

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS

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Dedham Town Hall
26 Bryant Street
Dedham, MA 02026-4458
Phone: 781-751-9242

Jennifer White Tahiraj
Administrative Assistant
jtahiraj@dedham-ma.gov

Associate Members

Jared F. Nokes, J.D.

DECISION

Applicant/Owner	Paul J. and Barbara R. Corey
Property Address	769 East Street, Dedham, MA
Zoning District	Single Residence B
Map and Lot	152/48
Representative	<ul style="list-style-type: none">Kevin F. Hampe, Esq., 411 Washington Street, Dedham, MAPaul J. and Barbara R. Corey, owners
Legal Notice	The applicants seek to be allowed a variance for a side yard setback for an existing single family dwelling to remain 13.1 feet instead of the required 15 feet on a newly created lot in the Single Residence B zoning district.
Section of Zoning Bylaw	<i>Town of Dedham Zoning Bylaw Section 4.0, Table 2</i>
Date of Application	May 29, 2018
Date of Public Hearing	June 20, 2018
Date of Decision	June 20, 2018
Vote	5-0, Unanimously approved
Voting Members	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E.

Date Filed With Town Clerk June 27, 2018

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts, held public hearings on Wednesday, June 20, 2018, in the Town Office Building, 26 Bryant Street, Dedham, Massachusetts. Present were members of the ZBA, James F. McGrail, Esq., Chair, J. Gregory Jacobsen, Vice Chair, Scott M. Steeves, and Jason L. Mammone, P.E.

The hearings for this meeting of the ZBA were duly advertised in *The Dedham Times* on June 1, 2018, and June 8, 2018, in accordance with the requirements of Massachusetts General

Law, Chapter 40A, Section 11, and the Town of Dedham Zoning Bylaw. In addition, notices of the hearings were sent to abutters within 300 feet of the property in question on June 1, 2018. Notification of each hearing was sent to the abutting towns of Boston, Needham, Canton, and Westwood. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Town of Dedham Planning Department.

The Applicant was represented by Kevin F. Hampe, Esq., 411 Washington Street, Dedham, MA. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

On May 29, 2018, the Applicant submitted an application, which included:

1. Zoning Board of Appeals application
2. Petition statement written by Kevin F. Hampe, Esq.
3. Plan of land prepared by James P. Toomey, PLS, 48 Summit Avenue, Walpole, MA
4. Deed recorded in Norfolk Registry of Deeds dated October 14, 1971
5. Town of Dedham Assessors Database information

The subject property is known and numbered as 769 East Street, Dedham, Massachusetts, and is shown on Dedham Assessor's Map 152, Lot 48. The certified plot plan indicates that the Subject Property contains 25,316 square feet of land and has 173.53 feet of frontage on East Street and 127.79 feet of frontage on Madison Street. According to the Town of Dedham Zoning Map, the Subject Property is located in the Single Residence B zoning district. Currently, the property is occupied by a single family dwelling with a large garage. According to the records maintained by the Dedham Board of Assessors, the building was constructed in 1695.

The applicants seek to be allowed a variance for a side yard setback for an existing single family dwelling to remain 13.1 feet instead of the required 15 feet on a newly created lot in the Single Residence B zoning district. *Town of Dedham Zoning Bylaw Section 4.0, Table 2*

Mr. Hampe explained that the property is in the Single Residence B, and is a single lot at this time. The property contains an historic house built in 1695. The property is under agreement to be sold to a developer who wants to subdivide the property and construct another single family dwelling. In order to do that, a variance for a side yard setback is needed. When it was constructed, it complied with side yard setback requirements of the Town of Dedham Zoning Bylaw. The requirements have changed, and require a 15 foot side yard setback for lots created after 1989. The existing house will remain in the same location and will be 13.1 feet from the side yard instead of the required 15 feet. It will contain 12,711 square feet. The second lot will

contain 12,589 square feet and 149.65 feet of frontage on Madison Street. The existing garage will be removed; this is located primarily on the new lot.

Anne Mercer, 750 East Street, was concerned that a huge house would be constructed on the new lot. Mr. Corey said he cannot control what the new owner does as long as it is allowed. Richard McGowan, 770 East Street, lives across the street. He said his view will change if this goes through, and his quality of life will diminish. He stated that he was not in favor of this, saying that the quality of Dedham has been changing and giving relief seems counterintuitive. Mr. Maguire said that the house complied with regulations when it was built. Mr. Hampe said that the house is an historic house and he said this would preserve it. However, another option would be to take the house down and two new houses could be built. Mr. Maguire said that the Coreys could have simply taken the house down and not have to come to the Zoning Board of Appeals.

Michael Morris, 762 East Street, said that he lived in Houston, Texas, where there is no zoning. He said their historic district was destroyed. He said that waiving requirements is a slippery slope, and that he would hate to see the house destroyed. However, he was concerned about the Town waiving certain requirements. Mr. McGrail agreed with his comments about Houston, and said he would like the historic home maintained. Mr. Morris asked if there was any guarantee that the house would remain. Mr. McGrail said there was not. If he sells the house and the new owners choose to take it down, so be it. Ms. Mercer suggested that a covenant be put into the sale; Mr. McGrail said this was not the Board's issue. He also said he would support the application in hopes that the house will be saved. He agreed with the neighbors about taking houses down and building huge new houses. Mr. Corey said that he and his wife wanted to sell the property as a unit. The owner-to-be promised to market the house.

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 on G.L. c. 40A, § 10.” Section 10 of Chapter 40A of the General Laws of Massachusetts states 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 provision 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 and criteria for the issuance of the requested modification are satisfied.

Upon motion duly made by Scott M. Steeves and seconded by E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, the ZBA voted unanimously, 5-0, to be allowed a variance for a side yard setback for an existing single family dwelling to remain 13.1 feet instead of the required 15 feet on a newly created lot in the Single Residence B zoning district. In granting said Special Permit, the Zoning Board of Appeals finds that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. Furthermore, the Zoning Board of Appeals finds that, after consideration of the criteria in Section 9.3.2 of the Town of Dedham Zoning Bylaw, the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and the neighborhood.

The Applicant is advised that, in accordance with Massachusetts General Law 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 (20) 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 (20) 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.

Date: June 20, 2018

Attest by the Zoning Board of Appeals:

James F. McGrail, Esq., Chair

J. Gregory Jacobsen, Vice Chair

Scott M. Steeves

E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®

Jason L. Mammone, P.E.

Attest by the Administrative Assistant:

Susan N. Webster