

JAN 06 2015

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**TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS**

**ZONING BOARD OF APPEALS
DECISION**

2015 JAN - 6 PM 2:19

APPLICANT:	Dedham Real Estate Development, LLC
PROJECT ADDRESS:	750 Providence Highway, Dedham, MA
CASE #	VAR-10-14-1893
PROPERTY OWNER/ADDRESS:	Dedham 800, LLC, 128 Carnegie Row, Norwood, MA
MAP/LOT AND ZONING DISTRICT:	136/14, 136/22, Highway Business, Flood Plain Overlay District, Aquifer Protection Overlay District
DATE OF APPLICATION:	October 3, 2014
MEMBERS PRESENT AND VOTING:	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jessica L. Porter
PETITION:	To be allowed a Special Permit to perform work in the Flood Plain Overlay District including removal of driveway, asphalt, and fill, restoration of wetlands and lands under a water body, installation of rain gardens, water quality, and other stormwater management systems, addition of fill, construction of a building, parking lot, and landscaped area, and all works associated or related thereto.
SECTION OF ZONING BYLAW:	<i>Sections 8.1 Aquifer Protection Overlay District, Section 9.2 Board of Appeal, and Section 9.3 Special Permits</i>
REPRESENTATIVE:	Peter A. Zahka II, Esq., 12 School Street, Dedham, MA David Spiegel, Dedham Real Estate Development, LLC Matthew Smith, P.E., Norwood Engineering Co., Inc., 1410 Route 1, Norwood, MA
DATE FILED WITH TOWN CLERK:	January 6, 2015

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on November 17, 2014, commencing at 7:00 p.m. in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were Members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, and E. Patrick Maguire, LEED AP. In the absence of Member Jason L. Mammone, P.E., the Chairman appointed Associate Member Jessica L. Porter to sit in his place and stead. These hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:10 p.m., the Chairman called for the hearing on the appeal of Dedham Real Estate Development, LLC, to be allowed such special permits as necessary to perform work in the Flood Plain Overlay District including removal of driveway, asphalt and fill, restoration of wetlands and lands under a water body, installation of rain gardens, water quality, and other stormwater management systems, addition of fill, construction of a building, parking lot, and landscaped area and all works associated or related thereto at 750 Providence Highway in the Highway Business Zoning District. *Dedham Zoning By-Law Sections 8.1; 9.2; 9.3.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present was David Spiegel, principal of Applicant (hereinafter referred to as "Applicant"), and Matthew Smith, P.E., Norwood Engineering Co., Inc., 1410 Route 1, Norwood, MA. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Applicant proposes a redevelopment of the real estate known and numbered as 750 Providence Highway, Dedham, MA (hereinafter referred to as "Subject Property"). The Subject Property is owned by Dedham 800, LLC, 128 Carnegie Row, Norwood, MA, and is shown on Dedham Assessors' Map 136, Lots 14 and 22. The Subject Property contains approximately 7.48 acres of land and has approximately 863 feet of frontage on Providence Highway. The Subject Property is currently occupied by an existing 7,170 square foot building. This building houses a 252-seat full service restaurant (TGI Fridays). According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Highway Business (HB) Zoning District. Portions of the Subject Property are located in the Flood Plain Overlay District (FPOD) and the Aquifer Protection Overlay District (APOD).

The Applicant proposes to construct a new one-story commercial/retail building with approximately 9,350 square feet at the Subject Property. (The existing TGI Friday's building will remain). The Project also involves major upgrades and improvements to the site and parking area. Access to the Subject Property will continue to be provided by way of the driveway from the Best Buy Plaza. However, the existing connection from the Subject Property to the Bed, Bath & Beyond Plaza will be eliminated (as described further below). The Subject Property currently contains 146 parking spaces serving the TGI Friday's. The redeveloped site will have approximately 174 parking spaces serving the new retail building and the TGI Friday's. The Project is subject to major site plan review by the Dedham Planning Board.

A number of "sustainable strategies" have been incorporated into the design of the proposed new building and the upgrade and improved site/parking area. As proposed, the new building will include a "green roof" and solar panels. The elimination of the connection to the Bed, Bath & Beyond Plaza allows for a significant restoration of this area as wetlands and other resource areas (these were filled in the 1970's). The Project will also result in a major improvement of water quality through upgrades to the existing drainage system from direct wetland discharges to low impact drainage design with two constructed pocket wetlands and two rain gardens. Upon completion of the Project, the Subject Property will have an increase in flood storage volume by approximately 26,394 cubic feet, increase in bordering vegetated wetlands by approximately 8,943 square feet, and increase in land under water body by approximately 668 square feet.

The Project is subject to site plan review by the Dedham Planning Board. Except for the relief requested herein, the Applicant indicates that the Project will otherwise comply with the dimensional, parking, and landscape requirements under the Dedham Zoning By-Law.

As indicated above, portions of the Subject Property are located in the FPOD and APOD. The existing entrance to the Subject Property is located in the APOD. No work is proposed in this area. However, work is proposed in the FPOD. This includes the removal of the connection drive (and associated asphalt and fill) between the Subject Property and the Bed, Bath & Beyond Plaza, the restoration of wetlands and lands under water, installation of rain gardens, water quality, and other stormwater management systems, addition of fill, construction of a building, parking lot, and landscaped areas, and work associated with the same.

Section 8.1.5 of the Dedham Zoning By-Law provides that a special permit from the ZBA is required for "any work within a FPOD". In acting upon requests for special permits, the ZBA is guided by Section 9.3.2 of the Dedham Zoning By-Law which provides that:

Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this By-Law, the determination shall include consideration of each of the following:

1. Social, economic, or community needs which are served by the proposal;
2. Traffic flow and safety, including parking and loading;
3. Adequacy of utilities and other public services;
4. Neighborhood character and social structures;
5. Impacts on the natural environment;
6. Potential fiscal impact, including impact on town services, tax base, and employment.

In addition, Section 8.1.1 of the Dedham Zoning By-Law provides "that the purpose of the Flood Plain Overlay District (FPOD) is to preserve and maintain the groundwater table, to protect the public health and safety of persons and property against the hazards of flood and ground water inundation...and to conserve natural conditions, resources...and open spaces for education, recreation and general welfare of the public." Specifically with respect to the work to be performed in the FPOD, Section 8.1.5 of the Dedham Zoning By-Law provides that the ZBA should give consideration to the following aspects: the "building or structure should be designed, placed and constructed to offer minimum obstruction of the flow of water; and that it shall be firmly anchored to prevent floating away." In addition, Section 8.1.10 of the Dedham Zoning By-Law provides in pertinent part that "no land fill or dumping...without proper volumetric compensation at a ratio of 2:1 for every cubic foot filled."

The Applicant respectfully submits that the requirements and criteria for the issuance of the requested special permits are satisfied. Specifically, the beneficial impacts of the Applicant's proposal outweigh any adverse effects, and the proposed change is not substantially more detrimental to the neighborhood than the existing use. In fact (as discussed further below), the Applicant will be significantly improving on the existing conditions. The Project will satisfy the

Dedham Zoning By-Law dimensional and parking requirements. In addition, applicant has submitted a Notice of Intent with the Dedham conservation Commission for the Project inclusive of the work in the FPOD. After review, the Conservation Commission has issued an Order of Conditions for the Project including the work in the FPOD. All work will be done in compliance with said Order.

The Applicant submits that the proposed work will not interfere with the general purposes for which the FPOD was established and will not be detrimental to the public health. As a result of this Project and the work in the FPOD, there will be a number of environmental enhancements:

- a. Increase in flood storage volume of 26,394 cubic feet
- b. Increase in bordering vegetated wetlands by 8,943 square feet
- c. Increase of land under water body by 668 square feet
- d. Restoration of wetlands filled in the 1970's
- e. Improve water quality through upgrade of existing drainage system from direct wetland discharges to low impact drainage design with two (2) constructed pocket wetlands and two (2) rain gardens.
- f. Improve wetland habitat and other functionality from direct connection to existing wetlands by elimination of driveway.

The Project also satisfies the 2:1 ratio for compensation relative to any proposed filling in the FPOD. The building is properly anchored and will have no potential for floating away. The building will have a standard foundation and be constructed upon "pilings." The slab will be approximately 4.8' feet above the 100 year storm.

No one appeared at the hearing in opposition to this application for relief.

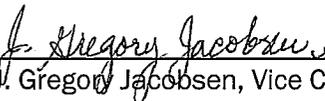
Upon motion duly made by J. Gregory Jacobsen and seconded by E. Patrick Maguire, LEED AP, the ZBA unanimously voted (5-0) to grant the requested special permits necessary to perform work in the Flood Plain Overlay District including removal of driveway, asphalt and fill, restoration of wetlands and lands under a water body, installation of rain gardens, water quality, and other stormwater management systems, addition of fill, construction of a building, parking lot, and landscaped area and all works associated or related thereto. In granting of said special

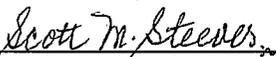
permits, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. In addition, the ZBA finds that the Applicant satisfies the requirements of Section 8.1 (Flood Plain Overlay District) of the Dedham Zoning By-Law.

The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no special permit shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed or that an appeal has been filed within such time shall be recorded in the Norfolk County Registry of Deeds or the Land Registration Office of Norfolk County.

Dated: December 3, 2014


James F. McGrath, Esq., Chairman


J. Gregory Jacobsen, Vice Chairman


Scott M. Steeves


E. Patrick Maguire, LEED AP


Jessica L. Porter

Attest, by the Administrative Assistant:


Susan N. Webster

Copies of this decision are filed in the Dedham Town Clerk's office. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning Department.

Materials Submitted:

- ZBA application
- Position Statement from Peter A. Zahka II, Esq.
- Existing conditions plan, site layout plan, and grading, drainage and utilities plan prepared by Norwood Engineering Co., Inc.
- Flood plan Elevation data prepared by "Norwood Engineering Co., Inc.