

**TOWN OF DEDHAM**  
**ZONING BOARD OF APPEALS**  
26 BRYANT STREET, DEDHAM, MASSACHUSETTS 02026



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**DECISION**

**Applicant:** SSG Development II LLC and Parkway Development Associates, Norfolk Realty Trust

**Project Address:** 10-24 Providence Highway

**Property Owner:** Parkway Development Associates

**Case #:** Var-05-12-1532

**Map/Lot:** 57/4D and 4E

**Zoning District:** Highway Business

  

**Date of Application:** May 18, 2012

**Date of Hearing:** June 13, 2012

**Members Present and Voting:** J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E., Jessica L. Porter

  

**Applicant Representative:** Peter A. Zahka II, Esq.  
George Bachrach, partner, SSG Development  
David Williams, Director of Market Development, SSG Development  
Geoffrey Fitzgerald, Manager/Civil Engineer, BL Company

**Petition:** To be allowed such special permits and variances as may be necessary or required for a self-storage facility (a warehouse) with a rear yard setback of 13.5 feet (25 feet required), a lot coverage of 41.32% (40% maximum allowed), a floor area ratio of 1.28 (.35 maximum allowed), and for a parking lot with 11 parking spaces (22 required).

**Section of Zoning By-Law:** Town of Dedham Zoning By-Law Sections 3, 4.2, 4.3.2, 5.1.15, 9.2.2, and 9.3, and Tables 1, 2, and 3.

**Materials Submitted:** ZBA application  
Rendering of proposed storage building

Addendum to Zoning Board of Appeals application  
Information provided by Peter A. Zahka II, Esq. including aerial photographs, rendering of proposed building, existing conditions survey plan prepared by Bennett Engineering, Sagamore Beach, MA, distances from proposed building to homes, information regarding existing storage facilities owned by Applicant  
Letter from Kenneth Cimeno, Building Commissioner defining the term "self-storage" as falling into the definition of "warehouse."

**Date of Filing with Town Clerk:** July 3, 2012

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, June 13, 2012, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Acting Chairman J. Gregory Jacobsen, E. Patrick Maguire, LEED AP, Scott M. Steeves and Jason L. Mammone, P.E. In the absence of Chairman James McGrail, Esq., Associate Member Jessica L. Porter was appointed to sit for this hearing. The hearings at this meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:45 p.m., the Acting Chairman called for the hearing on the appeal of SSG Development II, LLC, and Parkway Development Associates, Norfolk Realty Trust. The Applicants seek such special permits and/or variances as may be necessary or required for a self-storage facility (a warehouse) with a rear yard setback of 13.5 feet (25 feet required), a lot coverage of 41.38% (40% maximum allowed), a floor area ratio of 1.28 (.35 maximum allowed), and a parking lot with 11 parking spaces (22 required), at the property located at 10 - 24 Providence Highway in the Highway Business (HB) Zoning District. *Town of Dedham Zoning By-Law, Sections 3, 4.2, 4.3.2, 5.1.15, 9.2, 9.3 and Tables 1, 2, and 3.*

Applicant was represented by Peter A. Zahka, II, Esq., of 12 School Street, Dedham, MA. Also present on behalf of Applicant was George Bachrach, Partner, SSG Development, David Williams, Director of Marketing Development, SSG Development, and Geoffrey Fitzgerald, Manager, Civil Engineering, BL Companies. At the outset of the hearing, Applicant submitted a letter from the Dedham Building Commissioner, an updated site plan, building renderings and elevations, and various other plans, drawings, and photographs. The three-page transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Subject Property, owned by Applicant Parkway Development Associates, Norfolk Associates Realty Trust, under Declaration of Trust dated April 29, 1986, and filed in the Norfolk County Registry of Deeds, Land Registration Division (“Norfolk Registry”), as Document No. 488728, pursuant to a deed filed in the Norfolk Registry as Document No. 488727 with Certificate of Title No, 123455, and is shown as Lot 32 on Land Court Plan 35334-N and on Dedham Assessors’ Map 57 Lots 4D and 4E. The Subject Property contains approximately 71,874 square feet of land and has approximately 447 feet of frontage on Providence Highway. According to the Zoning Map for the Town of Dedham, the Subject Property is predominately located in the Highway Business (HB) Zoning District. There is a small strip of land along Providence Highway that is located in the General Residence (GR) Zoning District. (However, the proposed building and associated parking are located in the HB Zoning District.)

Currently, the Subject Property is a vacant/undeveloped lot located between Ocean State Job Lot in Dedham and Waves Car Wash in Boston (West Roxbury). Adjacent to and abutting the Subject Property is another vacant/undeveloped lot on Providence Highway in Boston (West Roxbury) owned by Parkway Development Associates Suffolk Realty Trust under Declaration of Trust dated April 29, 1986 and filed in the Suffolk County Registry of Deeds, Land Registration Division (the “Suffolk Registry”), as Document No. 404490, pursuant to deed filed in the Suffolk Registry as Document No. 404488 with Certificate of Title No. 99460, shown as Lot 27 on Land Court Plan 33855-H (the “Boston Parcel”). Although the Subject Property and Boston Parcel are owned by separate trust entities, they are under common beneficial ownership and control. There is a thirty (30) foot right of way which traverses the property parallel and close to Providence Highway. Directly behind the property is vacant/undeveloped lot (owned by others) upon which is located a wetland area. This vacant/undeveloped lot separates the Subject Property from a residential neighborhood predominately located in Boston (West Roxbury). Aerial photographs indicate that there is significant vegetation between the Subject Property and this neighborhood (although there has been some recent clearing for the development of additional homes).

Applicant SSG Development II, LLC, (hereinafter referred to as “Applicant SSG”) proposes to construct a self-storage facility on the proposed site. There will also be an associated truck rental as well as an office which will sell storage related items. In the letter submitted by Applicant SSG,

the Dedham Building Commissioner opines that a self-storage facility falls within the Dedham Zoning By-Law definition of “warehouse”. Table 1 (Principal Use Table) to the Dedham Zoning By-law provides that a “warehouse” is a use allowed in the HB Zoning District upon issuance of a special permit. Accordingly, the proposed self-storage facility is allowed at the Subject Property upon the issuance of a special permit.

Applicant SSG submits that the proposed self-storage facility is well suited and appropriate for the Subject Property. Noting that the Subject Property is a gateway to Dedham, the building will be appropriately designed to more resemble a first class office building than the “older” type self storage facility (i.e., no exterior garage doors, etc.). Typically the customers are individuals and small businesses storing household goods and small appliances. All customers will sign lease agreements and will need to abide by strict rules including no flammables or toxics. The building will be fully sprinklered and will have cameras monitoring activity inside and outside of the facility. No outdoor storage is proposed (with the exception of a rental truck). Compared to typical warehouse, a self-storage facility is an extremely benign and low impact use. A typical warehouse usually involves the storage of industrial and commercial goods, requires many employees to handle loading and unloading, and has corresponding truck activity. On the other hand, a self-storage facility has only one to two employees, infrequent visits to the site by customers, and very little large truck activity. Applicant SSG noted that it has developed many self-storage facilities, including a number directly abutting residential properties, without any security, noise, or other problems.

Applicant SSG noted that it has revised and refined the proposal since the submission of the application in response to comments and concerns raised by the residential neighbors as well as by the ZBA<sup>1</sup>. As now presented, the proposed facility will consist of a 3-story building with a floor area of approximately 92,286 gross square feet. Applicant SSG’s original proposal was for a four story building requiring a height variance. The proposed three story building now satisfies the Dedham Zoning By-Law height regulations and no height variance is required or request. The proposed building also satisfies the Dedham Zoning By-Law front and side yard requirements.

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<sup>1</sup> Applicants had submitted a previous application to the ZBA. The hearings on that application had been continued numerous times primarily due to the lack of a full complement of ZBA members to hear the matter. Given these continuances and the significant revisions to the original proposal, Applicant request and the ZBA approved the withdrawal without prejudice of this prior application. *See, ZBA Case VAR-10-11-1448.*

As shown on the revised site plan the facility requires 18 parking spaces and 18 parking spaces are provided (exclusive of the area set aside for the truck rental). Applicant SSG indicated that it has been able to satisfy the Dedham Zoning By-Law requirement by reducing the size of the building and by locating three of the parking spaces in the “loading area.” Applicant SSG further submits that the actual operation of the facility does not require 18 spaces and that during site plan review it will discuss with the Planning Board a potential waiver to reduce the number of spaces for additional landscaping. Inasmuch as the proposal now satisfies the Dedham Zoning By-Law, Applicant SSG withdrew its request for a parking variance.

The proposed facility will have a lot coverage of 41.32% (40% maximum allowed) requiring a variance. Due to the reduction in building size, this is significantly below the 50% lot coverage in Applicant SSG’s original proposal. In calculating dimensional requirements, however, land in another municipality may be considered<sup>2</sup>. As indicated above, the Subject Property is under common beneficial ownership and control as the Boston Parcel. If the Boston Parcel is considered<sup>3</sup>, the lot coverage for the proposal is well below the Dedham Zoning By-Law requirement and a variance is not required.

The proposed facility will have a rear yard setback of 13.5 feet (25 feet required) and requires a variance. Applicant SSG notes that this variance is necessitated by a 30 foot right of way traversing the property. Inasmuch as others may have rights in and/or over said right of way, the proposed building and parking lot cannot be located within the same. In addition, Applicant SSG claims that it is unable to further reduce the “width” of the proposed building due to operational considerations of a self-storage facility. Applicant SSG avers that given the distance and vegetation between the proposed facility and the residential abutters the requested reduction in the rear yard will have no negative impact.

The proposed facility will have a floor area ratio (FAR) of .94 (.35 maximum allowed) requiring a variance. Due to the reduction in building size, this is significantly below the 1.44 FAR in Applicant

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<sup>2</sup> See, *Boulter Brothers Construction Company, Inc. v. Zoning Board of Appeals of Norfolk*, 45 Mass. App. Ct. 283 (1988).

<sup>3</sup> Applicants indicate the potential for a 2,500 square foot building being developed on the Boston Parcel. This potential building has been assumed and accounted for in determining lot coverage utilizing both the Dedham and Boston properties.

SSG's original proposal. Taking into consideration the Boston Parcel under common beneficial ownership and control as the Subject Property the FAR is reduced to .78<sup>4</sup>. Applicant notes that the variance is required due to the fact that each level of the proposed self-storage facility is a floor and must be counted toward the FAR. On the other hand, the same size building could be constructed as a typical warehouse and the Dedham Zoning By-Law requirement would be satisfied. The ZBA, in previous decision, has recognized the above in granting FAR relief to allow typical warehouses to be converted to self-storage facilities.

Neki Demirali, 85 Crosstown Avenue, West Roxbury, Warren Zola, 60 Crosstown Avenue, Dedham and Stephanie Fedynyshyn, 73 Crosstown Avenue, West Roxbury appeared at the hearing. All live in the residential neighborhood to the rear of the Subject Property. While they acknowledged and appreciated Applicant's revisions to the proposal, they still expressed concern regarding the impact that the proposed building would have on their properties.

Upon motion duly made and seconded, the ZBA voted unanimously to grant the requested special permit and variances to construct a self-storage facility (a warehouse) with a rear yard setback of 13.5 feet instead of the required 25 feet and a floor area ratio of .78 instead of the .35 maximum at the property located at 10 - 24 Providence Highway in the Highway Business (HB) Zoning District. The calculation of the floor area ratio takes into consideration the land area of the Boston Parcel as described above. In granting of said special permit, 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.

Applicant is 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

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<sup>4</sup> Applicants indicate the potential for a 2,500 square foot building being developed on the Boston Parcel. This potential building has been assumed and accounted for in determining floor area ratio utilizing both the Dedham and Boston properties.

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: July 3, 2012

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J. Gregory Jacobsen

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Scott M. Steeves

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E. Patrick Maguire, LEED AP

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Jason Mammone, P.E.

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Jessica L. Porter