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TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS
DECISION

2015 JAN -6 PM 2:19

APPLICANT: Dennis Gullotti and Jill F. DeVirgilio
PROJECT ADDRESS: 807-809 East Street, Dedham, MA
CASE # VAR-10-14-1909
PROPERTY OWNER/ADDRESS: Dennis J. Gullotti and Jill F. DeVirgilio, 807 East Street, Dedham, MA
MAP/LOT AND ZONING DISTRICT: 153/37, Single Residence B
DATE OF APPLICATION: November 11, 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 such Special Permits and/or variances as necessary to divide an approximate 27,358 square foot lot occupied by a pre-existing nonconforming two-family dwelling into two building lots with a rear yard of 13.6 feet (20 feet required), and for the continued use of said two-family dwelling: one lot will have a lot area of approximately 14,855 square feet and will be occupied by the two-family dwelling that will have a side yard of approximately 13.6 feet (15 feet required), and one lot that will have a lot area of approximately 12,503 square feet at 807-809 East Street. The property is in a Single Residence B zoning district.

SECTION OF ZONING BYLAW: Town of Dedham Zoning Bylaw Sections 3.1, Principal Uses, 3.3 Nonconforming Uses and Structures, 9.2.2 Board of Appeal, Powers, 9.3 Special Permits, Table 1 Principal Use Regulations, Table 2 Table of Dimensional Requirements
REPRESENTATIVE: Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
Dennis J. and Jill F. DeVirgilio

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, December 3, 2014 commencing at 7:00 p.m. in the Town Office Building, 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. The hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11. In addition, abutters within 300 feet of the property in question received notification of the hearing, and adjacent towns were sent notifications (Boston, Canton, Westwood, and Needham).

At 7:35 p.m. the Chairman called for the hearing on the appeal of Dennis J. Gullotti and Jill F. DeVirgilio to be allowed such Special Permits and/or variances as necessary to divide an approximately 27,358 square foot lot occupied by a pre-existing nonconforming two-family dwelling into two building lots: one lot will have a lot area of approximately 14,855 square feet and will be occupied by the two-family dwelling which will have a side yard of approximately 13.6 feet (required 15 feet) and for the continued use of said two-family dwelling, and one lot will have a lot area of approximately 12,503 square feet at 807-809 East Street in the Single Residence B (SRB) Zoning District. *Dedham Zoning By-Law Sections 3.3; 4.1; 4.6; 9.2.2 & 9.3.*

The Applicants were represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present were Applicants Dennis J. Gullotti and Jill F. DeVirgilio (hereinafter referred to as the "Applicants"). The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Applicants are the owners of the real estate known and numbered as 807 East Street (hereinafter referred to as the "Subject Property") which is shown on Dedham Assessors' Map 153, Lot 37. The Subject Property contains approximately 27,358 square feet of land and has over 100 feet of frontage on East Street and over 200 feet of frontage on Rustcraft Road. The Subject Parcel is occupied by a two to two-and-a-half story two-family dwelling. Assessors' records indicate that the building was built in 1900. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Single Residence B (SRB) Zoning District.

Section 10 of the Dedham Zoning By-Law defines “nonconforming building, structure, or use” as “an existing legally established building, structure, lot or use which predates and does not conform to the current requirements of the district in which it is situated as regards to size, dimensions, location, or use of building or land.” The data card maintained by the Dedham Board of Assessors indicates that the existing two-family dwelling was constructed in 1900. With the exception described below for the conversion of a single family dwelling into a two-family dwelling, two-family dwellings are generally not allowed in the SRB Zoning District. In addition, the existing two-family dwelling has a rear yard of 13.6 feet; 25 feet is currently required in the SRB Zoning District. Therefore, the existing two-family dwelling is considered a pre-existing nonconforming

The Applicants propose to divide the Subject Property into two building lots. After such division, one lot will have an area of approximately 14,855 square feet, frontage on Rustcraft Road of approximately 95.5 feet, and will be occupied by the existing two-family dwelling. After the division, the two family dwelling will be re-oriented to front on Rustcraft Road. Given this re-orientation, the rear yard will now become a side yard. This side yard will continue to be 13.6 feet (a side yard of 15 feet is required in the SRB Zoning District). No new buildings or additions are proposed on this lot. The second lot will have an area of approximately 12,503 square feet with over 109 feet of frontage on East Street and over 116 feet of frontage on Rustcraft Road. The Applicants indicate that a new single family dwelling will be constructed on this lot.

The Applicants have requested such special permits and/or variances to allow the proposed division of the land. The Applicants need relief only for the proposed 14,855 ± square foot lot to be occupied by the existing two-family dwelling; no relief is required for the proposed 12,503 ± square foot lot. Specifically, relief is required for the continued use of said two-family dwelling and for a side yard of approximately 13.6 feet instead of the required 15 feet in the SRB Zoning District. In addition, Applicants may also need relief from the lot area requirements. Table 2 (Table of Dimensional Requirements) provides that a lot area of 12,500 square feet is required in the SRB Zoning District. While the proposed lot to be occupied by the two-family dwelling exceeds this requirement, it is noted that Section 7.2 of the Dedham Zoning By-Law allows (by special permit) for the conversion of single family dwellings to two-family dwellings in the SRB Zoning District, provided that the house is located on a lot with an area of 18,750

square feet. Inasmuch as the two-family dwelling is already in existence, it is unclear as to whether an area of 12,500 square feet or 18,750 square feet is required.

Pursuant to Section 3.3.2 of the Dedham Zoning By-Law, the Board of Appeals may:

award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The following types of changes to nonconforming uses may be considered by the Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

Additionally, pursuant to Section 3.3.3 of the Dedham Zoning By-Law, the Board of Appeals may:

award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

1. Reconstructed, extended or structurally changed;
2. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent.

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 9.2.2.2 of the Dedham Zoning By-Law provides that the ZBA has the power "to hear and decide appeals or petitions for variances from the terms of this By-law, with respect to particular land or structures, as set forth in G.L. c.40A, §10. Section 10 of Chapter 40A of the General Laws of Massachusetts provides that a Variance may be granted if:

Owing to circumstances relating to 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, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The Applicants respectfully submit that they satisfy the above stated requirements and criteria for the issuance of the requested special permits and variances. Specifically, the beneficial impacts of Applicant's proposal outweigh any adverse effects and the proposed change is not substantially more detrimental to the neighborhood than the previous use. As stated above, the existing two-family dwelling has a pre-existing nonconforming rear yard of 13.6 feet instead of the required 20 feet. Due to the re-orientation of the existing two-family dwelling (from fronting on East Street to fronting on Rustcraft Road) this rear yard will become a side yard. While the side yard will continue to be nonconforming (13.6 feet instead of the required 15 feet), it is actually less nonconforming than prior to the proposed re-orientation. If such relief is not granted, the Applicants will suffer a financial hardship in that the Applicants will be required to demolish a portion of the existing structure (i.e., the attached garage). Likewise, (assuming that a lot area of 18,750 square feet is required for the two-family structure) the Applicants would suffer a financial hardship in that they would be required to convert the structure to a single family dwelling.

No one appeared in opposition to the requested relief. While not opposing the Applicants' requested relief, Paula Taylor, the owner of the abutting property at 817 East Street, appeared at the meeting and made some general inquiries relative to the dwelling to be constructed on the proposed 12,505 square foot lot. Specifically, Ms. Taylor inquired as to the removal of trees on this lot and location of the driveway to serve the new dwelling. In response, the Applicants indicated that they will relate Ms. Taylor's inquiries to the developer of this lot.

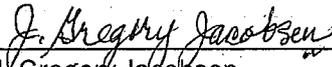
Upon motion duly made by J. Gregory Jacobsen and seconded by Scott M. Steeves, the ZBA unanimously voted (5-0) to grant the requested special permits and variances necessary to divide the Subject Property into two new building lots: one lot will be occupied by the existing two-family dwelling and will have a lot area of approximately 14,855 square feet and a side yard of approximately 13.6 feet and for the continued use of the existing two-family dwelling as a two-family dwelling, and one lot will have a lot area of approximately 12,503 square feet at 807 East Street in a Single Residence B Zoning District.

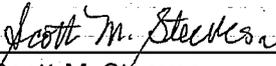
In granting of said special permits, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. In granting said variances, the ZBA finds that the Applicant has satisfied the requirements Section 10 of Chapter 40A of the General Laws of Massachusetts, to wit: a literal enforcement of the Dedham Zoning By-Law requirements would cause a substantial financial hardship to Applicant, and that the relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Dedham Zoning By-Law.

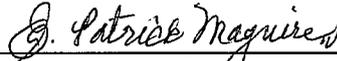
Applicants are advised that, in accordance with MGL Chapter 40A, Section 11, no variance shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been filed and that 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.

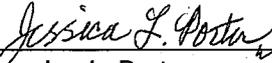
Dated: December 3, 2014


James F. McGrail, Esq., Chairman


J. Gregory Jacobsen


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
- Petition Statement prepared by Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
- Addendum to ZBA Application prepared by Peter A. Zahka II, Esq.
- Photograph of existing conditions
- Town of Dedham GIS map
- Plan of land prepared by Norwood Engineering Co., Inc., 1410 Rte. One, Norwood, MA