

**TOWN OF DEDHAM  
COMMONWEALTH OF MASSACHUSETTS**

James F. McGrail, Chair  
 J. Gregory Jacobsen, Vice Chair  
 Scott M. Steeves  
 Jason L. Mammone, P.E.  
 Sara Rosenthal, AIA, LEED AP, NCARB



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George Panagopoulos, Associate Member  
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**ZONING BOARD OF APPEALS  
MINUTES**

**Wednesday, January 29, 2020, 7:00 pm, Lower Conference Room**

Present: James F. McGrail, Chair  
 J. Gregory Jacobsen, Vice Chair  
 Scott M. Steeves  
 Sara Rosenthal, AIA, LEED AP, NCARB  
 Andrew Pepoli, Associate Member

Staff: Jeremy Rosenberger, Town Planner

Absent: Jason L. Mammone, P.E.  
 George Panagopoulos, Associate Member

The meeting was brought to order at 7:00 pm. The plans, documents, studies, etc., referred to are incorporated as part of the public records and are on file in the Planning and Zoning office. The hearings were advertised in *The Dedham Times* as required, and notices to abutters within 300 feet of each property were sent.

<b>Applicant:</b>	<b>Dedham 800, LLC</b>
<b>Project Address:</b>	<b>800 Providence Highway</b>
<b>Zoning District, Map and Lot</b>	Highway Business Zoning District (HB) Map 136 Lot 15
<b>Legal Notice:</b>	The Zoning Board of Appeals for the Town of Dedham, Massachusetts, will hold a public hearing at Dedham Town Hall, 26 Bryant Street, Dedham, MA at 7:00 p.m., Wednesday, January 29, 20, on the petition of Dedham 800, LLC, P.O. Box 890, Norwood, MA. The petitioner requests a Special Permit to operate a +/- 2,900 sq. ft. animal/veterinary hospital with ancillary services and sale of goods.

<b>Section of Zoning Bylaw:</b>	<i>Town of Dedham Zoning Bylaw Sections 3.1.3, 9.2, 9.3 and Table 1.</i>
<b>Representatives:</b>	Peter A. Zahka, Esquire

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. The Applicant had previously submitted a certified plot plan of the Subject Property, a tenant layout plan, 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 was afforded an opportunity to make a full presentation.

Applicant is the owner of the real estate known and numbered as 800 Providence Highway, Dedham, Massachusetts, and shown on Dedham Assessors Map 79, Lot 140 (the "Subject Property"). The Subject Property contains approximately 1.3 acres of land and has over 200 feet of frontage on Providence Highway. The Subject Property is occupied by a 1-story commercial building with various commercial tenants (Harrows, Dunkin Donuts, etc.). According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Highway Business (HB) Zoning District.

One of the tenants (Vitamin Shoppe) has vacated or will be vacating the Subject Property and Applicant desires to lease approximately 2,900 square feet of the building to an animal or veterinary hospital with ancillary services and sale of goods. Per Table 1 (Principal Use Table) of the Dedham Zoning By-Law, an animal or veterinary hospital is allowed in the HB Zoning District by special permit. Applicant reports that while there has been considerable interest for the space by animal or veterinary hospitals, he has been unable to lease the property to such a use. It is Applicant's belief that this is partly because of the need for a special permit (i.e., potential tenants are leasing space in surrounding communities where they do not have to wait for a special permit). Accordingly, Applicant is requesting the special permit to assist with negotiations with future animal or veterinary hospitals.

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.

Applicant respectfully submits that the requirements and criteria for the issuance of the requested special permit is satisfied. The Subject Property is a fully developed commercial site on Providence Highway with adequate utilities and public services. The proposed use will not interfere with any of the other commercial tenants and will allow Applicant to lease vacant space in the building. The Subject Property already has a parking plan approved by the Dedham Planning Board. Therefore, traffic flow and safety, including parking and loading, are not an issue. (Applicant acknowledges that an application to the Planning Board may be required depending upon the number of practicing veterinarians.) Since the building and parking lot already exist, there will be no impact on the environment.

No one appeared at the hearing in favor or in opposition to the application.

Greg Jacobsen made a motion to approve the Special Permit as presented. The motion was seconded by Andrew Pepoli. All agreed (5-0) unanimous.

<b>Applicant:</b>	<b>Supreme Development, LLC</b>
<b>Project Address:</b>	<b>114 Bussey Street</b>
<b>Zoning District, Map and Lot</b>	Map 79, Lot 140) and is in the Local Business (LB) and Single Residence B (SRB) Zoning Districts.
<b>Legal Notice:</b>	The Petitioner requests variances and special permits to change a nonconforming use and structure to another nonconforming use, and to demolish a preexisting nonconforming building (with first floor space formally used commercially and four residential apartments on the upper floors) and replace with four (4) two-family residential dwellings on the same lot or abutting lots in common ownership containing approximately 12,396 sf of land in SRB Zoning District (12,500 sf required) and 8,296 sf of land in the LB Zoning District (12,500 sf required), with frontage of

	156 feet of frontage with 64 feet in the SRB Zoning District (95 feet required) and 92 feet in the LB Zoning District (0 feet required), and which will have a front yard setbacks of 10 feet (8.6 feet required) , side yard setbacks of not less than 10.5 feet (10 feet required in the SRB Zoning District and 0 feet required in the LB Zoning District), rear yard setbacks of 10.5 feet (20 feet required in the SRB District and 0 feet required in the LB Zoning District), floor area ratio in the SRB Zoning District of 66% (maximum of 50% allowed), floor area ratio in the LB Zoning District of 61% (maximum of 40% allowed), lot coverage in the SRB Zoning District of 41% (maximum of 30% allowed), and lot coverage in the LB Zoning District of 36% (maximum of 40% allowed).
<b>Section of Zoning Bylaw:</b>	<i>Town of Dedham Zoning By-Law Sections 2.1.4, 3.3, 9.2, 9.3, Table 1 and Table 2.</i>
<b>Representatives:</b>	Peter A. Zahka, Esquire

At 7:05 p.m., the Chairman called for the hearing on the application of Supreme Development, of 21 Eastbrook Road, Dedham, MA (the “Applicant”).

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was the owner of Subject Property, Giorgio Petruzzello. Applicant had previously submitted a certified plot plan of the Subject Property, architectural drawings and elevations of the proposed development, photos of the existing conditions, and a Memorandum in Support the Application. At the hearing, Attorney Zahka also distributed additional architectural drawings and elevations as well as a zoning comparison compliance table (detailing the dimensional requirements assuming the Subject Property was located in a single zoning district). The transcript from the hearing is the primary source of evidence and is incorporated herein by reference. At the hearing, Applicant was afforded an opportunity to make a full presentation.

Applicant is the owner of the real estate known and numbered as 114 Bussey Street, Dedham, Massachusetts, and shown on Dedham Assessors Map 79, Lot 140 (the “Subject Property”). The Subject Property contains approximately 20,651 square feet<sup>1</sup> of land with approximately 156 feet of frontage on Bussey Street. The Subject Property is occupied by an existing building with the first floor formerly used as commercial space and four residential apartments on the upper floor. According to the records maintained by the Dedham Board of Assessors the existing building was constructed circa 1930. According to the Zoning Map for the Town of Dedham, the Subject Property is located partially in the Local Business (LB) Zoning District and partially in the Single Residence B (SRB) Zoning Districts.

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<sup>1</sup> The Town of Dedham GIS and Assessors’ records indicates a land area of 20,803 sf. However, Applicant’s survey indicated that the Subject Property contains 20,651 square feet of land.

The Subject Property consists of Lots 6, 7, and 8 shown on a plan dated May, 1863, recorded with Norfolk Registry of Deeds. As depicted on said plan, said Lot 6 contains 7,037 square feet of land with 52 feet of frontage on Bussey Street, said Lot 7 contains 6,930 square feet of land with 52 feet of frontage on Bussey Street, and said Lot 8 contains 6,836 square feet of land with 52 feet of frontage on Bussey Street. As noted above, the Subject Property is depicted on the Dedham Zoning Map as being located partially in the SRB and partially in the LB Zoning Districts. As shown on the Town of Dedham GIS Map, the land in the SRB Zoning District surrounds the land in the LB Zoning District. Specifically, the Subject Property consists of approximately 12,395 square feet of land with 64 feet of frontage in the SRB Zoning District and approximately 8,296 square feet of land with 92 feet of frontage in the LB Zoning District.

The Subject Property and the uses thereon are nonconforming in a number of respects. Per Table 1 (Principle Use Table) of the Town of Dedham Zoning By-Law, four-family dwellings or mixed-used buildings with four residential apartments are not currently allowed in either the SRB or LB Zoning Districts. In addition, mixed-used buildings (with up to two apartments) are allowed in the LB Zoning District only with a special permit and no special permit was ever issued for the existing building<sup>2</sup>. Per Table 2 (Table of Dimensional Requirements) 12,500 square feet of land is required for lots in the LB or SRB Zoning Districts and (while the Subject Property has in excess of 12,500 square feet) there is not the requisite land area in either zoning district. Furthermore, the existing building has no front yard setback and per said Table 2 a minimum of 25 feet is required in the LB Zoning District and a minimum of 25 feet is required in the SRB Zoning District. 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 the existing nonconforming building and construct four (4) new two-family residential dwellings at the Subject Property (the “Project”). Applicant had originally proposed a Project with the two dwellings at the front of the lot facing Bussey Street. As such, the Project required three (3) curb-cuts. At the suggestion of the Planning Director and Building Commissioner, Applicant rotated these two front dwellings so that they face each other. As such, the Project only requires a single curb-cut. As now proposed, there will be a front yard setback of not less than 9 feet, side-yard setbacks of 10.5 feet, rear yard setbacks of 10.5 feet, floor area ratio of 63.6% (for the entire lot), and lot coverage of 38.8% (for the entire lot). The relief required for the Project depends

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<sup>2</sup> “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)

upon whether the Subject Property is considered as being located in a single zoning district (or if each zoning district is considered separately). This is discussed further below.

Applicant submits that the Project does not require relief from the side yard or front yard setbacks. As shown on the submitted plans, the Project proposes side yard setbacks of 10.5 feet which satisfies (per Table 2 of the Dedham Zoning By-Law) the 10 feet required in both the SRB and LB Zoning Districts<sup>3</sup>. As shown on the submitted plans, the Project proposes front yard setbacks of approximately 9 feet (instead of the required 25 feet in the SRB Zoning District or 20 feet in the LB Zoning District per Table 2). However, Section 4.3.1 of the Dedham Zoning By-Law provides in pertinent part that: “Notwithstanding the Table of Dimensional Requirements, no building in any district need be further from the exterior line of any street than the average distance from such line of the dwellings or other principal buildings located on the lots adjacent thereto on either side.” As further depicted on the submitted plans, the average distance of the front yard setbacks of the dwellings on the adjacent lots is 8.6 feet.

The Project requires a special permit for a “change” from one nonconforming use and structure to another nonconforming use and structure. In addition, the Project requires a variance from Section 4.7 of the Dedham Zoning By-Law to allow more than one residential building on a lot. Section 2.1.4.3 of the Dedham Zoning By-law provides that for where a zoning district boundary divides a lot, the entire lot may be counted to meet the lot area requirement. The lot area requirement (per Table 2) is 12,500 square feet for both the LB and SRB Zoning Districts and the Subject Property contains approximately 20,691 square feet. Therefore, if said Section 2.1.4.3 is applicable, no relief from lot area is required. On the other hand, if said Section 2.1.4.3 is not applicable (because the Project has buildings in both zoning districts) variances from lot area are required. Likewise, the Subject Properties has a total of 156 feet of frontage which satisfies the lot frontage requirements (of 95 feet in the SRB Zoning District and 0 in the LB Zoning District). However, if each zoning district is considered separately, then a variance is required for the frontage in the SRB Zoning District. The proposed rear yard setback of 10.5 feet requires a variance from the 20-foot setback requirement for the SRB Zoning District<sup>4</sup>. The proposed lot coverage of 38.8% for the lot as a whole (41% in the SRB Zoning District, and 36% in the LB Zoning District) require variances from the lot coverage requirements of 30% and 40% in the SRB and LB Zoning Districts, respectively. Likewise, the proposed floor area ratio 63.6% for the lot as a whole (66% in the SRB Zoning District and 61% in

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<sup>3</sup> Per footnote 5 of said Table 2 there is a minimum side yard setback in the SRB Zoning District of 10 feet for lots established prior to 1989. Per footnote 6 of said Table 2, there is no side yard setback in the LB Zoning District for lots established prior to 1970. As noted above, the lots comprising the Subject Property were established by an 1863 plan.

<sup>4</sup> Per footnote 6 of said Table 2 there is no rear yard setback in the LB Zoning District for lots established prior to 1970. Per footnote 5 of said Table 2 there is a minimum rear yard setback in the SRB Zoning District of 20 feet for lots established prior to 1989. As noted above, the lots comprising the Subject Property were established by an 1863 plan.

the LB Zoning District) requires variances from the floor area requirements of 50% and 35% in the SRB and LB Zoning Districts, respectively.

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:

7. Social, economic, or community needs which are served by the proposal;
8. Traffic flow and safety, including parking and loading;
9. Adequacy of utilities and other public services;
10. Neighborhood characteristics and social structure;
11. Impacts on the natural environment; and
12. Potential fiscal impact, including impact on town services, tax base, and employment.

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 variance are satisfied. At the outset, Applicant submits that the Project compares favorably to the potential build-out of the Subject Property allowed under the Dedham Zoning By-Law. The existing building currently contains four (4) dwelling units and Applicant notes that (since commercial uses are allowed in the LB Zoning District) there is the potential to obtain permits for commercial use of the first floor. In addition, Applicant claims that pursuant to Section 4.5.1 (Special Lot Size Exceptions for Dwelling Units) of the Dedham Zoning By-Law the Subject Property contains a separate “grandfathered” buildable lot for a single-family dwelling. Applicant also believes that there is the potential for another commercial building to be constructed on that portion of the Subject Property located in the LB Zoning District.

Applicant’s Project is a vast aesthetic improvement over the current building. Traffic flow and safety including parking is greatly improved by the proposal. There will be a single curb-cut onto the property and each dwelling unit will have its own parking area inclusive of a garage. Inasmuch as this is a well-developed neighborhood, there is adequate utilities and public services to support the proposal. With respect to the natural environment, it is noteworthy that this is a redevelopment of an existing built-upon site and that Applicant will be required to obtain a Stormwater Management Permit from the Dedham Conservation Commission (assuring proper drainage and better ground water recharge and management). The proposal (by replacing an old building in need of significant renovations and repairs) will result in a major fiscal impact to the Town. Some of the proposed dwellings are designed with first floor master bedrooms. The proposal addresses a number of social, economic and community needs by eliminating commercial uses, by providing dwelling units with first floor master bedrooms (which are highly desired by senior citizens), and by providing the opportunity for the public to purchase condominium units (in other than a large building). Further, by demolishing the building and replacing it with an entirely residential use, the proposal eliminates any commercial use of the Subject Property into conformity with the surrounding neighborhood.

With respect to the requested variances, it is noteworthy that most are necessitated by “split-zoning” of the Subject Property. As stated above, the LB Zoning District is surrounded on two sides by the SRB Zoning District, making this unique from even other “split-zoned” lots. It is also noteworthy that there are significant grade differences between the front and rear of the lot. Without the requested relief, Applicant would suffer a severe financial hardship in that Applicant would be unable to re-develop the lot (with the



exception of the building on the “grandfathered” lot and a potential second commercial building as described above)). Applicant submits that the proposal is not substantially more detrimental (and avers that it is less detrimental) than the existing building and use, that the relief may be granted without derogating from the intent or purposes of the Zoning By-Law.

Several people from the surrounding neighborhood spoke at the hearing. Robert Campanella, a resident of 61 Congress Street, indicated that he believes the Project will be a major improvement to the area and is in favor of the Project as submitted. Brian Keaney, 183 Grant Avenue, represented that he and/or other members of his immediate family own several residential properties on Bussey Street in the vicinity of the Subject Property. Mr. Keaney stated that while he agrees that the Project is an improvement over the current building, he has concerns with the density of the Project and feels that three (3) two-family homes (even if larger) would be more appropriate. District 3 Town Meeting Representative, Rita Mae Cushman, 121 Garfield Road, testified that she made numerous telephone calls to abutters in the area and that everyone she spoke to were favorable to the Project. The Chairman reported that he received an email from District 3 Town Meeting Precinct Chairman Charlie Krueger, 11 Stafford Street, wherein Mr. Krueger states that he also contacted numerous abutters in the area and that all indicated that they were favorable to the Project. The Applicant noted that he sent letters directly to the abutters regarding the Project and that the few that contacted him were in favor of the Project

Sara Rosenthal made a motion to approve the application as presented. The motion was seconded by Scott Steeves, and all were in favor, 5-0, unanimous.

Greg Jacobsen made a motion to approve the minutes from the January 15, 2020 meeting. Andrew Pepoli seconded the motion, and all were in favor. 5-0.

Scott Steeves made a motion to adjourn the meeting at 8:20 p.m. The motion was seconded by Greg Jacobsen, and all agreed. 5-0.