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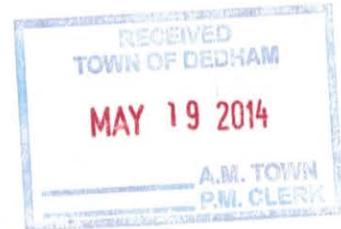
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**TOWN OF DEDHAM**  
COMMONWEALTH OF MASSACHUSETTS  
**ZONING BOARD OF APPEALS**  
**DECISION**



<b>APPLICANT:</b>	Angelo Locilento, Trustee of 144 River Street Realty Trust, 223 Sandy Valley Road, Dedham, MA
<b>PROJECT ADDRESS:</b>	144 River Street, Dedham, MA
<b>CASE #</b>	<b>VAR-03-14-1815</b>
<b>PROPERTY OWNER/ADDRESS:</b>	Angelo Locilento, Trustee of 144 River Street Realty Trust, 223 Sandy Valley Road, Dedham, MA
<b>MAP/LOT AND ZONING DISTRICT:</b>	128/5, General Residence
<b>DATE OF APPLICATION:</b>	March 19, 2014
<b>MEMBERS PRESENT AND VOTING:</b>	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E., Jessica L. Porter, Jared F. Nokes, J.D.
<b>PETITION:</b>	To be allowed such Special Permits and variances as may be necessary or required to alter, extend, and change a pre-existing nonconforming commercial building and use on a pre-existing nonconforming lot, to a uses as a two-family residential dwelling with a frontage and lot width of approximately 25 feet, with a front yard of approximately 5 feet, a side yard of approximately 2 feet, a rear yard of approximately 20 feet, a lot coverage of approximately 46 percent, and a floor area ratio of approximately 84% at 144 River Street in a General Residence (GR) zoning district.
<b>SECTION OF ZONING BYLAW:</b>	<i>Town of Dedham Zoning Bylaw Sections 3, 4.3.2, 5.8, 9.2.2, 9.3, and Tables 1 and 2</i>
<b>REPRESENTATIVE:</b>	Peter A. Zahka II, Esq.
<b>DATE FILED WITH TOWN CLERK:</b>	<b>MAY 19, 2014</b>

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on Wednesday, April 16, 2014, 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, 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 7:50 p.m., the Chairman called for the hearing on the petition of Angelo Locilento, Trustee of 144 River Street Realty Trust for such special permits and variances as may be necessary or required to alter, extend and change a pre-existing non-conforming commercial building and use on a pre-existing nonconforming lot, to a use as a two-family residential dwelling with a frontage and lot width of approximately 25 feet, with a front yard of approximately 5 feet, a side yard of approximately 2 feet, a rear yard of approximately 20 feet, a lot coverage of approximately 46 percent, and a floor area ratio of approximately 84 percent at 144 River Street, Dedham, MA in a General Residence (GR) Zoning District. *Town of Dedham Zoning By-Law Section 3, 4.3.2, 4.8, 9.2.2, 9.3, and Tables 1 and 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present at the hearing for the Applicant was the Applicant, Angelo Locilento, Trustee, and Applicant’s architect, Lucio Trabucco. With the application, Attorney Zahka submitted a certified plot plan of the Subject Property, as well a floor plans, elevations, and photographs of the existing building. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Subject Property is known and numbered as 144 River Street, Dedham, MA, and is shown on Dedham Assessor’s Map 128, Lot 5. The Subject Property contains approximately 2,163 square feet of land and has approximately 25 feet of frontage on River Street. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the General Residence (GR) Zoning District.

Currently located on the Subject Property is a 2-story commercial (office) building. According to records maintained by the Dedham Board of Assessors, the building was originally constructed in 1930. The existing building has a front yard of approximately 5 feet, a side yard of approximately 2 feet, a rear yard of approximately 20 feet, lot coverage of approximately 46%, and a floor area ratio of approximately 84%. To the Applicant's knowledge, the existing structure has always been used by commercial occupants including as a law office and driving school. There is a small area in the rear of the building that is utilized for off-street parking. This area is accessed via a right of way over the adjoining property.

The Applicant proposes to convert the existing structure for use as a two-family residential structure. As shown on the plans submitted by the Applicant, this conversion will not require any need for parking plan review, and there will be no changes to the footprint of the existing structure. The Applicant indicates that the only primary change to the structure is the addition of "dormers," which are required to increase the height of the second floor ceilings.

Table 1 (Principal Use Table) of the Dedham Zoning By-Law indicates that (with minor exceptions) commercial/offices uses are not a use allowed in the GR Zoning District (the proposed two-family dwelling is allowed in the GR Zoning District). In addition, Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law provides that structures in the GR Zoning District must have a minimum lot area and frontage/width of 7,500 square feet and 50 feet, respectively, for a single family home and 11,000 square feet and 90 feet, respectively, for a two-family home. In addition, said Table 2 provides that that structures and lots in the GR Zoning District must have a minimum front yard of 25 feet, a minimum side yard of 15 feet, a minimum rear yard of 25 feet, a maximum lot coverage of 30% and a maximum floor area ratio of 90%. As indicated above, the lot and existing structure do not conform to most of these requirements. 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 lot, structure and use at the Subject Property predate the Dedham Zoning By-Law prohibition, the same are considered as legal pre-existing nonconforming structures and 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:

3.3.2.1 **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.

3.3.2.2 **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 addition, Section 4.3.2 of the Dedham Zoning By-Law provides, in pertinent part, as follows:

The side and rear yard requirements hereof may be varied by the Board of Appeals in the specific case of an irregular, narrow, or shallow lot or a lot unusual either in shape or topography, provided that in the opinion of the Board it is impossible or extremely difficult to adhere to such requirements

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.

Section 9.2.2 of the Dedham Zoning By-Law empowers and authorizes the ZBA “to hear and decided 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 Applicant submits that the above criteria for issuance of the requested special permits and variances have been satisfied. The existing structure is already in existence and is being changed from a non-conforming use (commercial/office) to a conforming use (two-family dwelling). With the exception of “dormers,” there will be almost no changes to the structure. The required dimensional relief is primarily (i.e., except for the “dormers”) for non-conformities that already exist. The Applicant submits that there will be fewer vehicles from the use of the Subject Property as a two-family dwelling than as a commercial/office use. Without the requested special permits and variances, the proposed conversion would be impossible (since the structure and lot are already nonconforming). In order to bring the Subject Property into compliance with the dimensional requirements, it would require acqui-

tion of adjacent properties, which would be a severe financial hardship to the Applicant and is not practical or feasible.

Mr. Edward Killion, of 138 River Street, Dedham, MA, a direct abutter to the Subject Property, appeared at the hearing and expressed his concern with the parking for the proposed two-family dwelling. He indicated that the parking in the rear could accommodate no more than two vehicles and that there was an existing parking problem on the street. In response, the Applicant noted that the Dedham Zoning parking requirements for proposal are the same if not less than for existing commercial use of the building. After discussion with the ZBA, the Applicant also indicated his willingness to restrict the number of tenant vehicles allowed at the Subject Property.

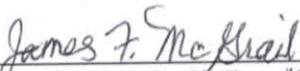
Upon motion being duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA voted unanimously (5-0) to grant such special permits and/or variances as may be necessary or required to alter, extend and change a pre-existing non-conforming commercial building and use on a pre-existing nonconforming lot, to a use as a two-family residential dwelling with a frontage and lot width of approximately 25 feet, with a front yard of approximately 5 feet, a side yard of approximately 2 feet, a rear yard of approximately 20 feet, a lot coverage of approximately 46 percent, and a floor area ratio of approximately 84 percent at 144 River Street, Dedham, MA in a General Residence (GR) Zoning District. The aforesaid relief is granted on the condition that the Applicant shall limit and restrict, by terms of the lease or otherwise, each dwelling unit to a single vehicle which shall be parked in the rear of the property (with no tenant parking allowed on the street).

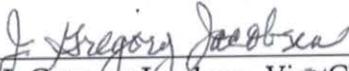
In granting of said special permits, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. In granting said variances, the ZBA finds that 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.

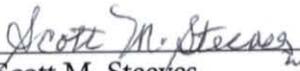
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no variance shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been 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: April 16, 2014

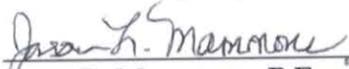
Attest, by the Zoning Board of Appeals:

  
James F. McGrail, Esq., Chairman

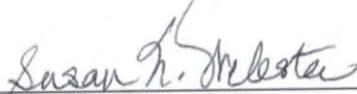
  
J. Gregory Jacobsen, Vice Chairman

  
Scott M. Steeves

  
E. Patrick Maguire, LEED AP

  
Jason L. Mammone, P.E.

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:**

- Zoning Board of Appeals application
- Addendum to ZBA application prepared by Peter A. Zahka II, Esq.
- Certified plot plan prepared by Boston Survey, Inc., Unit C-4 Shipways Place, Charlestown, MA 02129
- Photographs of existing conditions
- Renderings of proposed changes to property