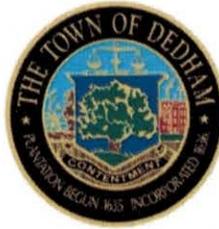


ZONING BOARD MEMBERS
JAMES F. McGRAIL, CHAIRMAN
J. GREGORY JACOBSEN, VICE CHAIRMAN
SCOTT M. STEEVES
E. PATRICK MAGUIRE, LEED AP
JASON L. MAMMONE, P.E.

ASSOCIATE MEMBERS
JESSICA L. PORTER
JARED F. NOKES, J.D.



DEDHAM TOWN HALL
26 BRYANT STREET
DEDHAM, MA 02026
PHONE 781-751-9242
FAX 781-751-9225

SUSAN WEBSTER
ADMINISTRATIVE ASSISTANT
swebster@dedham-ma.gov

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS
DECISION



APPLICANT:	Phoenix Properties Group, LLC, 30 Saucier Street, Acushnet, MA, and Katherine N. Conkling, 60 Emmett Avenue, Dedham, MA (P.O. Box 728, Shareham, NY)
PROJECT ADDRESS:	60 Emmett Avenue, Dedham, MA
CASE #	VAR-02-14-1799
PROPERTY OWNER/ADDRESS:	Katherine N. Conkling, P.O. Box 728, Shareham, NY 11786
MAP/LOT AND ZONING DISTRICT:	97/70, Single Residence B
DATE OF APPLICATION:	February 20, 2014
MEMBERS PRESENT AND VOTING:	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E.
PETITION:	To be allowed Such Special Permit and variances required to alter, change, expand, and enlarge (including but not limited to adding upper floors, extension of an exterior wall that is 3 feet from the side line, and expansion of a free-standing garage) a pre-existing nonconforming use (3-family) and structure, and the parking area and accessory uses related thereto
SECTION OF ZONING BYLAW:	<i>Town of Dedham Zoning Bylaw Sections 3.3.2, 3.3.3, 3.3.4, 9.2.2, 9.3, Tables 1 and 2</i>
REPRESENTATIVE:	Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
DATE FILED WITH TOWN CLERK:	APRIL 23, 2014

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, March 25, 2014, 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, E. Patrick Maguire, LEED AP, and Jason Mammone, P.E.

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

At 7:35 p.m., the Chairman called for the hearing on the petition of Phoenix Properties Group, LLC, and Katherine N. Conkling for such special permits and variances required to alter, change, expand, and enlarge (including but not limited to adding upper floors, extension of an exterior wall that is 3 feet from the sideline, and expansion of a free-standing garage) a pre-existing nonconforming use (3-family) and structure, and parking area and accessory uses related thereto at 60 Emmett Avenue, Dedham, MA, in a Single Residence B (SRB) Zoning District. *Town of Dedham Zoning By-Law Section 3.3.2, 3.3.3., 3.3.4, 9.2.2, 9.3, and Tables 1 and 2.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present at the hearing for Applicant were Jerry McCarty, the principal of Phoenix Properties, LLC, and Matthew Smith of Norwood Engineering, Inc., the project engineer. With the application, Attorney Zahka submitted various plot plans of the Subject Property as well a Memorandum in Support of the application. At the commencement of the hearing, Attorney Zahka distributed copies of the Dedham GIS Map as well as photographs of the Subject Property and existing buildings. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The Subject Property is known and numbered as 60 Emmett Avenue, Dedham, MA, and is shown on Dedham Assessor's Map 97 Lot 70. The Subject Property contains approximately 23,605 square feet of land with over 149 feet of frontage on Odyssey Lane and over 139 feet frontage on Emmett Avenue. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Single Residence B (SRB) Zoning District.

Currently located on the Subject Property is a 3-family residential dwelling. According to records maintained by the Dedham Board of Assessors, the building was originally constructed in 1890. The structure varies in height from 1-story to 3-stories. The existing structure is approximately 3 feet from the sideline (Emmett Avenue). Also located on the Subject Property are a 1-story 491 square foot two-car garage and a 50 square foot shed.

Applicant Phoenix Properties, LLC, has entered into an agreement to purchase the Subject Property which is currently owned by Applicant Katherine N. Conkling, P.O. Box 728, Shareham, NY. Applicant Phoenix Properties Group, LLC, (hereinafter the "Applicant") proposes to modify the existing 3-family dwelling to townhouse-type units. This will be done by adding upper floors to various portions of the structure. The expansion will be contained within the existing footprint. The exterior wall of the structure which is 3 feet from the sideline (Emmett Avenue) will be extended to add an upper floor. In addition, Applicant proposes to expand the existing garage from two bays to three bays and shall be providing additional on-site parking.

Table 1 (Principal Use Table) of the Dedham Zoning By-Law indicates that 3-family residential dwellings are not a use allowed in the SRB Zoning District. In addition, Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law provides that structures in the SRB Zoning District must have a minimum side yard setback of 15 feet. As indicated above, the side yard setback for the existing structure is only 3 feet. Section 10 of the Dedham Zoning By-Law defines a "nonconforming building, structure or use" as "an existing legally established or erected 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 the size, dimensions, location, or use of building or land." Inasmuch as the structure and use at the Subject Property predate the Dedham Zoning By-Law prohibition, the same are considered as legal pre-existing nonconforming uses.

The Dedham Zoning By-Law authorizes and empowers the Zoning Board of Appeals (hereinafter "ZBA") to grant special permits to extend or enlarge non-conforming uses and non-conforming structures. Specifically, Sections 3.3.2 and 3.3.3 of the Dedham Zoning By-Law provide that:

3.3.2 Nonconforming Uses. 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.

3.3.3 Nonconforming Structures. 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.

The Applicant submits that the above criteria for issuance of the requested Special Permits have been satisfied. The existing structure is a 3-family dwelling and will remain as such following the Applicant's proposed renovations (i.e., no increase in the number of dwelling units). The existing structure is in need of significant repair and updating which the

Applicant will undertake if granted the requested relief. In addition, the Applicant will improve traffic flow and safety by expanding the garage and by providing sufficient off-street parking (which is subject to review by the Dedham Planning Board). The project will also be submitted to the Dedham Conservation Commission for a Stormwater Management Permit. Without the requested relief, the existing structure will continue as a 3-family dwelling but without these extensive improvements which will enhance the aesthetic appearance of the Subject Property and should benefit the entire area.

As noted above, the Applicant will be extending an exterior wall which is 3 feet from the side-line. Section 3.3.4 of the Dedham Zoning By-Law provides that "the extension of an exterior wall at or along the same nonconforming distance within a required yard, shall require the issuance of a variance from the Board of Appeals". 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 Applicant respectfully submits that the requirements for issuance of the requested variance have been satisfied. Simply stated, without the variance, the proposed renovations and upgrading of the existing structure are impossible (since the structure is already 3 feet from the sideline). Removal of a portion of the structure to bring the same into compliance with the setback requirements would be a severe financial hardship to the Applicant and is not practical or feasible.

Mr. Ibrahim Tannous, 15 Odyssey Lane, Dedham, MA, a direct abutter to the Subject Property, appeared at the hearing and expressed his concern that the location of the proposed parking spaces would interfere with the use and enjoyment of his own property. Mr. Tannous requested a fence along the entire length of the common property line. Also speaking on behalf of Mr. Tannous was Mr. Richard Cimeno, a former Dedham Housing Inspector, who raised an issue as to whether the property was a legal 3-family dwelling.

Mr. Sangwoo Lee, 2 Odyssey Lane, Dedham, MA, appeared at the hearing and indicated his preference for the existing building to be demolished and a single family dwelling be erected in its place.

In response to the abutters' concerns, the Applicant indicated that a fence could not be erected on or close to the common boundary line with Mr. Tannous due to the existence of a 10 foot wide drain easement. The Applicant proposed relocating the parking spaces so that the same were not facing Mr. Tannous' property, and to erect a small fence to shield the same. There was a lengthy discussion regarding the location and length of the fence. The Applicant indicated that he would be refurbishing the garage and did not see the need for a fence behind the same. In addition, the Applicant produced sufficient evidence (including testimony of former occupants) that the Subject Property has been utilized as a 3-family for at least 60 years.

Upon motion being duly made by Jason L. Mammone, P.E., and seconded by Scott M. Steeves, the ZBA voted unanimously (5-0) to grant such special permits and/or variances to alter, change, expand, and enlarge (including but not limited to adding upper floors, extension of an exterior wall that is 3 feet from the sideline, and expansion of a free-standing garage) a pre-existing nonconforming use (3-family) and structure, and parking area and accessory uses related thereto at 60 Emmett Avenue, Dedham, MA, in a Single Resident B (SRB) Zoning District. The aforesaid relief is granted on the condition that the Applicant erect a fence between the garage and the drain easement on the Subject Property, which will run parallel to the common property line with 15 Odyssey Lane. Said fence shall start at a point approximately even with that portion of the garage closest to Odyssey Lane; provided, however, that the Applicant shall contact Mr. Tannous prior to construction of the fence and if he consents in writing, the fence may commence at the point approximately even with that portion of the garage furthest from Odyssey Lane (i.e., the fence would not be erected behind the garage).

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.

The 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 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: March 25, 2014

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

J. Gregory Jacobsen
J. Gregory Jacobsen

Scott M. Steeves
Scott M. Steeves

E. Patrick Maguire
E. Patrick Maguire, LEED AP

Jason L. Mammone
Jason Mammone, P.E.

Attest, by the Administrative Assistant:

Susan N. Webster
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:

- Zoning Board of Appeals application
- Owner consent and authorization
- Memorandum of Applicant prepared by Peter A. Zahka II, Esq.
- Site Layout Plan prepared by Norwood Engineering Company, Inc., 1410 Route One, Norwood, MA 02062
- Town of Dedham GIS map
- Photographs of existing conditions