

**TOWN OF DEDHAM**  
COMMONWEALTH OF MASSACHUSETTS

**ZONING BOARD OF APPEALS**

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Jared F. Nokes, J.D.

**DECISION**

<b>Applicant/Owner</b>	<b>Jordaan, LLC</b>
<b>Property Address</b>	<b>197 Milton Street</b>
<b>Zoning District</b>	<b>LMA</b>
<b>Map and Lot</b>	<b>129/2</b>
<b>Representative</b>	<b>Peter A. Zahka, II, Esquire</b>
<b>Legal Notice</b>	The applicant seeks to be allowed special permits and variances necessary to close two automotive repair bays, to construct approximately 445 square feet of additional floor area, and to use approximately 2,585 square feet of floor area for retail of non-automotive products sales at a pre-existing non-conforming gasoline service station. <i>Town of Dedham Zoning Bylaw Sections 3.1, 3.3, 4.1, 9.2, 9.3, Table 1, and Table 2</i>
<b>Section of Zoning Bylaw</b>	
<b>Date of Application</b>	June 18, 2018
<b>Date of Public Hearing</b>	July 18, 2018
<b>Date of Decision</b>	July 30, 2018
<b>Vote</b>	5-0, unanimously approved
<b>Voting Members</b>	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E.
<b>Date Filed With Town Clerk</b>	<b>July 30, 2018</b>

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, James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB,

LEED AP, and Jason L. Mammone, P.E. These hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:45 p.m. the Chairman called for the hearing on the appeal of Jordaan, LLC, to be allowed such special permits and variances necessary to close two automotive repair bays, to construct approximately 445 square feet of additional floor area, and to use approximately 2,585 square feet of floor area for retail of non-automotive products sales at a pre-existing non-conforming gasoline service station. The property is located at 197 Milton Street, Dedham, MA, in the Limited Manufacturing A (LMA) Zoning District. *Town of Dedham Zoning By-Law Sections 3.1, 3.3, 4.1, 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 Applicant's owner, Yogesh Patel, and Project Engineer Brian Dunn, of MBL Land Development & Permitting Corp. With the Application, Attorney Zahka had submitted a certified plot plan and 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 197 Milton Street and shown on Dedham Assessor's Map 129, Lot 2, is owned by Applicant, Jordaan LLC. The Subject Property contains approximately 17,243 square feet of land and has approximately 131 feet of frontage on Milton Street (with additional frontage on River Street). The Subject Property is occupied by a pre-existing nonconforming gasoline service station with two bays, fueling stations, and canopy. This station currently has in excess of 100 square feet of retail space for automotive products. According the Zoning Map for the Town of Dedham, the Subject Property is located in the Limited Manufacturing A (LMA) Zoning District.

The Subject Property and existing service station appear to be nonconforming in a number of respects. The Subject Building does not appear to comply with the current dimensional requirements for lots and buildings in the LMA Zoning District including a rear yard setback of about 14 feet (25 feet required) and a maximum lot coverage of about 88% (50% maximum allowed). While service station with repair bays are allowed of right in the LMA Zoning District, service stations with more than 100 square feet of retail space for nonautomotive

products require a special permit. Likewise, retail uses in the LMA Zoning District require a special permit from the ZBA.

Applicant proposes to close two automotive repair bays, to construct approximately 445 square feet of additional floor area, and to use approximately 2,585 square feet of floor area for retail of non-automotive products sales. Any proposed additions to the building will satisfy the dimensional requirements for the LMA Zoning District (i.e., no new nonconformities are being created). Simply stated, Applicant will no longer provide repair services at the Subject Property. Instead, it is Applicant's desire to operate a retail store but maintain the gasoline fueling stations. Inasmuch as the retail area for non-automotive products would be in excess of 100 square feet (i.e, 2,585 square feet), Applicant requires a special permit.<sup>1</sup>

In addition, as stated above, the Subject Property and existing service station are pre-existing nonconforming. 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.

Pursuant to Section 3.3.4 of the Dedham Zoning By-Law a variance is required when the extension of a nonconforming structure creates a new nonconformity. As noted above the proposed addition will have a lot width through the rear building line of 71.9 feet. Section 9.2.2

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<sup>1</sup> Per footnote 24 to Table 1 (Use Regulation Table) of the Dedham Zoning By-Law.

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. Specifically, the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or neighborhood considering these requirements and criteria. Applicant states that his customers are requesting more retail products and items at the Subject Property (and less automotive services) and this Project will provide it with the opportunity to address this demand and better serve the public. As indicated, the proposed addition does not establish any new nonconformities at the Subject Property. (The existing nonconformities will remain.) In addition, Applicant notes that proposal allows for new and improved parking and circulation on the site. As part of the Project, Applicant will be defining curb cuts, adding landscaping and re-locating parking spaces. The Project will be subject to review by the Dedham Planning Board. Applicant reports that the Project was presented to the Planning Board for a scoping session and that it was well received. Applicant has already adopted many of the recommendations made at this scoping session. Applicant further reports that the Planning Board had requested revisions and updating to the building itself (being mindful of the East Dedham Design Guidelines). In response, Applicant displayed a drawing of a proposed renovated building with a pitched roof (which it intends to submit to the Planning Board for its consideration). Applicant avers that the parking/site and building improvements will result in a major overall aesthetic upgrade to the area.

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 be allowed such special permits and variances necessary to close two automotive repair bays, to construct approximately 445 square feet of additional floor area, and to use approximately 2,585 square feet of floor area for retail of non-automotive products sales at a pre-existing non-conforming gasoline service station at 197 Milton Street, Dedham, MA, in the LMA 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 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: July 30, 2018

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James F. McGrail, Esq., Chairman

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J. Gregory Jacobsen

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Scott M. Steeves

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

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Jason L. Mammone, P.E.