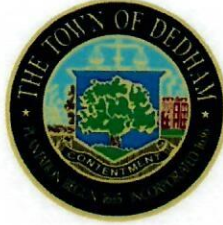


James F. McGrail, Esq., Chairman  
J. Gregory Jacobsen, Vice Chairman  
Scott M. Steeves  
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®  
Jason L. Mammone, P.E.

Jessica L. Porter, Associate Member  
Jared F. Nokes, J.D., Associate Member



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

Susan Webster  
Administrative Assistant  
[swebster@dedham-ma.gov](mailto:swebster@dedham-ma.gov)

## TOWN OF DEDHAM ZONING BOARD OF APPEALS DECISION



<b>Applicant/Owner:</b>	<b>Robert and Karen F. Primeau</b>
<b>Property Address:</b>	<b>90 Ashcroft Street, Dedham, MA 02026</b>
<b>Agent/Agent Address:</b>	Steve Hanson, Contractor, Hanson Associates, 33 Eastern Point Drive, Shrewsbury, MA 01545
<b>Legal Notice:</b>	The applicant seeks to be allowed a Special Permit for a side yard setback of 6'5" (six feet, five inches) instead of the required 10 (ten) feet to construct a room over an existing nonconforming garage.
<b>Section of Zoning Bylaw:</b>	<i>Town of Dedham Zoning Bylaw Section 4.1 Table of Dimensional Requirements and Section 3.3.3 Nonconforming Uses and Structures</i>
<b>Zoning District, Map and Lot:</b>	General Residence, 143/20
<b>Date of Application:</b>	November 15, 2016
<b>Date of Public Hearing:</b>	December 14, 2016
<b>Date of Decision:</b>	December 14, 2016
<b>Vote:</b>	Approved unanimously, 5-0
<b>Voting Members:</b>	J. Gregory Jacobsen, Scott M. Steeves, Jason L. Mammone, P.E., Jessica L. Porter, Jared F. Nokes, J.D.
<b>Date Filed with Town Clerk:</b>	<b>December 29, 2016</b>

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held a public hearing on Wednesday, December 14, 2016, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, J. Gregory Jacobsen, Vice Chairman, Scott M. Steeves, and Jason L. Mammone, P.E. In the absence of Chairman James. F. McGrail and Member E. Patrick Maguire, MLA, RLA, CLARB, LEED AP, Acting Chairman Jacobsen Associate Members Jared F. Nokes, J.D., and Jessica L. Porter to sit in their steads.

The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11 and the Town of Dedham Zoning Bylaw. Legal ads were placed for two consecutive weeks in *The Dedham Times*. In addition, abutters within 300 feet of the property in question received notification of the hearings, and notification regarding each hearing was sent to the neighboring towns (Boston, Needham, Canton, and Westwood).

At 7:00 p.m., the Chairman called for the hearing on the petition of Robert and Karen F. Primeau, 90 Ashcroft Street, Dedham, MA. The Applicants are seeking a Special Permit for a side yard setback of 6'5" instead of the required 10 feet to construct a room over an existing nonconforming garage. The property is located at 90 Ashcroft Street, Dedham, MA, and is in the General Residence zoning district. *Town of Dedham Zoning Bylaw Section*

The Applicant was represented by Steve Hanson, Contractor, Hanson Associates, 33 Eastern Point Drive, Shrewsbury, MA 01545. The Applicant had submitted an Application for a Special Permit on November 15, 2016. This included:

- Zoning Board of Appeals Application
- Photographs of existing conditions
- Elevations for proposed addition
- Certified plot plan prepared by David A. O'Driscoll, PLS, O'Driscoll Land Surveying Co., 46 Cottage Street, Medway, MA 02053

The minutes from the hearing are the primary source of evidence and is incorporated herein by reference. At the hearing, the Applicant was afforded an opportunity to make a full presentation.

The Subject Property, 90 Ashcroft Street, shown on Dedham Assessors Map 143, Lot 20, contains approximately 9,000 square feet of land. It has approximately 75 feet of frontage on Ashcroft Street. The Subject Property was built in 1956. According to the records maintained by the Dedham Board of Assessors, the property contains a single family dwelling. The Subject Property is located in the General Residence zoning district.

Mr. Primeau is seeking a Special Permit to construct a second floor over an existing nonconforming garage. There is a zoning hardship in that, when the garage was built, the current

zoning was not in place. There is a financial hardship because his daughter will move back home and they need more space. The garage is sinking anyway, and needs to be torn down due to safety issues. While they do that, they would like to reconstruct it to current codes and add some living space for his daughter. When he applied for a building permit, Jim Sullivan reviewed the certified plot plan and noted that the house is nonconforming, requiring a Special Permit. Mr. Primeau has talked with direct abutters on each side, and the neighbors have no problem with the petition.

The Town of Dedham Zoning Bylaw states that:

**3.3.3 Nonconforming Structures**

The Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure in accordance with this section only if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood. The following types of changes to nonconforming structures may be considered by the Board of Appeals:

- a. Reconstructed, extended or structurally changed
- b. Altered to provide for a substantially different purpose or for the same purpose in a substantially different manner or to a substantially greater extent

The Zoning Bylaw further states:

**.3.7 Reconstruction after Catastrophe or Voluntary Demolition**

A nonconforming structure may be reconstructed after a catastrophe or after voluntary demolition in accordance with the following provisions:

- a. Reconstruction of said structure shall commence within two years after such catastrophe or demolition.
- b. Building(s) or structure(s) as reconstructed shall be located on the same footprint as the original nonconforming structure, and shall be only as great in volume or area as the original nonconforming structure.
- c. In the event that the proposed reconstruction would (a) cause the structure to exceed the volume or area of the original nonconforming structure or (b) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition.

It is felt that Mr. Primeau's petition for a Special Permit falls into the appropriate categories as noted. In addition, it is deemed a safety hazard, and allowing his petition would correct this issue.

No one in the audience spoke in favor or against the petition. Mr. Primeau has talked with direct abutters on each side, and the neighbors have no problem with the petition. Mr. Steeves commented that this will be a big improvement from the existing conditions.

On a motion made by Scott M. Steeves and seconded by Jessica L. Porter, the Zoning Board of Appeals voted unanimously, 5-0, to approve such Special Permits for a side yard setback of 6'5" (six feet, five inches) instead of the required 10 (ten) feet to construct a room over an existing nonconforming garage.

In granting of said special permit and variance, the ZBA finds that the Applicant has satisfied the conditions of Section 3.3 Nonconforming Uses and Structures of the Dedham Zoning By-Law. In addition, the ZBA finds that the adverse effects of the Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood and will not be substantially more detrimental to the neighborhood.

The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, 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.

Date: December 14, 2016

Attest by the Zoning Board of Appeals:

  
\_\_\_\_\_  
J. Gregory Jacobsen, Vice Chairman

  
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Scott M. Steeves

  
\_\_\_\_\_  
Jason L. Mammone, P.E.

Jessica L. Porter  
Jessica L. Porter

Jared F. Nokes  
Jared F. Nokes, J.D.

Attest by the Administrative Assistant:

Susan N. Webster  
Susan N. Webster