

**TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS**

Members

Scott M. Steeves, Chair
Sara Rosenthal, AIA, LEED AP, Vice Chair
J. Gregory Jacobsen
Jason L. Mammone, P.E.
Tom Ryan, Esquire



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Michelle Tinger

Associate Members

Norman Vigil, Esquire
Allen MacDuffie

**ZONING BOARD OF APPEALS
MINUTES**

**Wednesday, March 16, 2022, 7:00 p.m.
Dedham Town Hall**

Remote Meeting by Zoom

Present: Scott M. Steeves, Chair
Sara Rosenthal, AIA, LEED AP, NCARB, Vice Chair
J. Gregory Jacobsen
Tom Ryan, Esq., Member
Jason L. Mammone, P.E.
Norman Vigil, Esquire, Associate Member
Allen MacDuffie, Associate Member

Staff: Jeremy Rosenberger, Town Planner
Michelle Tinger, Community Planning and Engagement Specialist
Jennifer Doherty, Administrative Assistant

The meeting began at **7:00 pm** on the night of **Wednesday, March 16, 2022**. The Chairman opened the meeting by reading the following statement:

Pursuant to Chapter 20, the Acts of 2021, this meeting of the Zoning Board of Appeals is being conducted via remote means. Members of the public who wish to access the meeting can do so by using the Zoom link or phone numbers via computers or mobile device as posted on the Meeting Agenda which can be found on the town website. No in-person attendance of members of the public will be permitted, but every effort will be made to ensure that the public can adequately access the proceedings in real time via technological means.

The Chairman conducted roll call:

Sara Rosenthal, Vice Chair

J. Gregory Jacobsen

Tom Ryan

Norman Vigil

Allen MacDuffie

Scott M. Steeves, Chair

The Chairman called the meeting to order.

17 Vincent Road

Applicant:	Jared Nokes
Project Address:	17 Vincent Road
Zoning District, Map/Lot:	Single Residence B (SRB) Zoning District, Map 178, Lot 56
Legal Notice:	Request for a Special Permit for the addition of two (2) +/- 13.5 sq. ft. dormers above the second floor; proposed additions would intensify the pre-existing non-conforming front yard setback.
Section of Zoning Bylaw:	Town of Dedham Zoning Bylaw Section 3.3(E), 9.2, 9.3, and Table 2.

Jared Nokes was in attendance on the video call to represent his application. He is seeking to add two front dormers to his house which would match the windows on the first floor. The project would add more square footage to the second floor and would intensify pre-existing non-conforming front yard setback. Mr. Nokes explained it would improve the aesthetics of the house and the neighborhood.

Chairman Steeves asked if there were any board members who wished to speak, and there were none. The Chairman noted for the record that Alexander and Carol McGuinness of 30 Creston Ave sent a letter to the Board in favor of the proposal. Joseph Ronda of 28 Vincent Road spoke in favor of the proposal.

A motion was made by Greg Jacobsen and seconded by Sara Rosenthal. A roll call vote was taken.

Sara Rosenthal – yes

Greg Jacobsen - yes

Tom Ryan – yes

Norman Vigil – yes

Scott Steeves – yes

The motion passed unanimously, 5-0.

449 High Street

Applicant:	Patricia Sampson (Representative: Peter A. Zahka, II, Esq.)
Project Address:	449 High Street
Zoning District, Map/Lot:	General Residence (GR) Zoning District, Map 93, Lot 93
Legal Notice:	Request for a Special Permit extend a pre-existing nonconforming use (landscape business) or change to a trade shop (another nonconforming use).
Section of Zoning Bylaw:	Town of Dedham Zoning Bylaw Sections 3.3, 9.2, 9.3, and Table 1.

Attorney Peter Zahka was on the video call representing the applicant. The property has a home in the front and a garage in the rear, which has been used by the current owners since about 1992 for their landscaping business. A 2017 decision by the Zoning Board of Appeals determined that this pre-existing nonconforming use is permitted on the property, despite a business not usually being allowed in the General Residence District.

The owners are seeking to either sell or rent the property, and request to either extend the current non-conforming use to the new owners or tenants or to change the non-confirming use designation to a “trade shop,” one with a lesser or equally disruptive nature as the current business. Per Dedham zoning bylaws, a definition of a trade shop includes carpenters, cabinet makers, upholsterers, paper hangers, painters, sign painters, plumbers, and electricians. Attorney Zahka explained that since this is a special permit request and not a variance request, there was no hardship requirement needed. He continued that a trade shop would likely be less detrimental to the abutters than the existing business be-

cause of the nature of the work. Many of the businesses that fall under a trade shop designation would have quieter equipment, smaller vehicles, and less disruptive hours than a landscaping business. He noted that many abutters on High Street and Churchill Place were in support of the designation change.

Sara Rosenthal asked if there was a certain timeframe in which the special permit would expire if approved, and Attorney Zahka explained that the permit would run with the land. Ms. Rosenthal agreed that a trade shop would likely be less disruptive than the current business.

Tom Ryan asked if the trade shop use allows retail sales, and Attorney Zahka explained that the use allows work only and retail sales would not be allowed on site.

Richard Dolabany, son of Russell and Rose Dolabany of 23-25 Churchill Place was invited to speak. As his parents are the owners of the site's largest abutter, he raised concerns about who would come into the space if the special permit were approved. There is no guarantee of who would enter the garage and asked if this decision could be postponed until the owners had a specific buyer or tenant in mind. Attorney Zahka responded that it is currently difficult to market the property without the trade shop designation and that there certainly could be a list of conditions for the potential new occupants including limits on outside storage. Mr. Dolabany asked if there can be conditions about noise on the site and if there could be limits on congregating and restrictions on who buys the property in the first place, to which Attorney Zahka responded that it is difficult to determine these specifics hypothetically and that the special permit would run with the land no matter the owner of the property.

Tom Polito, a business owner at 457 High Street, spoke in support of the special permit. He had no objections to the change in use because the business does not currently disturb him or his business and does not anticipate the change in designation would add to the activity on the site.

Stephen Acosta of 455 High Street said the landscape business has never bothered him and that he supports the proposal. He noted that the neighborhood is not a typical residential neighborhood because there are two insurance companies, St. Mary's Church, Doherty Funeral Home, and the Italian American Club nearby. Granting the special permit would not significantly alter the character of the neighborhood.

Joe and Holly Hamilton of 458 High Street noted that Mr. Dolabany has valid concerns, but they did not want to oppose the proposal based on hypothetical situations.

Mike Foster at 39 Churchill Place raised concerns about the fencing surrounding the property. Could new owners remove the fencing? He also noted that he and several other neighbors work from home and that noise on the property is a concern, particularly if a carpenter shop moved into the garage. Attorney Zahka responded that the applicant is looking for a comparably or less detrimental business and there could be restrictions placed on the use. He reminded those present that currently the landscaping business has no such restrictions.

Sara Rosenthal asked if there is a way to revise the 2017 trade shop designation language to address abutter concerns.

Tom Ryan clarified the conditions on the special permit for the site that were determined during the hearing with abutter input. No carpenters, no upholsterers, no cabinet makers. No retail on-site, an 8pm curfew, no storage outside, no outdoor fabrication, and no un-registered vehicles on-site.

A motion was made by Tom Ryan and seconded by Greg Jacobsen.

A roll call vote was taken.

Sara Rosenthal – yes

Greg Jacobsen - yes

Tom Ryan – yes

Norman Vigil – yes

Scott Steeves – yes

The motion passed unanimously, 5-0.

Scott Steeves left the meeting for the next hearing and Sara Rosenthal assumed the role as Chair.

55 Creston Avenue

Applicant:	Mary Ellen McDonough and Michael Cummings (Representative: Kevin Hampe, Esq.)
Project Address:	55 Creston Avenue
Zoning District, Map/Lot:	Single Residence B (SRB) Zoning District, Map 178, Lot 32
Legal Notice:	Request for variances necessary to establish a buildable lot; proposed new lot would not meet required minimum lot frontage (75 ft. provided, 95 ft. required) and

	minimum lot area (+/- 7,500 sq. ft. provided, 12,500 sq. ft. required).
Section of Zoning Bylaw:	Town of Dedham Zoning Bylaw Section 9.2, 9.3, Table 2.

Attorney Kevin Hampe was on the video call representing the applicant. The property was purchased by the owners in November 2021 and contains seven 2,500-square foot lots. Four of the lots consist of an existing home and there are three vacant 2,500-square foot parcels. The vacant parcels qualify for a grandfathered buildable lot in accordance with zoning bylaws, because the plot plan for the site (dated 1914) predates any existing regulations regarding lot size. The applicant wishes to build a single-family home on the three parcels. While the zoning bylaws allow the property to have only a 10-foot setback, the proposal would include a 15-foot setback. The existing house was approved by the town in 1958 despite not meeting area and frontage requirements, with the assumption that the back three lots would eventually be approved for a buildable lot. The proposed lot would have 75 feet of frontage on Alpena Avenue, with 95 feet required in the zoning district.

Michael Cummings presented a comparison of lot sizes in the neighborhood. The proposed lot would be 7,500 square feet. The average lot size on Alpena Avenue is 6,640 square feet, 860 square feet less than the proposed lot. Only one lot on Alpena has over 7,500 square feet, despite the 12,500 square feet required, and 75 of the 79 lots in the larger neighborhood are less than 7,500 square feet.

Mary Ellen McDonough explained that the proposed colonial style home would fit in with the neighborhood as there are several colonial homes already on the street. Furthermore, as a realtor she explained that colonial style homes are attractive to buyers and would positively impact property values of the neighborhood. She explained that all abutters have less than 15 feet of setback. A built home on the site would be more beneficial to abutters than an empty lot.

Attorney Hampe acknowledged the stormwater concern, and his clients have been working with the DPW on the issue. He also said that the picture of flooding on the site that has been circulated was an extraordinary event and should not be seen as the norm for stormwater.

Greg Jacobsen asked Attorney Hampe if the lot was ever determined by the Building Commissioner as not grandfathered, and he responded that there has never been official word that the lot is not grandfathered.

Tom Ryan asked Planning Director Jeremy Rosenberger about the stormwater management process. He explained that any applicant must have a plan to mitigate stormwater within the property and water cannot flow out onto public infrastructure or abutting properties. This falls within the jurisdiction of the Conservation Commission. If the stormwater mitigation regulations are not met, the applicant will not be granted a permit.

The Chair opened the hearing for public comment.

Robert O'Brien of 63 Creston Avenue raised concerns about the flooding on the site. The lot floods often when there are periods of heavy rain, and the concern is not the building of a house on the site alone but the potential for flooding at the proposed new home and with neighboring homes.

Robin and Jim Pezzone of 62 Alpena Avenue recounted the many flooding events they have dealt with having been residents in the neighborhood for many years. DPW explained to them several years ago that the sewer lines are too shallow and are inadequate for the current population. From experience they know that the proposed site becomes a "pond" whenever it rains heavily.

Robert Tedesco of 32 Winfield Street also raised concerns about flooding and that the proposed house was quite large for the property. While it was true that many of the properties had small lots, none of them had houses the size of the proposed house, and it would feel out of place in the neighborhood.

Sabrina ____ of ____ added to the concerns about flooding, to which Attorney Hampe responded that the applicants understood that they had to comply with the stormwater mitigation process in order to be approved.

Nancy? of ____ added that there has not been a new construction in the neighborhood since the zoning bylaws changed in 1989.

Allen MacDuffie added that stormwater issue was not an issue from the Zoning Board's point of view but rather the construction of the property. While it was clear that the lot size of the property would fit into the neighborhood, the question of hardship on the applicant, financial or otherwise, remained. There is no evidence of soil or topography that shows a hardship on the part of the applicant. Tom Ryan agreed with Mr. MacDuffie's analysis.

A motion was made by Greg Jacobsen to continue this hearing to the next meeting on April 20th. This was seconded by Tom Ryan, and a roll call vote was taken.

Greg Jacobsen - yes

Tom Ryan – yes

Normal Vigil – yes

Allen MacDuffie – yes

Sara Rosenthal – yes

The motion passed unanimously, 5-0. The hearing will be continued at the April 20th meeting.

Scott Steeves returned to the meeting and resumed the role of Chair.

3 Sylvia Lane

Applicant:	Caryl Moses (Representative: Peter A. Zahka, II, Esq.)
Project Address:	3 Sylvia Lane
Zoning District, Map/Lot:	Single Residence A (SRA) Zoning District, Map 135, Lot 60
Legal Notice:	Request for a Special Permit for a +/- 200 sq. ft. addition and to convert a single-family dwelling into a two-family dwelling.
Section of Zoning Bylaw:	Town of Dedham Zoning Bylaw Section 7.2, 9.2, 9.3, Table 1 and 2.

Attorney Peter Zahka was on the video call representing the applicant. The applicant seeks to connect the home to public sewer and significantly improve both the interior and exterior of the house. The applicant seeks to convert the single-family dwelling into a two-family dwelling which would require a 200-square foot addition to the property and the addition of an extra bedroom so that each unit will have two bedrooms.

Attorney Zahka continued that the small 200 square foot addition is appropriate as the property is well over an acre. Exterior changes would be relatively minor and would only improve the home's aesthetic. The home is blocked from most of the street and is only visible to 1 Sylvia Lane (which the applicant also owns) and 5 Sylvia Lane. Despite concerns of an absentee landlord creating a two-family dwelling, it is understood that Ben Moses, the applicant's son, resides at the property currently and will continue to do so after the renovation. Several neighbors have endorsed the proposal.

Sara Rosenthal asked about the easements to the property and to 1 Sylvia Lane (which the applicant also owns) because the properties are set back from the street. Attorney Zahka confirmed that there are full easements to access the property, which would include the upcoming addition of public sewer. Ms. Rosenthal also asked about the number of exits from the property, to which the applicant responded that he would cooperate with the Building Department in their fire safety inspection process.

Jim Kaufman of 248 Highland Street spoke in support of the proposal.

Tom Ryan confirmed that there were no recent police reports from the property and asked for clarification that the property has sufficient off-street parking.

Sara Rosenthal was reassured knowing the applicant's son was to remain on-site and the home would not have an "absentee landlord."

A motion was made by Greg Jacobsen and seconded by Sara Rosenthal. A roll call vote was taken.

Sara Rosenthal – yes

Greg Jacobsen - yes

Tom Ryan – yes

Norman Vigil – yes

Scott Steeves – yes

The motion passed unanimously, 5-0.

Minutes

A motion was made by Greg Jacobsen to approve the minutes of February 16, 2022, provided an error which had 119 Harding Terrace inaccurately written as 11 Harding Terrace was corrected. The motion was seconded by Sara Rosenthal and a roll call vote was taken.

Sara Rosenthal – yes

Greg Jacobsen - yes

Tom Ryan – yes

Norman Vigil – yes

Scott Steeves – yes

The motion passed unanimously, 5-0.

Old Business/New Business

The Board will meet in person for the April 20th meeting.

Planning Director Jeremy Rosenberger informed the Board that two potential zoning amendments (updates to the flood plain bylaw and the accessory residential parking by-law) are to be discussed by the Planning Board on Wednesday, March 23rd at 8pm. Town Meeting is schedule for May 16th where the amendments will be voted on.

Adjournment

A motion was made by Sara Rosenthal to adjourn the meeting at 9:28 pm, and the motion was seconded by Greg Jacobsen. A roll call vote was taken, all agreed, and the meeting was adjourned.