

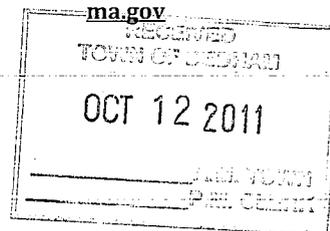
James F. McGrail, Esq., Chairman
J. Gregory Jacobsen
Scott M. Steeves
E. Patrick Maguire
Jason L. Mammone, P.E.
JH Rumpp, Alternate
Jessica L. Porter, Alternate

TOWN OF DEDHAM
Commonwealth of Massachusetts



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ZONING BOARD OF APPEALS
26 Bryant Street
Dedham, Massachusetts 02026

DECISION

Case # VAR-08-11-1415
Applicant: Whiting Avenue, LLC
Address: 408 Whiting Avenue, Dedham, MA
Map/Lot: 128/116, LMA District
Date of Hearing: September 21, 2011
Date of Filing: October 12, 2011

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday September 21, 2011, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, E. Patrick Maguire, and Jason L. Mammone, P.E. In the absence of Member Scott M. Steeves, the Chairman appointed Associate Member Jessica L. Porter to sit for these hearings. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:55 p.m., the Chairman called for the hearing on the appeal of Whiting Avenue, LLC, 408 Whiting Avenue, Dedham, MA, to be allowed such special permits and/or variances as may be required for the construction, operation and maintenance of a mixed-use building with up to fourteen (14) one-bedroom apartments (a building containing dwelling units in combination with stores or other permitted uses), and for the construction of a fence and/or berm and fence with a height of up to eight (8) feet at 408 Whiting Avenue in the Limited Manufacturing A (LMA) Zoning District. *Town of Dedham Zoning By-Law Section, 3.1.3 (Table 1, A.4), Sections 9.2.2, 9.3 and 10.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant were Applicant's Principal, David Raftery, Project

Architect Michael McKay of McKay Architecture, and Project Engineer Donald Myers of Norwood Engineering Co., Inc. Attorney Zahka had previously submitted a 4-page Memorandum, two (2) plot plans of the subject property, and a Traffic Assessment Report. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The subject property as shown on Dedham Assessors' Map 128 Lot 116 has approximately 28,980 square feet of land, and approximately 210 feet of frontage on Whiting Avenue. According to the Zoning Map for the Town of Dedham, the subject property is located in the Limited Manufacturing A (LMA) Zoning District. Currently, the subject property is occupied by three (3) commercial buildings with a floor area of approximately 10,755 square feet. For many years, the subject property has been utilized as a contractor's yard.

Applicant proposes to demolish the existing buildings and construct a new two-story mixed-use development with up to fourteen (14) one-bedroom apartments. Line A.4. of Table 1 ("Use Regulation Table") of the Dedham Zoning By-Law, provides that "buildings containing dwelling units in combination with stores or other permitted uses" are allowed in the LMA Zoning District upon issuance of a special permit by the ZBA. In addition, Applicant proposes to construct a fence and/or a fence and berm of up to eight (8) feet in height along the left side of the property. The definition of a "fence" in Section 10 of the Dedham Zoning By-Law provides in pertinent part that, "any fence installation proposed to be in excess of six (6) feet six (6) inches in height shall require a Special Permit from the Zoning Board of Appeals."

In acting upon requests for special permits, the ZBA must determine that the "adverse effects of the proposed use will not outweigh its beneficial impacts" after consideration of the six (6) enumerated factors set forth in Section 9.3 of the Dedham Zoning By-Law. Applicant respectfully submits that it satisfies the requirements and criteria for the issuance of the requested special permits. Specifically, the adverse effects of the Project will not outweigh its beneficial impacts. The Project will significantly improve the overall appearance of the subject property and will have minimal negative impact on the surrounding area. There are a number of single and two-family residential

dwelling in the vicinity of the subject property. However, single and two-family dwellings are not allowed (either as of right or by special permit) in the LMA Zoning District. Many of the other uses allowed in the LMA Zoning District may not be compatible with residential dwellings. On the other hand, Applicant's Project has a major residential component and the building has been designed with a number of architectural features (such as sloped roofs, dormers, etc.) which are residential in character.

While the Dedham Zoning By-Law does not limit the number of bedrooms, Applicant has proposed only one-bedroom apartments. There has been a demonstrated need/demand for one-bedroom apartments in the Town of Dedham. Limiting the Project to one-bedroom apartments will also minimize the traffic and other impacts. A traffic report prepared for Applicant by LandStrategies LLC concluded that the Project "will have a minimal impact on existing traffic conditions."

The Project is designed to satisfy the dimensional requirements of Dedham Zoning By-Law including parking and landscaping. The Dedham Zoning By-Law requires 1.5 parking spaces per dwelling unit regardless of size. By limiting the apartment to one-bedrooms the number of vehicles associated with the same will also be limited. Inasmuch as this is a "mixed-use" development it is anticipated that many spaces will be vacated by residents during the daytime and available for the commercial uses. (The reverse is true during the evening – there will be very little commercial activity and spaces will be available for the residents). In terms of parking and traffic, the Project will be submitted to the Dedham Planning Board for site plan review.

The Project will be fiscally positive to the Town. The new modern building will bring in more tax revenues than the existing buildings. Furthermore, one-bedroom units are not anticipated to have any school age children and as such have no fiscal impact on the Dedham Public Schools. It is generally accepted that school costs (of which this Project will have none) are one of the biggest costs facing any municipality.

Inasmuch as this is a redevelopment of existing fully developed property, the adequacy of utilities and/or other public services is not an issue. The Project will include a

significant increase in on-site landscaping and will require a Stormwater Management permit for the Dedham Conservation Commission. Accordingly, the Project will be improving the natural environment.

Applicant submitted numerous letters in support of the Project from residents and businesses throughout Dedham. Applicant indicated that it had held three (3) meetings with the abutters and one (1) with the Oakdale Square Alliance to present the Project and address concerns. These meetings have resulted in a number of changes including repositioning of the building, incorporation of additional landscaping and fencing, and modifications to windows and other architectural features of the building. In addition, to address abutter concerns regarding the potential occupants of the first floor commercial space Applicant has agreed not to lease or permit such space to be occupied or used for a restaurant/prepared food establishment, a variety store, a commercial laundromat, or a liquor (package) store. Applicant is willing to accept these restrictions as a condition in a ZBA decision approving and granting the requested special permits.

Numerous abutters appeared at the hearing. In general, the abutters spoke favorably about the Project. While the abutters preferred single family homes, they acknowledged that the same are not allowed in the LM Zoning Districts. Several abutters reported on the meetings with the Applicant and Applicant's agreement to restrict certain uses from the first floor commercial space. A number of speakers raised concerns relative to traffic and specifically a speeding that currently exists on Whiting Avenue.

Upon motion duly made by James F. McGrail, Esq. and seconded by J. Gregory Jacobsen, the ZBA voted unanimously to grant the requested special permits for the construction, operation and maintenance of a mixed-use building with up to fourteen (14) one-bedroom apartments (a building containing dwelling units in combination with stores or other permitted uses), and for the construction of a fence and/or berm and fence with a height of up to eight (8) feet at 408 Whiting Avenue. The grant of the special permits is conditioned upon the first floor commercial space not being leased, occupied or otherwise used for a restaurant/prepared food establishment, a variety store, a

commercial laundromat (except that a laundry area for tenant use only is not prohibited) and a liquor (package) store. 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.

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: October 12, 2011

James F. McGrail
James F. McGrail, Esq., Chairman

J. Gregory Jacobsen 10/11/11
J. Gregory Jacobsen

E. Patrick Maguire
E. Patrick Maguire

Jason L. Mammone
Jason L. Mammone, P.E.

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