

**TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS**

James F. McGrail, Chairman
J. Gregory Jacobsen, Vice Chairman
Scott M. Steeves
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
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**ZONING BOARD OF APPEALS
DECISION**

Applicant:	Morais & Martins, LLC
Property Address:	250 Washington Street, Dedham, MA
Property Owner:	Morias & Martins, LLC
Property Owner Address:	93 Paul Street, #2, Somerville, MA 02145
Applicant Representative:	Peter A. Zahka, II, Esq.
Legal Notice:	The applicant seeks special permits and variances as required to construct an addition to a pre-existing nonconforming two-family dwelling on a pre-existing nonconforming lot, which addition will have a lot width through the rear building line of 71.9 feet instead of the required 90 feet. The property is located at 250 Washington Street, Dedham, MA, in the General Residence (GR) Zoning District.
Section of Zoning Bylaw:	Town of Dedham Zoning By-Law Sections 3.3.2, 3.3.3, 3.3.4, 3.3.5, 9.2.2, 9.3.2, Table 1, and Table 2.
Zoning District, Map and Lot:	General Residence (GR) Map 93/Lot 11
Date of Application:	June 18, 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:	August 7, 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, 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 7:10 p.m. the Chairman called for the hearing on the appeal of Morais & Martins, LLC, to be allowed such special permits and variances as required to construct an addition to a pre-existing nonconforming two-family dwelling on a pre-existing nonconforming lot, which addition will have a lot width through the rear building line of 71.9 feet instead of the required 90 feet. The property is located at 250 Washington Street, Dedham, MA, in the General Residence (GR) Zoning District. *Town of Dedham Zoning By-Law Sections 3.3.2, 3.3.3, 3.3.4, 3.3.5, 9.2.2, 9.3.2, 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 were Applicant’s owners, Paulo DeMorais and Carlos Martin. With the Application, Attorney Zahka had submitted a certified plot plan (which depicted the existing conditions and the proposed addition), and photos 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 250 Washington Street and shown on Dedham Assessor’s Map 93, Lot 11, is owned by Applicant Morais & Martins LLC. The Subject Property contains approximately 6,350 square feet of land, and has approximately 51.35 feet of frontage on Washington Street. The Subject Property is occupied by an existing two-family dwelling (which according to the records maintained by the Dedham Board of Assessors was constructed circa 1890). According the Zoning Map for the Town of Dedham, the Subject Property is located in the General Residence (GR) Zoning District.

The Subject Property and the existing two-family are pre-existing nonconforming in a number of respects. Pursuant to Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law, two-family building lots in the GR Zoning District require a minimum lot size of 11,000 square feet, minimum frontage of 90 feet, minimum front yard setback of 20 feet, minimum side

yard setback of 15 feet, and minimum lot width at front and rear building lines of 90 feet. The Subject Property has approximately 6,350 square feet of land and about 51.35 feet of frontage. In addition, the existing two-family house has a front yard setback of 7.7 feet, side yard setbacks of 15.1 feet and 3.1 feet, and a lot width through rear building line of 66.4 feet.

Applicant proposes to construct an addition to the existing two-family dwelling (which will continue to be utilized as a two-family dwelling). The proposed addition satisfies all of the building setback/dimensional requirements of the Dedham Zoning By-Law except that the addition will have a lot width through the rear building line of 71.9 feet. None of the existing nonconformities are being extended by the addition.

As stated above, the Subject Property and two-family house 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 3.3.5 of the Dedham Zoning By-Law provides, in pertinent part, that:

Nonconforming single and two family residential structures may be [altered and extended] upon a determination by the Building Inspector that such proposed [alteration and extension] does not increase the nonconforming nature of said structure. The following circumstances shall not be deemed to increase the nonconforming nature of said structure:

d. In the event that the Building Inspector determines the nonconforming nature of such structure would be increased by the proposed [alteration and extension], the Board of Appeals may, by Special Permit, allow such [alteration and extension] where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming 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 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 the above referenced requirements and criteria. Two-family houses are allowed in the GR Zoning District and after the proposed addition the use will continue to be a two-family house. The proposed addition complies with all dimensional requirements of the GR Zoning District with the exception of lot width through the rear building line. It is noteworthy that the GR Zoning District is the only zoning district to have a minimum lot width through front and rear building lines requirement. After the proposed addition, the lot width through the rear of the building will actually be greater (i.e., “less nonconforming”) than it is under the existing condition. Furthermore, due to the unusual shape of the lot, without the requested relief Applicant will never be able to expand the existing structure and would suffer a financial hardship.

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 to construct an addition to a pre-existing nonconforming two-family house (which will continue to be used as a two-family house) on a pre-existing nonconforming lot, which addition will have a lot width through the rear building line of 71.9 feet instead of the required 90 feet at 250 Washington Street, Dedham, MA, in the GR 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: _____

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