their hearings to the next meeting. Ms. Gardiner chose to proceed with the hearing with only four voting members.

The subject property is known and numbered as 64 Etna Road, Dedham, MA, and is shown on Dedham Assessors' Map 156, Lot 138. The certified plot plan indicates that the Subject Property contains 12,366 square feet of land and has 100 feet of frontage on Etna Road, 75 feet of frontage on Paul Street, and 39.27 feet of frontage on the corner of Etna Road and Paul Street. According to the Dedham Zoning Map, the Subject Property is located in the General Residence zoning district. Currently, the property is occupied by a single family dwelling. According to the records maintained by the Dedham Board of Assessors, the dwelling was constructed in 1994.

The house is situated on two lots that run facing Paul Street and fronts on Etna Road. Ms. Gardiner wants to subdivide the lots the opposite way so they both face Etna Road, and then sell both. She said it would not be that much different from the property across the street. The majority of the lots in the neighborhood are 6,250 square feet, although there are some that are larger. She did not split down the middle because the Building Department told her that, because of the existing house, she would have to ask for a variance for a side setback. She will be selling the property, and said that prospective buyers have said they would want to do the same thing. She would like to reap the benefit if it is already subdivided. Lot 2 is a corner lot, so the only direct abutter is behind her; the owner was not present for the hearing. She has spoken with her neighbors about this proposal. In order to use the two original lots, her house would have to be torn down because it sits on each lot.

Michael Humphrey, 113 Paul Street, asked when the setback requirements changed from 10 feet to 15 feet; this was in approximately 2012. He also asked if a new buyer of both lots would have to return to the ZBA for the same request; they would. With regard to Lot 2 on the Etna Road side, he asked how far the envelope could be pushed to the street for setback. Mr. Steeves said 20 feet. The 20 foot setback applies to both Etna Road and Paul Street. Robert Aldous, 63 Pine Street, Planning Board member, said there will be more requests of this nature, and asked the ZBA to very carefully consider it before allowing smaller lots. The reason for lot size is to prevent buildings from being so close together in the event of a fire. Mr. Maguire said that this is not always an easy decision because many of the existing lots in areas of town are much smaller than the zoning requirements.

Mr. Maguire understood what the applicant wanted, but the new lot would require a smaller house. Ms. Gardiner said that change is coming, whether she does it or someone else does, and she would like the benefit of this. Mr. Maguire, looking at the Google map for the area, said the density would be excessively tighter with another house. Mr. Steeves said they could not subdivide it, and explained that the house was built over the property line, making it pre-existing. If the house was not there, it could be subdivided, but because it exists across the property line, it cannot be subdivided.

Mr. Humphrey said he was not vehemently opposed, but was not in favor of the petition. He did not want to hamper the applicant's chance to have a better life with her children, but would prefer not to see a house on such a small lot. He said enough has already happened in town and in their neighborhood. Ms. Gardiner said that the only plus is that there cannot be a large house on the lot. Mr. Maguire suggested adding on to the house to make it a two-family, but Ms. Gardiner said she tried to sell it that way but was unsuccessful. Mr. Maguire said he was having a hard time with the proposal and why the Board should approve it. He said it would set a precedent for other neighbors. Ms. Gardiner said she is not the first to do this, and it would not be different from what is already in the neighborhood.

Mr. Steeves said that in the past the neighbors were very upset with previous approvals, so it is very difficult for the Board. Ms. Gardiner said these were all huge houses sandwiched in between houses. In this case, it is a corner lot. Whoever buys her house will know there is a house to be built beside them. Mr. Steeves said it would be making a bad situation worse. He understood her request, but said the Board has to take into consideration what Mr. Aldous

has said and what the neighbors have said. He said he could not support this. Ms. Gardiner said that she has been told this is the only way she can sell it and walk away with something. Mr. Nokes said that any decision, regardless of size, would be consistent regardless of the owner.

On a motion made by Scott M. Steeves and seconded by E. Patrick Maguire, LEED AP, the Zoning Board of Appeals voted unanimously (4-0) to DENY the petition to subdivide two existing lots identified as Lots 198 and 199 into two new lots identified as Lot 1 containing a single family dwelling, which would have a lot area of 6,450 square feet and frontage on Etna Road of 64.50 feet, and Lot 2, which would have a lot area of 5,916 square feet and frontage on Etna Road of 60.50 feet for a proposed single family dwelling. Lot size requirement for each lot is 7,500 square feet.

In accordance with MGL Chapter 40A, Section 11, the Applicant has twenty (20) days after the date of the filing of this decision with the Dedham Town Clerk to appeal the decision to a court of competent jurisdiction.

Dated: August 17, 2016

Attest, by the Zoning Board of Appeals:

J. Gregory Jacobsen

J. Gregory Jacobsen, Vice Chairman

Scott M. Steeves

Scott M. Steeves

E. Patrick Maguire

E. Patrick Maguire, LEED AP

Jared F. Nokes

Jared F. Nokes, J.D.

Attest, by the Administrative Assistant:

Susan N. Webster

Susan N. Webster

Materials Submitted:

- Zoning Board of Appeals application
- Petition statement
- Certified plot plan prepared by Don Rosa, PLS, 54 Liberty Street, Randolph, MA