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TOWN OF DEDHAM ZONING BOARD OF APPEALS MINUTES

Wednesday, June 17, 2015, 7:00 p.m.
Lower Conference Room



Present: James F. McGrail, Chairman
J. Gregory Jacobsen, Vice Chairman
Scott M. Steeves
E. Patrick Maguire, LEED AP
Jessica L. Porter
Jared F. Nokes, J.D.
Susan Webster, Administrative Assistant

Mr. McGrail called the meeting to order at 7:03 p.m. The plans, documents, studies, etc. referred to are incorporated as part of the public record and are on file in the Planning and Zoning office. In addition, the legal notice for each hearing was read into the record. Mr. McGrail noted that Member Jason L. Mammone, P.E., would not be present for the evening's hearings, and appointed Associate Member Jessica L. Porter to sit in his stead.

Applicant:	EGP IK Plan, Robert Bousaleh, Trustee
Property Address:	10 Helena Road, Dedham, MA
Case #:	VAR-05-15-1968
Property Owner/Address:	EGP IK Plan, Robert Bousaleh, Trustee, 31 Prescott Street, South Weymouth, M 02190
Map/Lot, Zoning District:	183/12, General Residence
Date Of Application:	May 8, 2015
Present And Voting:	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jessica L. Porter
Representative:	Robert Bousaleh, owner Kateri M. Bousaleh, Esq., MacDonald Bousaleh Law Offices, P.C., 53 Plain Street, P.O. Box 850336, Braintree, MA 02184
Legal Notice:	To be allowed a Special Permit to re-establish the use of the property as a single family dwelling in the Flood Plain Overlay District
Section Of Zoning Bylaw:	Town of Dedham Zoning Bylaw Section 8.1.5, Flood Plain Overlay District, Procedures, Section 9.2, Board of Appeal, and Section 9.3, Special Permits

The Applicant purchased the property on April 29, 2015, after it had been foreclosed. The nonconforming single family dwelling was built in 1935. The lot is 12,000+ square feet, and the existing dwelling is approximately 1,500 square feet. The Building Department issued a permit to repair, renovate, and make the house suitable for occupancy. A hole in the roof was repaired, and electrical service has been restored. Mold and mildew have been removed and remediated, and further renovations are ongoing. The request for a Special Permit is to resolve any questions regarding the use of the house as a single family dwelling. Atty. Bousaleh gave a brief history of the previous occupants, who left without telling anyone and left clothes, shoes, and furniture. The lender, who acquired the property through foreclosure, did minor maintenance, i.e., mowed the lawn, secured doors and windows, and removed a swimming pool. The Applicant now wishes to make the property a credit to the neighborhood.

Frederick Johnson, Town of Dedham Building Inspector, said that the property, an existing single family dwelling, is located directly in a flood zone. Under the Zoning Bylaw, there is a two-year loss of use if a property is not used; if the petition is not granted, the grandfathered use will be lost. The Applicant has permits from the Building Department to maintain it. However, the use of a single family dwelling in the Flood Plain Overlay District is a prohibited use. Since the property has clearly been abandoned for over two years, the Applicant needs relief to establish residency and use the property for a residence. It could be maintained in perpetuity to protect the structure, but no one could move in. They therefore are requesting a renewal of the use of the single family dwelling in a flood plain overlay district. The Building Department discovered this in the winter of 2010 after receiving a phone call. The utilities had been shut off, but no one had ever shut off the water. The basement was flooded, and had to be pumped out by the Fire Department. The water was shut off at the street and the property was secured on April 6, 2010. Ms. Bousaleh said that this is an example of how vacant properties create problems for municipalities, i.e., police calls for crime, squatters, and wildlife, and Fire Department calls for arson. They can also affect home values by as much as 10%. She noted that the Applicant is planning to add a deck, and is aware that there can be nothing in the basement due to the flooding.

Francis Kirby, 26 Helena Road, spoke in favor of the petition. John Corish, 82 Trenton Road, said the property is in awful condition, and asked what would happen to the rest of it. Ms. Bousaleh said that the property would be landscaped and mowed, and will be an improvement. Mr. Corish asked if renovation was the only option. Ms. Bousaleh said that tearing it down would be problematic and expensive. The house is solid. There has been serious remediation performed inside as well. Mr. Corish said that it should be torn down and a new house built closer to Trenton Road. He also said that the road is a mess, having been dug up for utilities, and water sits and brings bugs. Ms. Bousaleh said that any dips in the road can be filled, but noted that there is a high water table in the area. The Applicant said that he will work toward paving the road, which is private. Mr. Corish asked what the policy is for converting the road to a public way, and Mr. McGrail explained the process. Danielle Jurdan, 77 Trenton Road, said that saying the property is "scruffy" is an understatement. The neighbors are constantly trying to keep children out of the property. She said that anything that can be done to improve it will be great. Ms. Bousaleh noted that all repairs and renovations will be done under the supervision of the Building Department. No one else spoke in favor or in opposition to the petition.

Mr. Jacobsen made a motion to approve the Special Permit to re-establish the use of the property as a single family dwelling in the Flood Plain Overlay District. Ms. Porter seconded the motion. The vote was unanimous at 5-0. This hearing ended at 7:24 p.m.

Applicant: Steven Foss
Property Address: 14 Hazelnut Place, Dedham, MA
Case #: VAR-05-15-1971
Property Owner/Address: Steven Foss, 14 Hazelnut Place, Dedham, MA
Map/Lot, Zoning District: 112/35, General Residence
Date Of Application: May 21, 2015
Present And Voting: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jessica L. Porter
Representative: Steven Foss
Legal Notice: To be allowed a front yard setback of 0 feet instead of the required 20 feet to construct an A frame roof to an existing front porch
Section Of Zoning Bylaw: *Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements*

Mr. Foss explained that his property is located on a private way. There is an existing porch on his property, and he wanted to dress it up with a peaked roof. The house is right on the street, hence the request for a front yard setback of 0 feet. The roof has already been constructed, and Mr. Foss said he was unaware of the need to come before the Zoning Board of Appeals. No one spoke in favor or in opposition to the petition, and no one had any questions. Mr. Steeves made a motion to allow a front yard setback of 0 feet instead of the required 20 feet to construct an A frame roof to an existing front porch. Ms. Porter seconded the motion. The vote was unanimous at 5-0. This hearing ended at 7:24 p.m.

Applicant: Joseph Bourgeois and Meghan Rock
Property Address: 697 Washington Street, Dedham, MA
Case #: VAR-05-15-1972
Property Owner/Address: Craig Todaro and Allison Staton, 30 Woodleigh Road, Dedham, MA
Map/Lot, Zoning District: 135/55, General Residence
Date Of Application: May 26, 2015
Present And Voting: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jessica L. Porter
Representative: Mollie Moran, AIA, 64 Dwight Street, Dedham, MA
Joseph Bourgeois, 20 Radcliff Road, Somerville, MA 02145
Legal Notice: To be allowed a Special Permit to have an accessory dwelling unit in an existing single family dwelling
Section Of Zoning Bylaw: *Town of Dedham Zoning Bylaw Section 7.7, Special Residential Regulations*

Mr. McGrail noted that Mr. Maguire recused himself from this hearing due to a professional relationship with Ms. Moran, who is also Mr. Bourgeois' mother. He explained that there would only be four members of the Board hearing the petition, which would require a unanimous vote for approval. He gave Ms. Moran and Mr. Bourgeois the option of continuing the hearing until the next meeting, or continuing. They chose to continue. Ms. Moran explained that Mr. Bourgeois and his wife, Meghan Rock, will be moving back to Dedham, and will be purchasing 697 Washington Street. The building is an existing antique building built in 1870.

and the Applicants would like to add an accessory dwelling unit. She submitted a memo in support of the application listing twelve points that need to be achieved in order to do that.

Zoning Bylaw Requirement	Applicant Response
1. <i>No more than one accessory dwelling unit shall be allowed per lot</i>	The submitted drawings only propose one accessory dwelling unit.
2. <i>The lot on which the dwelling unit is located contains at least 10% greater land area than required by the dimensional regulations for its district</i>	The lot contains 15,388 square feet, which is 23% more than the required lot area for the district.
3. <i>The proposed dwelling unit is accessory to the principal residence and either the proposed dwelling unit or the principal residence is occupied by the owner of the lot on which the dwelling unit is located.</i>	The applicant intends to live in the principal residence.
4. <i>The proposed dwelling unit shall be designed for two persons and shall not be occupied by more than two persons.</i>	As shown on the plans, the accessory dwelling unit has only one bedroom and is intended to be occupied by no more than two persons.
5. <i>The building in which the proposed dwelling unit is to be located existed on the date of the adoption of this subsection of the Zoning Bylaw.</i>	The building in which the proposed dwelling unit is to be located is an antique home which existed well before the date of adoption of this subsection of the Bylaw.
6. <i>The Special Permit, if granted, shall clearly state that it is not transferable to a purchaser of the lot, and shall require, as a condition of its validity, that a certified copy of the permit be filed with the Registry of Deeds by the Applicant.</i>	This condition is understood.
7. <i>Exterior alterations required to meet applicable building, fire, or health codes are permitted and must be designed to conform to the architectural integrity of the structure and the residential character of the neighborhood.</i>	There are no exterior alterations required to meet any of these codes.
8. <i>The accessory dwelling unit created shall be a minimum of 350 square</i>	The proposed accessory dwelling unit is 944 square feet, or 32.5% of the

feet and a maximum of 1,000 square feet or 33% of the total building size in the dwelling structure, whichever is less.

9. *One parking space shall be provided and designated for each accessory apartment established in addition to the prior requirements for the property. Such parking space shall be created in conformance with all applicable dimensional requirements and screened appropriately from abutting properties.*

10. *Alterations to the building dwelling unit shall be designed to be compatible with the surrounding residential district and shall not create a second entrance in the front of the building.*

11. *The Board shall review and approve the septic system on site as part of the approval process.*

12. *Any Special Permit granted pursuant to this section shall require that the applicant request certification of the permit every three years and failure to request such certification shall cause the permit to lapse.*

total building size (per the plans and calculations submitted).

One parking space will be provided in the parking area to the rear of the existing dwelling. This parking area is screened from abutting properties by fencing and trees. Note also that the new parking area proposed will also significantly improve the safety for vehicles exiting onto Washington Street as the parking area will allow vehicles to turn around on site and exit frontward instead of current conditions which force vehicles to back onto Washington Street

No alterations are planned to the existing dwelling unit exterior. The addition to the rear is planned to be compatible in color and materials and designed in a manner appropriate to traditional homes.

The current septic system needs replacement or removal. The applicant is in the process of filing an application for a sewer connection to Washington Street. If a sewer connection is not possible, a new septic system will be permitted through the Dedham Board of Health. Therefore, a review of this current septic system is not required as part of this application.

The applicant is aware of this condition.

Ms. Moran indicated that no other variance or relief are being requested. The addition will be long and thin measuring 18' x 40' back from the existing house. The site is wooded and will provide shielding from the abutters. The applicant will rent out the accessory unit. It is to be noted that there is a total of \$15,121.28 in taxes that are owed to the Town of Dedham, and Ms. Moran stated that this will be paid at the time of sale on September 1, 2015. Mr. McGrail

said that any decision cannot be effective until that time, and Ms. Moran was aware of that. He also stated that any decision will have specific conditions related to #6 and #12.

Barbara Cote, owner of 19 Sylvia Lane, asked for clarification on the accessory dwelling unit. Ms. Moran explained that the building will be an extension of the existing house, not a separate building. There is more than adequate setback and will not impact Sylvia Lane. Elias Mansour, 705 Washington Street, said the property in question abuts his. He asked what side the addition will be on. Ms. Moran explained that it will be on the back.

Mr. McGrail asked Ms. Moran if she had met with the abutters, and she said she had not. He asked her to meet with the neighbors, and continued the meeting to July 15, 2015. Ms. Moran said that they are not requiring additional relief, and they have met the criteria. She said the Applicant was concerned about obtaining financing prior to closing in September. Ms. Cote said they have no information on this proposal. Mr. McGrail said that meeting with the neighbors will be a courtesy. Ms. Moran said she had spoken with one of the neighbors. Mr. Mansour expressed concern because the house will be a two-family dwelling, and he does not know what kind of people will rent the accessory dwelling unit. Ms. Moran explained that the occupants would be her son, his wife, and their year-old baby, and that they will be extremely careful about any renters.

Mr. McGrail asked Ms. Moran to meet with the neighbors prior to the continued meeting on July 15, 2015. The hearing ended at 7:34 p.m.

Applicant:	Whole Foods Market c/o Hattie Brown
Property Address:	300 Legacy Place, Dedham, MA
Case #:	VAR-05-15-1970
Property Owner/Address:	Legacy Place, LLC, 33 Boylston Street, Suite 3000, Chestnut Hill, MA 02467
Map/Lot, Zoning District:	162/1, Research, Development, and Office
Date Of Application:	May 21, 2015
Legal Notice:	To be allowed to install a freight farm container for the purposes of growing local produce on the pad site at Legacy Place between Yardhouse and Showcase Cinemas for the period of June 20, 2015, to October 1, 2015

Mr. Maguire returned to the Board for the remainder of the evening.

Mr. McGrail announced that the Applicant sent an e-mail to the Zoning Board of Appeals wishing to withdraw, without prejudice, the Special Permit petition for a freight farm container at Legacy Place. Mr. Jacobsen made a motion to allow the withdrawal, seconded by Mr. Steeves. The vote was unanimous at 5-0. This discussion ended at 7:35 p.m.

Applicant: Alexander A. Argiros, Trustee, Dedham 865 Realty Ventures Nominee Trust and Dedham 875 Realty Ventures Nominee Trust
Property Address: 865 and 875 Providence Highway
 Lot 32, Orchard Street
 Lot B, 835 Providence Highway
Case #: VAR-05-15-1973
Property Owner/Address: Alexander A. Argiros, Trustee, Dedham 865 Realty Ventures Nominee Trust and Dedham 875 Realty Ventures Nominee Trust, 1461 VFW Parkway, West Roxbury, MA 02132
Map/Lot, Zoning District: 149/34, 149/35, 136/11, Research Development and Office
Date Of Application: May 22, 2015
Present And Voting: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jessica L. Porter
Representative:

- Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
- Michael Argiros, Owner
- James DeVellis, Project Engineer, DeVellis Zrein, Inc., P.O. Box 307, Foxborough, MA 02035
- Steven Allen AIA, LEED AP, Prellwitz Chilinski Associates, 221 Hampshire Street, Cambridge, MA 02139

Legal Notice: To be allowed such variances and/or Special Permits and/or waivers as may be required for the change, alteration, extension, or enlargement of pre-existing non-conforming buildings and parking lot, the demolition of the existing buildings and construction of new buildings with a front yard setback of 5 feet instead of the required 30 feet, frontage landscape buffer of 5 feet instead of the required 20 feet, and a parking lot for more than 20 vehicles to be within 40 feet of a residential zoning district line, for retail uses, uses requiring a common victualler license, for a drive-through facility, and for a free standing sign with a front yard setback of 5 feet.
Section Of Zoning Bylaw: *Town of Dedham Zoning Bylaw Sections 2.1.4 Location of Boundaries, 3.3.2 Nonconforming Uses, 3.3.3 Nonconforming Structures, 3.3.4 Variance Required, 3.3.7 Reconstruction After Catastrophe or Voluntary Demolition, 4.2.2 Buildings Permitted in Nonresidential Districts, 5.1.10.4 Zoning District Requirements - Buffer Area, 5.2.2 Landscaped Areas, 9.2.2 Powers, 9.3 Special Permits - Procedures, Table 1 Use Regulation Table, and Table 2 Dimensional Requirements; Town of Dedham Sign Code Sections 8 Nonconforming Signs and Signs Without Permits, 11 Appeals, Table 1 Permitted Signs by Type and District, and Table 2 Sign Dimensions and Location*

These minutes are based on the decision written by Peter A. Zahka II, Esq.

The Applicant proposes to redevelop the real estate known and numbered as 865 Providence Highway, 875 Providence Highway, an approximate 6,000 square foot parcel to the

rear of 865 Providence Highway,¹ and an approximate 4,000 square foot parcel behind 875 Providence Highway² (hereinafter referred to collectively as the "Subject Property"). The portion of the Subject Property known as 865 Providence Highway, shown on Dedham Assessors' Map 149-35, contains approximately 17,217 square feet of land and has approximately 138.71 feet of frontage on Providence Highway. The portion of the Subject Property known as 875 Providence Highway, shown on Dedham Assessors' Map 149-34, contains approximately 29,703 square feet of land and has approximately 209.24 feet of frontage on Providence Highway. Therefore, inclusive of the aforesaid 6,000 square foot and 4,000 square foot parcels, the Subject Property consists of a total of approximately 56,920 square feet of land and has approximately 348.95 feet of frontage on Providence Highway. According to the Dedham Zoning Map, the Subject Property is located in the Research Development & Office (RDO) and Single Residence B (SRB) Zoning Districts.

The Subject Property is currently occupied by two (2) two-story office buildings. The building at 865 Providence Highway has approximately 8,507 (gross) square feet of floor area and the building at 875 Providence Highway has approximately 13,403 (gross) square feet of floor area. Therefore, the Subject Property currently contains approximately 21,910 square feet of floor area. These buildings have a height of approximately thirty (30) feet to the top of ridge. The portions of the Subject Property consisting of the 4,000 square foot and 6,000 square foot parcels have historically been utilized as parking for the aforesaid buildings. The entire area (including the two rear parcels) surrounding the buildings consists almost entirely of a paved parking lot with little on-site landscaping. In addition, the Subject Property contains two free-standing signs (one in front of each building) with front yard setbacks of 3.9 feet and 0 feet.

The Subject Property is accessed via curb cuts on Providence Highway including one curb-cut directly across from Legacy Boulevard, which is controlled by a traffic signal. The Subject Property is also accessible in the rear via Wilson Avenue/Orchard Street, and is used as a cut-through between Providence Highway and Washington Street (Route 1A). To the south of the Subject Property is a heavily developed commercial area. To the west (rear) of the Subject Property is a residential neighborhood of Orchard Street/Wilson Avenue/Lee Terrace.

As noted above, the vast majority of the Subject Property is located within the RDO Zoning District. However, while historically used as part of the parking lot for the Subject Property, portions of the two rear parcels are partially located in the Single Residence B (SRB) Zoning District.

The Subject Property and buildings thereon are pre-existing nonconforming in a number of respects. According to Dedham Zoning By-Law Table of Dimensional Requirements, lots in the RDO Zoning District are required have to a minimum side yard setback of 15 feet, a max-

¹ This parcel is owned by Dalco Realty Trust and is shown as Lot B on various plans including a plan dated July 25, 1932, prepared by E. Worthington Engineer, filed with Norfolk Registry of Deeds as Plan No. 801 of 1968 in Plan Book 225. The Applicant will be acquiring this parcel from Dalco Realty Trust.

² This parcel is shown as Lot 32 on various plans including the plan referenced in Footnote 1 above. The Applicant, Dalco Realty Trust, and the owner of 54 Wilson Avenue are the only abutters to Lot 32. The Applicant will be acquiring any rights that Dalco Realty Trust may have in Lot 32. To clear up any future ownership issues relating to Lot 32, the Applicant has proposed "exchanging" deeds with the owner of 54 Wilson Avenue so that each will have the full ownership and use of half of the same.

imum floor area ratio of 35%, and a lot area of 1 acre. Currently, 865 Providence Highway has a side yard of 12.3 feet, a floor ratio of 44%, and a lot area of .395 acres. Currently, 875 Providence Highway has a floor area ratio of 37% and a lot area of .682 acres. Likewise, the parking lot is pre-existing nonconforming. Section 5.1.10.2 of the Dedham Zoning By-Law provides that in the RDO Zoning Districts no portion of a parking lot with twenty or more cars shall be located within forty (40) feet of a residential district boundary. As stated above, portions of the current parking lot are actually located in the residential district, with the vast majority of the parking lot within forty (40) feet of the residential boundary line. In addition, the existing signs on the Subject Property are pre-existing nonconforming. Table 2 of the Dedham Sign Code provides that free-standing signs in the RDO Zoning District³ to have a front yard setback of 25 feet. As previously indicated, the two free-standing signs currently existing on the Subject Property have front yard setbacks of 3.9 feet and 0 feet.

The Applicant proposes to redevelop the Subject Property by demolishing the two existing buildings and constructing two new one-story buildings with associated parking. One building (to be located on the current 865 Providence Highway) will contain approximately 4,680 square feet of floor area, and will be used and occupied by various office tenants and/or small retail tenants and/or a bank. The other building (to be located on the current 875 Providence Highway) will have approximately 6,800 square feet of floor area, and will be used and occupied by a 1,900 square foot coffee shop (such as a Starbucks) with a drive-thru and seating for approximately 20 patrons as well as various other retail and/or office tenants. The new buildings will have an average height of 22 feet (compared to the existing 30 feet). As proposed, the buildings will be located between 5-10 feet from Providence Highway. The majority of the associated parking will be to the rear of the property and, as currently designed, will include a drive-thru for the coffee shop and 64 parking spaces. In addition, the Applicant will be significantly increasing the on-site landscaping. This will include the required 15% of the interior landscaping and 5 feet of landscaped buffer around the perimeter of the parking lot. The Applicant proposes to install a fence along the rear property line and along the property line with Wilson Avenue. In addition, the area between the buildings and Providence Highway will be landscaped. The Applicant will also be "adopting" the landscaping in the State right-of-way, which will be incorporated into the frontage landscaping and provide an additional 5 to 10 feet of landscaping in this area. The two existing signs will be removed and one new free-standing sign will be located in the landscape island with a front yard setback of approximately 5 feet. Access to the Subject Property will be via two curb cuts on Providence Highway: The existing curb-cut at the traffic signal will be utilized as an entrance and exit, and the Southern curb cut as an exit only (including an exit for the drive-thru). Inasmuch as there will be landscaping and a fence along the rear and south side, there will no longer be access to the rear of the Subject Property from Orchard Street or Wilson Avenue.

The Applicant seeks variances to allow a front yard setback of 5 feet as well as a landscaping buffer of 5 feet. Pursuant to the authority granted under Section 9.2.2 of the Dedham Zoning By-Law, 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." The Applicant had previously met with Planning Director Richard J. McCarthy, Jr. and Building Commissioner Kenneth R. Cimeno to review and discuss initial concept plans, which depicted the proposed buildings satisfying the Dedham Zoning By-Law front yard set-

³ Under the Dedham Sign Code, lots in the RDO Zoning District with frontage on a major highway follow the regulations relating to lots in the Highway Business (HB) Zoning District.

back requirement. After these meetings, the Planning Director suggested relocating the buildings closer to Providence Highway. Bringing the buildings closer to Providence Highway allows for better on-site circulation, pushes the buildings further from the residential abutter, and provides for an overall improved site design. Subsequently, the Applicant appeared before the Planning Board for a "scoping session" with revised conceptual site plans that incorporated the aforesaid suggestions. At its meeting of April 16, 2015, the Planning Board voted to support the variances necessary for this site design. At that time, the Applicant agreed to incorporate the landscaping in the State highway layout into its frontage landscaping. A letter, dated June 17, 2015, from Planning Director Richard McCarthy reciting the above was submitted to the ZBA and is incorporated herein by reference.

The Applicant also seeks special permits for the following uses at the Subject Property: (a) retail, (b) coffee shop (i.e., a use requiring a common victualler license, and (c) a drive-through facility. Pursuant to Footnote 22 to Table 1 (Use Regulation Table") of the Dedham By-Law, special permits may be granted for retail uses and uses requiring a common victualler license in the RDO Zoning District provided (1) such uses are located on a lot having frontage on a major highway, and (2) the projected traffic generation by all uses on the lot during afternoon peak hour does not exceed 3.5 trip ends per 1,000 square feet of lot area, excluding pass-by trips by not diverted trips, based upon current trip generation materials from the ITE. The Applicant submits that both requirements are satisfied. First, Providence Highway is a major highway as the same is defined under the Dedham Zoning By-Law. Second, the Applicant submitted a report by Bayside Engineering, Inc., dated May 14, 2015, indicating that the weekday evening peak hour traffic for all the proposed uses on the Subject Property is 2.86 trip ends per 1,000 square feet of land area. The Applicant submits that this report was conservative since pass-by trips were not excluded and because it was based upon a land area of 47,000 square feet (instead of the almost 57,000 square feet included in the Subject Property).

In addition, the Applicant seeks such special permits to alter, extend, and change pre-existing nonconforming uses and structures. As described above, the existing buildings and parking lot are pre-existing nonconforming. Pursuant to Sections 3.3.2 and 3.3.3 of the Dedham Zoning By-Laws, the Board of Appeals may award a special permit or variance to reconstruct, extend, alter, or change a nonconforming structure and use if "it determines that such . . . shall not be substantially more detrimental" than the existing nonconforming use and/or structure to the neighborhood. In addition, Section 3.3.7 of the Dedham Zoning By-Law authorizes the ZBA to grant special permits for the voluntary demolition and reconstruction of nonconforming structures. The Applicant proposes to alter, extend, and change (and continue to use) the existing parking lot located on the Subject Property including that located in the residential zoning district. The reconstructed buildings (which will satisfy all dimensional requirements except for the front yard setback and frontage landscape buffer) and the new improved parking lot will not be substantially more detrimental than the existing nonconforming structures and uses. In fact, the Applicant avers that this will actually be less detrimental than the pre-existing conditions. The new buildings will be lower and further away from the residential neighborhood. In addition, the parking lot will be upgraded and landscaped, and a fence installed along the rear property line in common with the residential abutter.

The Applicant also seeks a waiver from the Dedham Sign Code requirements for a 25 foot front yard setback for a free-standing sign. As indicated above, there are two pre-existing signs with front setbacks of 3.9 feet and 0 feet. The Applicant proposes to remove those signs and erect a new free standing sign with a front yard setback of 5 feet. Pursuant to

Dedham Sign Code Section 8.f, "an existing nonconforming sign with a . . . setback from a public way less than allowable under this chapter may be replaced with a sign erected on the same lot with . . . setback less than allowable under this chapter upon the issuance of a waiver by the Board of Appeals; provided, however, that . . . the minimum setback of any sign erected under this paragraph shall be no less than the current setback of the nonconforming sign being replaced." The Applicant submits that such a waiver is warranted in this case since (a) two non-conforming signs are being eliminated, (b) the proposed new sign will have a front yard setback greater than the existing signs, and (c) the proposed building will have front yard setbacks of 5 feet. The Applicant also notes that all other signs will comply with the Dedham Sign Code. In addition, the Applicant has agreed not to permit any internally illuminated signs on the rear of the building facing the residential neighborhood.

The Applicant respectfully submits that it satisfies the requirements and criteria for the issuance of the requested variances, special permits, and waivers. In addition to the matters set forth above, the proposed construction will eliminate numerous pre-existing nonconformities at the Subject Property. The only requested variance is to allow the building to be moved forward as suggested and supported by the Planning Director and the Planning Board. Locating the buildings closer to Providence Highway, reducing the height of the buildings (from 30 feet to 22 feet), and decreasing the total floor area (21,910 square feet to 11,480 square feet) will lessen the impact on the abutting residential neighborhood. With the exception of the front yard setback and frontage landscape buffer, the Applicant's proposal will meet and satisfy the Dedham Zoning By-Law requirements for parking spaces and for internal and perimeter landscaping. The Applicant will be upgrading the stormwater management and drainage from the Subject Property. The Project will be submitted to the Dedham Conservation Commission for review and approval and will be submitted to the Dedham Planning Board for Major Site Plan Review.

The Applicant also indicated that, prior to the appearing before the Zoning Board of Appeals, it held a meeting with the residential abutters to discuss the Project and to listen to their concerns. One of the major issues and concerns of the residential abutters was related to the volume and speed of traffic on Orchard Street and Wilson Avenue. In response to these concerns, the Applicant has offered to conduct a traffic study (volume and speed) of the traffic on these streets to assist the residents in making rational and informed decisions, and for the residents to submit to Dedham's Transportation Advisory Committee for consideration of speed humps or other traffic calming measures. The Applicant did note that some of the residential abutters were not in favor of eliminating the rear access to the Subject Property (but that there was no consensus on the same).

A number of the residential abutters from Orchard Street, Wilson Avenue, and Lee Terrace appeared and spoke at the meeting. The primary topic of concern raised by these abutters related to the traffic on Wilson Avenue and Orchard Street. While many of the neighbors supported the closure of the access to the Subject Property from these streets, others held a contrary position (and even indicated their displeasure with the Town's closure of the Providence Highway curb-cut from Wilson Avenue). Several residents noted that the traffic problems on their streets have become more severe since the installation of the traffic lights at the intersection of Washington Street/Elm Street/Highland Avenue (which cause substantial back-up on Washington Street). Other matters raised by the abutters included the location of the proposed dumpsters, the height of the proposed fence (they desired an 8 foot high fence), assurances that any special permit for the use with a common victualler license and

the drive-thru be limited to a coffee shop (and not other food establishments), and the lights from the parking lot.

Upon motion duly made by Jessica L. Porter and seconded by Scott M. Steeves, the ZBA voted unanimously (5-0) to grant and approve such variances and/or special permits and/or waivers as may be required for the change, alteration, extension, or enlargement of pre-existing, non-conforming buildings and parking lot, the demolition of the existing buildings and construction of new buildings with a front yard setback of 5 feet instead of the required 30 feet, frontage landscape buffer of 5 feet instead of the required 20 feet, and a parking lot for more than 20 vehicles to be within 40 feet of a residential zoning district line (including in and on the residential district), for retail uses, uses requiring a common victualler license, for a drive-through facility, and for a free standing sign with a front yard setback of 5 feet. Said variances and/or special permits and/or waivers are granted upon the following terms and conditions:

1. The Applicant shall install a fence on the Subject Property with a height of eight (8) feet on along the common property line with 54 Wilson Avenue and along at least a portion of Wilson Avenue. (While The Applicant has not requested a special permit for an eight (8) foot fence, it is the position of the ZBA that it has authority to require the same as a condition of approval. In the event that the Applicant is prevented from installation of a fence of eight (8) feet by any other municipal agency, board, or official, the same shall not affect the remainder of this decision or otherwise interfere with the Applicant's ability to proceed with the Project; provided, however, that in such event, the Applicant shall use reasonable efforts to make an application for a special permit for a fence with a height of eight (8) feet prior to the issuance of the final certificate of occupancy for the Project.)
2. The dumpsters serving the Subject Property shall be located away from the residential properties to the extent reasonably possible.
3. The wall signs on the rear of the proposed buildings visible to residential properties shall not be internally illuminated.
4. The special permits granted and approved for the use requiring a common victualler license and for the drive-through facility shall be limited to use by a coffee shop (such as a Starbucks). Any desired change for the use of such special permits shall require a new application to the ZBA.
5. The Applicant shall assist the residential abutters in addressing traffic concerns on Wilson Avenue and Orchard Street. Such assistance shall include providing the residential abutters with a traffic study/report on the volume and speed of traffic on Wilson Avenue and Orchard Street, examining and making recommendations regarding the "timing" of the traffic signals at Washington Street/Elm Street/ Highland Street (which appears to be causing excessive back-up on Washington Street), and working with Pauline's Books & Media at 885 Providence Highway relative to the potential closure of the Wilson Avenue driveway entrance to that site.
6. The parking lot lights serving the Subject Property shall be placed on a timer set to turn said lights off no later than one-half hour after the close of the businesses.

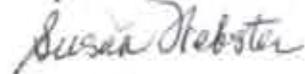
This hearing concluded at 9:44 p.m.

OLD/NEW BUSINESS

Mr. Steeves made a motion to approve the minutes of May 27, 2015. Mr. Maguire seconded the motion. The vote was unanimous.

Mr. Steeves made a motion to adjourn. Ms. Porter seconded the motion. The vote was unanimous. The meeting ended at 9:58 p.m.

Respectfully submitted,



Susan Webster
Administrative Assistant
Town of Dedham Zoning Board of Appeals

/snw