

TOWN OF DEDHAM  
COMMONWEALTH OF MASSACHUSETTS



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



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2019 SEP 26 AM 9:02  
TOWN OF DEDHAM  
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ZONING BOARD OF APPEALS  
DECISION

Applicant: Bryan J. Wood  
Project Address: 40 Walnut Street  
Applicant Representative: Peter A. Zahka, II, Esq., 12 School Street, Dedham  
Legal Notice: The Applicant, Bryan J. Wood of 31 Benjamin St., Dedham, MA, seeks to be allowed such Special Permits and/or Variances required for the voluntary demolition of a nonconforming two-family dwelling and reconstruction of the same on the same footprint as the existing house, but with an increase in volume and area on a nonconforming lot occupied by two residential dwellings.

Section of Zoning By-Law: *Town of Dedham Zoning By-Law Section 3.3, 4.7, 9.2, 9.3, 10 and Table 2.*

Zoning District, Map and Lot: General Residence (GR); Map 112, Lot 115

Date of Public Hearing: September 18, 2019  
Date of Decision: September 18, 2019  
Vote: 5-0  
Voting Members: Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason M. Mammone, P.E., and Sara Rosenthal, AIA, LEED AP

Date filed with Clerk: September 26, 2019

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on September 18, 2019, 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, Jason M. Mammone, P.E, and Sara Rosenthal. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:45 p.m., the Chairman called for the hearing on the application of Bryan J. Wood, of 31 Benjamin Street, Dedham, MA (hereinafter referred to as the “Applicant”). Applicant requests such special permits and variances required for the voluntary demolition of a nonconforming two-family dwelling and reconstruction of the same on the same footprint as an existing house, but with an increase in volume and area on a nonconforming lot occupied by two residential dwellings. The property is located at 40 Walnut Street, Dedham, MA, and is in the General Residence (GR) Zoning District. *Town of Dedham Zoning By-Law Section 3.3, 4.7, 9.2, 9.3, 10 and Table 2.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was Bryan J. Wood. Attorney Zahka had previously submitted a certified plot plan of the Subject Property, floor plans and elevations, and photographs of the existing conditions. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference. At the hearing Applicant were afforded an opportunity to make a full presentation.

Applicant is the owner of the real estate known and numbered as 40 Walnut Street, Dedham, Massachusetts, and shown on Dedham Assessors Map 112, Lot 115 (hereinafter referred to as the “Subject Property”). The Subject Property contains approximately 10,240 square feet of land and has approximately 78.5 feet of frontage on Walnut Street. The Subject Property is currently occupied by an existing 2-family dwelling and an existing single-family dwelling (i.e., it is occupied by two buildings). According to the records maintained by the Dedham Board of Assessors the two-family dwelling was constructed around 1850 and the single-family dwelling was constructed around 1920. The Subject Property is located in the General Residence (GR) Zoning District.

The Subject Property and the uses thereon are nonconforming in a number of respects. Section 4.7 of the Dedham Zoning By-Law provides that (with some minor exceptions not applicable here) “there shall be provided for each residential structure . . . a separate lot of land meeting the requirements of this Bylaw for the district in which the structure will be located . . .” As noted above, there are two residential structures on a single lot. Table 2 of the Town of Dedham Zoning By-Law (Table of Dimensional Regulations) provides that two-family dwellings in the GR Zoning District require a minimum lot area of 11,000 square feet, a minimum frontage requirement of 90 feet, a minimum lot width of 90 feet, and a minimum lot width through front and rear building lines of 90 feet. As noted above, the Subject Property has an area of 10,240 square feet and lot frontage of 78.5 feet. In addition, the lot width and lot width through the front and rear building lines are 78.5 feet of less. Section 10 of the Dedham Zoning By-Law defines a “non-conforming 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 situation as regards to the size, dimensions, location, or use of building or land”. Accordingly, the Subject Property and the buildings and uses thereon are (pre-existing) nonconforming.

Applicant proposes to demolish and reconstruct the nonconforming two-family dwelling on the same footprint as the existing house. However, the new two-family dwelling will have an area and volume greater than the existing house. It is noteworthy that the new two-family dwelling will satisfy all the Dedham Zoning By-Law setback requirements and will not be creating a new non-conformity. In addition, the existing single-family dwelling will remain.

The Dedham Zoning Board of Appeals (ZBA) is authorized and empowered to grant requested relief under a number of provisions of the Dedham Zoning By-Law. Sections 3.3.2 and 3.3.3 of the Dedham Zoning By-Law provide that the ZBA may grant special permits to change, alter, extend, or reconstruct nonconforming uses and structures, respectively. Per said Sections 3.3.2 and 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.” Furthermore, with respect to nonconforming single and two family residential structures, Section 3.3.5 of the Dedham Zoning By-Law provides, in pertinent part, that if “the nonconforming nature of such structure shall be increased by the proposed reconstruction, extension, alteration or change, the Board of Appeals may, by Special Permit, allow such reconstruction, extension, alteration, or change where it determines the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.” Said Section 3.3.5 also lists a number of circumstances that are not deemed to increase the nonconformity including additions on lots with insufficient frontage and area where the addition otherwise complies with current setback requirements.

It is also noteworthy that Section 3.3.7 of the Dedham Zoning By-Law allows for the voluntary demolition and reconstruction of a structure provided the new structure is on the same footprint and has the same volume and area as the original structure. Said Section 3.3.7 further provides that if the new structure exceeds the volume and area of the original structure, a special permit is required from the ZBA.

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 . . . only upon [the] 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 should 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 characteristics and social structure;
5. Impacts on the natural environment; and

6. Potential fiscal impact, including impact on town services, tax base, and employment.

In addition, 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 that the requirements and criteria for the issuance of the requested special permits and/or variances are satisfied. Specifically, Applicant’s proposed changes, alterations, extension and reconstruction of the nonconforming structures and uses is not substantially more detrimental than the existing nonconforming uses and structures and the adverse effects of the proposal do not outweigh its beneficial impacts. Applicant’s proposed reconstruction does not change the nature or use of the property from its current state. Upon completion of the Project, the dwelling will continue to be a two-family dwelling (but will be updated). The same will have no impact on traffic flow, parking, or the environment. It is submitted that if not for the existence of two buildings on the same lot, Applicant could proceed with the project as of right. Without the requested special permits or variances Applicant will not be able to make the significant upgrades and improvements need to the two-family dwelling.

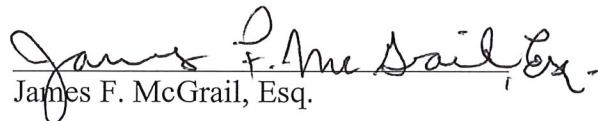
Applicant submitted a letter from a direct abutter in support of the application. While no abutters appeared in opposition of the requested relief, some neighbors complained about

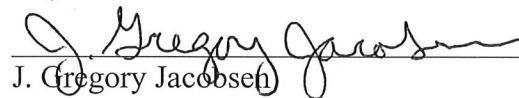
the condition of the Subject Property including mattresses and other debris located on the same. Applicant agreed to clean up this debris.

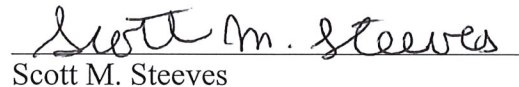
Upon motion duly made the ZBA voted unanimously (5-0) to approve and grant such special permits and variances required for the voluntary demolition of a nonconforming two-family dwelling and reconstruction of the same on the same footprint as an existing house, but with an increase in volume and area on a nonconforming lot occupied by two residential dwellings at 40 Walnut Street. As a condition of this approval, Applicant (as agreed to during the hearing) shall remove all mattresses and other debris being stored or otherwise located outside of the dwellings at the Subject Property.

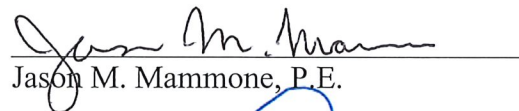
Appeals of this decision, if any, shall be made pursuant to Section 17 of Chapter 40A of the General Laws of Massachusetts and shall be filed within twenty days after the date of filing of notice of this decision with the Town Clerk. Applicant is advised that, in accordance with MGL Chapter 40A, Section 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: September 26, 2019

  
James F. McGrail, Esq.

  
J. Gregory Jacobson

  
Scott M. Steeves

  
Jason M. Mammone, P.E.

  
Sara Rosenthal, AIA, LEED AP

  
J. Roberts