

TOWN OF DEDHAM
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TOWN OF DEDHAM
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**ZONING BOARD OF APPEALS
DECISION**

Applicant:	Elie on Bridge Street, LLC
Project Address:	22 Bridge Street, Dedham, MA
Applicant Representative:	Peter A. Zahka, II, Esq., 12 School Street, Dedham
Legal Notice:	The Applicant, Elie on Bridge Street, LLC, requests a Special Permit and/or Variances necessary to construct an approximate 243 sq. ft. (5'4" x 45'6") addition to a preexisting nonconforming gasoline service station for purposes of enclosing existing oil tanks and general storage (i.e. an extension, alteration, and enlargement of a pre-existing nonconforming structure and use).
Section of Zoning By-Law:	<i>Town of Dedham Zoning By-Law Section 3.1.3; 3.3.2; 3.3.3; 9.2, 9.3, 10 and Table 1.</i>
Zoning District, Map and Lot:	General Business (GB); Map 14, Lot 51
Date of Public Hearing:	September 18, 2019
Date of Decision:	September 18, 2019
Vote:	5-0
Voting Members:	Chairman James F. McGrail Esq., Scott Steeves, Gregory Jacobsen, Jason Mammone, and Sara Rosenthal
Date filed with Clerk:	October 15, 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 7:15 p.m., the Chairman called for the hearing on the application of Elie on Bridge Street, LLC, of 22 Bridge Street, Dedham, MA (hereinafter referred to as the “Applicant”). Applicant requests such special permits and/or variances necessary to construct an approximate 243 square feet (5’4” x 45’6”) addition to a preexisting nonconforming gasoline service station for purposes of enclosing existing oil tanks and general storage (i.e., an extension, alteration, and enlargement of a pre-existing nonconforming structure and use) at 22 Bridge Street, Dedham, in the General Business (GB) Zoning District. *Town of Dedham Zoning By-Law Section 3.1.3; 3.3.2; 3.3.3; 9.2, 9.3, 10 and Table 1.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was Elie Lakkis, Member/Manager of Elie on Bridge Street, LLC.. Attorney Zahka had previously submitted a certified plot plan of the Subject Property, as well as a plan set showing existing conditions and proposed 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 22 Bridge Street, Dedham, Massachusetts, and shown on Dedham Assessors Map 14, Lot 51 (hereinafter referred to as the “Subject Property”). The Subject Property has a land area of approximately 10,909 square feet of land and has approximately 136 feet of frontage on Bridge Street. The Subject Property is located in the General Business (GB) Zoning District.

The Subject Property is currently occupied by a gasoline service station with a canopy, three (3) fueling dispensers, and two (2) automobile bays. While the exact date when the Subject Property was first utilized as a gasoline service station is unclear, a gasoline service station was operated for many years prior to 1952. The gasoline service station was commenced when the Subject Property was zoned "business" and the use was allowed as of right. In 1952, the Dedham Zoning Board of Appeals granted relief (in the form of a variance) to build an addition to the then existing gasoline service station. At the time, the Subject Property had been re-zoned to "single residence". In addition, a special permit for the canopy was approved by the Dedham Zoning Board of Appeals in Decision No. 92-1.

The gasoline service station has two existing outdoor oil tanks, one for waste oil and one for new oil, in the rear of the building. Given the Subject Property's proximity and elevation with respect to the Charles River, the Town of Dedham Conservation Commission issued an Order of Conditions for the Subject Property requiring enclosure of these two oil tanks. After discussion with the Conservation Commission and the Town of Dedham Building Department, Applicant determined that a roof on the enclosure/addition was preferable in order to allow rainwater to be incorporated into the storm water management system on the Subject Property. Specifically, Applicant proposes to construct an approximate 243 square feet (5'4" x 45'6") addition to a preexisting nonconforming gasoline service station for purposes of enclosing existing oil tanks and general storage.

Section 3.1.3 and Line G.1 of Table 1 (Principal Use Regulations) of the Dedham Zoning By-Law provides that full-service, self-service, or split island gasoline service stations with automotive repair bays but not performing body work are permitted uses in the GB Zoning District with a special permit. Section 10 of the Dedham Zoning By-Law defines a "nonconforming 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 situated as regards the size, dimensions, location, or use of building or land." Inasmuch as the gasoline service station at the Subject Property predates the Dedham Zoning By-Law requirement for a special permit, the same is considered as legal pre-existing nonconforming uses and structure. "A use

permitted as of right prior to the adoption of or subsequent amendment of a by-law and thereafter only by a special permit constitutes a nonconforming use.” *Shrewsbury Edgemere Assocs. Ltd. Partnership v. Board of Appeals of Shrewsbury*, 409 Mass. 317, 319-321 (1991). Section 3.3.1 of the Dedham Zoning By-Law provides that the Zoning By-Law is not applicable to nonconforming uses and that such uses may continue. As discussed below, Sections 3.3.2 and 3.3.3 of the Dedham Zoning By-Law authorize the Zoning Board of Appeals to grant special permits for the extension and alteration to pre-existing uses and structures.

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.”

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. The oil tanks have existed since Applicant acquired the Subject Property. The proposed addition is in furtherance of the Dedham Conservation Commission’s Order of Conditions and is designed to further protect area from any potential spill or leak from the tank. The design proposed by Applicant provides a roof which will allow rain water to be incorporated in the stormwater management system. There are no setback requirements in the GB Zoning District. Therefore, the addition complies with any dimensional requirements under the Dedham Zoning By-Law. Furthermore, the addition is at the rear of the existing building and will not impact any parking areas. If the desired relief is not granted, Applicant will be unable to build the addition and comply with the Order of Conditions.

The Chairman stated that he has always had environmental concerns with the Subject Property given the proximity of the gas station to the Charles River. He commended the Applicant for the proposed addition since the same will further protect the area from any potential oil spills.

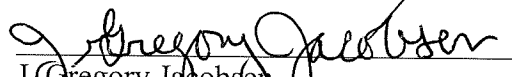
No one appeared in opposition or in support of the requested relief.

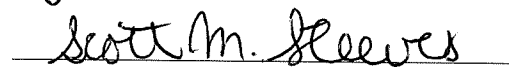
Upon motion duly made the ZBA voted unanimously (5-0) to approve and grant Applicant's request for special permit and/or variances necessary to construct an approximate 243 square feet (5'4" x 45'6") addition to a preexisting nonconforming gasoline service station for purposes of enclosing existing oil tanks and general storage (i.e., an extension, alteration, and enlargement of a pre-existing nonconforming structure and use) at 22 Bridge Street, Dedham, in the General Business (GB) Zoning District.

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: Oct. 15, 2019


James F. McGrail, Esq.


J. Gregory Jacobsen


Scott M. Steeves

Jason M. Mammone
Jason M. Mammone, P.E.

Sara Rosenthal
Sara Rosenthal

Attested to by Administrative Assistant

Jennifer White Doherty
Jennifer White Doherty