

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

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E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
Jason L. Mammone, P.E.



Dedham Town Hall
26 Bryant Street
Dedham, MA 02026-4458
Phone 781-751-9242
Fax 781-751-9225

Jennifer Doherty
Administrative Assistant
jdoherty@dedham-ma.gov

Associate Members
Jared F. Nokes, J.D.

ZONING BOARD OF APPEALS
DECISION

Applicant: Walden Behavioral Care, LLC, and
HCRI Massachusetts Properties Trust II

Property Address: 10 Carematrix Drive, Dedham, MA

Property Owner: HCRI Massachusetts Properties Trust II

Property Owner Address: One Seagate, Toledo, Ohio

Applicant Representative: Peter A. Zahka, II, Esq.

Legal Notice: To be allowed such variances and special permits as necessary for a (former) non-confirming nursing home in a con-confirming building on a non-confirming lot to be used as a hospital with (existing and continuing) lot area of approximately 2.8 acres, lot frontage of approximately 140 feet, lot width of zero, front yard setback of approximately 48 feet, side yard setbacks of approximately 43 feet, 78 feet, and 59 feet, lot coverage of approximately 20%, and floor area ratio of approximately 59%, and without 15% interior landscaping or landscape buffers along property lines.

Section of Zoning Bylaw: Town of Dedham Zoning Bylaws 3.1, 3.3, 4.1, 5.2, 6.2, 9.2, 9.3, Table 1, and Table 2.

Zoning District, Map and Lot: RDO, Map 164, Lot 6

Date of Application: June 21, 2018

Date of Public Hearing: July 18, 2018

Date of Decision: July 18, 2018

Vote: 5-0, unanimous approval

Voting Members: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jared F. Nokes, J.D.

Date Filed with Town Clerk: July 31, 2018

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts, held public hearings on July 18, 2018, commencing at 7:00 p.m. 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, MLA, RLA, CLARB, LEED AP, and Jason L. Mamone, P.E. These hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:40 p.m. the Chairman called for the hearing on the appeal of Walden Behavioral Care, LLC, and HCRI Massachusetts Properties Trustee II, to be allowed such variances and special permits required for a (former) nonconforming nursing home in a nonconforming building on a nonconforming lot to be used as a hospital with (existing and continuing) lot area of approximately 2.8 acres, lot frontage of approximately 140 feet, lot width of zero, front yard setback of approximately 48 feet, side yard setbacks of approximately 43 feet, 78 feet, and 59 feet, lot coverage of approximately 20% and floor area ratio of approximately 59%, and without 15% interior landscaping or landscape buffers along property lines. The property is located at 10 CareMatrix Drive, Dedham, MA , in the Research, Development, & Office (RDO) Zoning District. *Town of Dedham Zoning By-Law Sections 3.1, 3.3, 4.1, 5.2, 6.2, 9.2, 9.3, Table 1, and Table 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was Stuart Koman, Ph.D., President and CEO of Walden Behavioral Care, LLC. With the Application, Attorney Zahka had submitted a certified plot plans (including the most recently endorsed parking plan of the Subject Property and a land court plan of the Subject Property), as well as photographs of the existing conditions. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Subject Property, known and numbered as 10 CareMatrix Drive, is shown on Dedham Assessor’s Map 164, Lot 6, is owned by Applicant HCRI Massachusetts Properties Trust II. The Subject

Property contains approximately 2.8 acres and has approximately 140 feet of frontage on CareMatrix Drive. The Subject Property is occupied by an existing building three-story building most recently utilized as a nursing home. Per the records maintained by the Dedham Board of Assessors, it appears this building was constructed circa 1995 – 1996. According the Zoning Map for the Town of Dedham, the Subject Property is located in the Research, Development, & Office (RDO) Zoning District.

Applicant Walden Behavioral Care, LLC, is purchasing the Subject Property (subject to receipt of various zoning permits and approvals) and desires to utilize the same as a hospital. Applicant is not proposing any changes to the lot or the footprint of the building. Dr. Koman, President and CEO of Walden Behavioral Care, LLC, presented the ZBA with a brief overview of Walden Behavioral Care, LLC, and the hospital proposed at the Subject Property. Dr. Koman noted that Walden Behavioral Care is a psychiatric hospital offering treatment and care to patients with eating disorders as well as other psychiatric illness (many of which may co-occur with eating disorders). Since founded by Dr. Koman in 2003, Walden Behavioral Care has treated over 17,000 patients and has grown to 15 locations across Massachusetts, Connecticut, and Georgia. Dr. Koman indicated that the Subject Property would be utilized as a hospital with inpatient care only and will not provide outpatient services. He anticipated that there would be about 90 – 100 beds (which is a reduction from the number of beds in the former nursing home) and estimated that 60%-75% of these beds would be for patients with eating disorders. Employees would work in shifts (7:00 am – 3:00 pm, 3:00 pm – 11:00 pm, and 11:00 pm – 7:00 am) that would not conflict with the peak hour traffic on adjacent roadways. Dr. Koman concluded his remarks by noting that Walden Behavioral Care looks forward to the opportunity to be located in Dedham and become an active participant in the Dedham community.

It is noteworthy that nursing homes and hospitals are both listed in Use Category B.6 of Table 1 (Use Regulation Table) of the Dedham Zoning By-Law. Pursuant to said Table 1, both nursing homes and hospitals are allowed by special permit in the RDO Zoning District. In addition, Section 6.2.3 of the Dedham Zoning By-Law provides dimensional requirements specifically for a facility specified in Use Category B.6 (i.e., nursing home, hospital, etc.). As described further below, the requirement for a special permit and the dimensional requirements set forth in Section

6.2.3 were not applicable at the time the nursing home was constructed. Accordingly, the (former) nursing home and the Subject Property are pre-existing nonconforming in numerous respects. Notwithstanding that both the proposed use (hospital) and the former use (nursing home) are with the same Use Category B.6 and are subject to the same dimensional requirements, the Dedham Building Department considers this a change of use requiring the requested relief.

At the time the nursing home was constructed the Subject Property was part of a larger lot (which was eventually occupied by the nursing home building and an office building) and was located in the Limited Manufacturing (LM) Zoning District. At that time, a nursing home (and hospital) were allowed as of right in the LM Zoning District and the underlying dimensional requirements for the LM Zoning District were applicable. Subsequently, the Subject Property was re-zoned to the RDO Zoning District and now all uses in Use Category B.6 are allowed only by special permit and are subject to the specific dimensional and other requirements of Section 6.2.3. In or around 2007, the Dedham Planning Board approved an Approval Not Required Plan which established two lots: (1) The Subject Property which is occupied by the nursing home building and (2) a separate lot occupied by the office building. Prior thereto, the ZBA granted and approved variances for frontage and floor area ratio at the Subject Property. However, no special permits were granted for uses and variance were not granted from the requirements of Section 6.2.3. Accordingly, it appears the former use and the building and Subject Property are pre-existing nonconforming.

Accordingly, Applicant has requested such special permits and variances required for a (former) nonconforming nursing home in a nonconforming building on a nonconforming lot to be used as a hospital with (existing and continuing) lot area of approximately 2.8 acres, lot frontage of approximately 140 feet, lot width of zero, front yard setback of approximately 48 feet, side yard setbacks of approximately 43 feet, 78 feet, and 59 feet, lot coverage of approximately 20% and floor area ration of approximately 59%, and without 15% interior landscaping or landscape buffers along property lines. Pursuant to Section 3.3.2 of the Dedham Zoning By-Law the ZBA may award a special permit to change a nonconforming use if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the

neighborhood. The types of changes the ZBA may consider are those that change or substantially extend the use, or change from one nonconforming use to another, less detrimental, nonconforming use. Per Section 3.3.3 of the Dedham Zoning By-Law the ZBA may grant special permits to change, alter, extend, or reconstruct nonconforming structures. Per said Section 3.3.3, the ZBA “may award a special permit... if it determines that [the proposed change, alteration, extension, or reconstruction] shall not be substantially more detrimental than the existing nonconforming [use or structure] to the neighborhood.” In addition, Section 9.3.2 of the Dedham Zoning By-Law provides that when 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 said Section.

Furthermore, Section 9.2.2 of the Dedham Zoning By-Law provides that 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.

Applicant respectfully submits it satisfies the above stated requirements and criteria for the issuance of the requested special permits and variances. The adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or neighborhood considering these requirements and criteria. As noted the proposed hospital is in the same use category and subject to the same requirements as the former nursing home. As described above, Applicant’s hospital will have the same (if not less) impacts on the surrounding area. Applicant is not creating any

new nonconformities but proposes to utilize the Subject Property without any changes to the lot, parking lot, or building footprint. In addition, Applicant's proposal will allow for the re-use of a currently vacant large building. If the variances are not granted, Applicant will suffer a substantial financial hardship since the subject property will never be able to be used as a hospital.

No one appeared in favor or in opposition to this Application.

Upon motion being duly made and seconded, the ZBA voted unanimously (5-0) to grant such special permits and variances as required, for a (former) nonconforming nursing home in a nonconforming building on a nonconforming lot to be used as a hospital with (existing and continuing) lot area of approximately 2.8 acres, lot frontage of approximately 140 feet, lot width of zero, front yard setback of approximately 48 feet, side yard setbacks of approximately 43 feet, 78 feet, and 59 feet, lot coverage of approximately 20% and floor area ratio of approximately 59%, and without 15% interior landscaping or landscape buffers along property lines, at 10 Carematrix Drive, Dedham, MA, in the SRA Zoning District. In granting said special permit, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of 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.

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 de-

cision 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: _____

James F. McGrail, Esq., Chairman

J. Gregory Jacobsen

Scott M. Steeves

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

Jason L. Mammone, P.E.

Attest by the Administrative Assistant

Jennifer Doherty