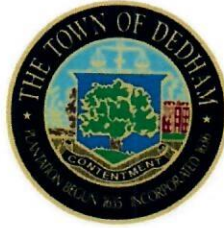


James F. McGrail, Esq., Chairman
J. Gregory Jacobsen, Vice Chairman
Scott M. Steeves
E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
Jason L. Mammone, P.E.

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



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Susan Webster
Administrative Assistant
swebster@dedham-ma.gov

TOWN OF DEDHAM ZONING BOARD OF APPEALS DECISION



Applicant:
Property Address:
Property Owner:
Property Owner Address:
Applicant Representative:

John R. Aplin, Trustee of Aplin Realty Trust
331 Whiting Avenue, Dedham, MA
John R. Aplin, Trustee of Aplin Realty Trust
331 Whiting Avenue, Dedham, MA
Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
Scott Henderson, P.E., 144 Washington Street Apt 1,
Quincy, MA 02169
John Aplin, owner

Legal Notice:

The applicant seeks to be allowed such Special Permits and variance as required to change, alter, extend, and/or reconstruct nonconforming uses and structures on a nonconforming lot (with frontage and lot width of approximately 57.68 feet), including the demolition of four (4) nonconforming commercial buildings used for a landscaping business and contractor's yard and construction of a new commercial building which will have a side yard setback of five (5) feet, and associated parking and outdoor storage, to be continued to be used for a landscaping business and contractor's yard, the erection of retaining walls in excess of four (4) feet in height, and the continued use of a nonconforming, two-family dwelling on the same lot with a side yard setback of five (5) feet.

Section of Zoning Bylaw:

Town of Dedham Zoning Bylaw Sections 3.1.3 Use Regulation Table, 3.3 Nonconforming Uses and Structures, 4.1 Dimensional Requirements, 6.5.2 Retaining Walls, 9.2 Board of Appeal, 9.3 Special Permits, Table 1 Principal Use Regulations, and Table 2 Table of Dimensional Requirements

Zoning District, Map and Lot:
Date of Application:
Date of Public Hearing:

General Residence, Map 128, Lot 105
March 17, 2017
April 19, 2017

Date of Decision: April 19, 2017
Vote: 5-0, unanimous approval
Voting Members: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason L. Mammone, P.E., Jessica L. Porter

Date Filed with Town Clerk: **May 2, 2017**

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on Wednesday April 19, 2017, 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, and Jason L. Mammone, P.E. In the absence of Member E. Patrick Maguire, the Chairman appointed Associate Member Jessica L. Porter to sit in his place. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:10 p.m., the Chairman called for the hearing on the appeal of John R. Aplin, Trustee of Aplin Realty Trust, 331 Whiting Avenue, Dedham, MA, to be allowed such special permits and variances as required to change, alter, extend, and/or reconstruct nonconforming uses and structures on a nonconforming lot (with frontage and lot width of approximately 57.68 feet), including the demolition of four (4) nonconforming commercial buildings used for a landscaping business and contractor’s yard and construction of a new commercial building which will have a side yard setback of 5 feet, with associated parking and outdoor storage and which will continued to be used for a landscaping business and contractor’s yard, the erection of retaining walls in excess of four (4) feet in height, and the continued use of a nonconforming 2-family dwelling on the same lot with a side yard setback of 5 feet at 331 Whiting Avenue in a General Residence (GR) Zoning District. *Town of Dedham Zoning Bylaw Sections 3.1.3 Use Regulation Table, 3.3 Nonconforming Uses and Structures, 4.1 Dimensional Requirements, 6.5.2 Retaining Walls, 9.2 Board of Appeal, 9.3 Special Permits, Table 1 Principal Use Regulations, and Table 2 Table of Dimensional Requirements*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was John R. Aplin as well as Scott Henderson, P.E., 144 Washington Street, Apt 1, Quincy, MA 02169. Attorney Zahka had previously submitted a 4-page

Memorandum as well as a certified plot plan and site photographs of the Subject Property and renderings of the proposed new building. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

John Aplin, Trustee of Aplin Realty Trust (hereinafter referred to as the "Applicant"), is the owner of the real estate known and numbered as 331 Whiting Avenue, Dedham, MA. The Subject Property, shown on Dedham Assessors' Map 128, Lot 105, has a land area of approximately 22,291 square feet of land, and frontage on Whiting Avenue of approximately 57.68 feet. The Subject Property is currently occupied by four (4) commercial buildings and a two-family house. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the General Residence (GR) Zoning District.

According to the Property Record Card maintained by the Dedham Board of Assessors, the two-family house and a number of the commercial buildings were built in 1900 (other structures were built in 1940 and 1955). Since at least 1981, Applicant has utilized the property for a landscaping business and/or contractor's yard. For many years prior thereto the Subject Property was utilized for various commercial purposes including as a contractor's yard.

The Subject Property and the uses thereon are nonconforming in several respects. Pursuant to Table 1 (Principal Use Table) of the Dedham Zoning By-Law commercial uses (with minor exception) are not allowed in the GR Zoning District. However, (in addition to a 2-family dwelling) the Subject Property is occupied by four (4) commercial buildings used as a landscape business and contractor's yard. Pursuant to Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law, lots in the GR Zoning District require a minimum lot frontage and minimum lot width of 90 feet, a minimum side yard of 10 feet, and a minimum rear yard of 20 feet. However, the Subject Property has frontage and lot width of only 57.68 feet. In addition, at least one of the commercial buildings has side yard setback of only 5 feet and a rear yard setback of 2.7 feet, and the 2-family dwelling has a side yard setback of only 5 feet.

As described above, the existing commercial buildings and uses are not allowed in the GR Zoning District, and the lot and the buildings thereon do not conform to a number of the minimum dimensional requirements applicable to the GR 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 situated as regards to the size, dimensions, location, or use of building or land.” Accordingly, the lot and the buildings and uses thereon are (pre-existing) nonconforming.

The Applicant proposes to demolish the four (4) existing commercial buildings and structures and to construct a new commercial building containing approximately 5,850 gross square feet (5,500 net square feet) of floor area with associated parking and outdoor storage. The new building will have a side yard setback of five (5) feet. The Applicant will continue to utilize the Subject Property and this building for his landscaping business and as a contractor’s yard. The Project requires retaining walls in excess of four (4) feet. In addition, the two-family dwelling (with a side yard setback of 5 feet) will remain in the Subject Property and will continue to be utilized as a two-family dwelling.

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 demolition and reconstruction of nonconforming structures, Section 3.3.7 of the Dedham Zoning By-Law provides, in pertinent part, that:

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

c. In the event that the proposed reconstruction would
(a) cause a structure to exceed the volume or area of the original nonconforming structure or...(c) 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.

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 by the Special Permit Granting Authority, unless otherwise specified herein, only upon its 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 shall 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 character and social structures;
5. Impacts on the natural environment;
6. Potential fiscal impact, including impact on town services, tax base, and employment.

The requirements and criteria for the issuance of the requested special permits are satisfied. Specifically, the Applicant's proposed changes, alterations, extension, and reconstruction of the nonconforming structures and uses are 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 Applicant proposes to reduce and consolidate four (4) existing commercial buildings into a newer single building and to provide for orderly parking on the Subject Property. The Applicant avers that this will be a major aesthetic improvement. The proposal will allow for the more efficient and effective use of the land. Also, the proposal will likely result in better traffic flow and parking on the site. Further, since the existing uses on the Subject Property will remain the same, there will be no different impact on the neighborhood (except for improved visual appearance). There should be no (negative) fiscal impact from the proposal (and there is the potential that the new building will result in an overall higher assessment of the Subject Property).

The Applicant also respectfully submits that the requirements and criteria for the issuance of a special permit to construct or erect retaining walls that are more than four (4) feet in height are

satisfied. Section 6.5.2 of the Dedham Zoning Bylaw states that “No retaining wall more than four (4) feet in height shall be erected or constructed without first obtaining a Special Permit from the Board of Appeals.” There is a considerable grade difference between the Subject Property and the abutting properties (which have a higher elevation). Accordingly, there are currently existing retaining walls on the Subject Property with varying heights up to approximately 5.5 feet. As part of the Project, the Applicant will be re-grading the entire site and will be replacing and/or installing new retaining walls with a maximum height of approximately 5.5 feet. It is noteworthy (that since the abutting properties are at higher elevation) the “face” of the retaining walls will not be visible from the abutting properties.

In addition, pursuant to the authority granted under Section 9.2.2 of the Dedham Zoning By-Law, 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 in 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 provisions 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.

The Applicant submits that it satisfies the requirements for issuance of a variance from the side yard setback requirement. The nature of the commercial uses on the Subject Property (landscaping business and contractor’s yard), in conjunction with the shape of the lot, makes it wholly impracticable for the Applicant to undertake the proposed upgrades to the site and maintain side yard setback. Accordingly, the Applicant will suffer a substantial financial hardship since it would either need to acquire additional land (or abandon the proposed upgrades to the Subject Property).

At the hearing, the Applicant submitted a petition signed by eight (8) abutters (mainly all direct abutters) indicating their support for the petition. Edward and Mary Mahoney, 337 Whiting

Avenue, and Christos Nikou, 346 Whiting Avenue, appeared at the hearing and raised questions regarding height of the retaining walls, and any potential change to the Applicant's business, hours of operation, parking and truck noise. In response, the Applicant noted that he does not anticipate any significant changes to his business operation. The Applicant noted that approval by the ZBA would give him the ability to garage more of his existing vehicles in the new building. He operates his landscaping business six (6) days a weeks and has no plans to be open on Sundays. With respect to retaining walls, Applicant stated that the height will be consistent with the existing walls and will not exceed six (6) feet in height.

Upon motion being duly made and seconded, the ZBA voted unanimously (5-0) to grant and approve:

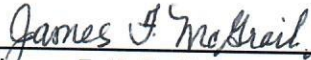
1. Such special permits as required to change, alter, extend, and/or reconstruct nonconforming uses and structures on a nonconforming lot with frontage and lot width of approximately 57.68 feet.
2. Such special permits as required for the demolition of four (4) nonconforming commercial buildings used for a landscaping business and contractor's' yard and construction of a new commercial building with associated parking and outdoor storage.
3. Such variances as required for construction of a new commercial building with a side yard setback of 5 feet.
4. Such special permits as required for the continued use of the Subject Property for a landscaping business and contractor's' yard with associated parking and outdoor storage.
5. Such special permits as required for construction and maintenance of retaining walls in excess of 4 feet in height; provided, however, no retaining wall shall be in excess of 6 feet in height.
6. Such special permits as required for the continued use of a two-family dwelling on the same lot as commercial uses which dwelling has a side yard setback of 5 feet.

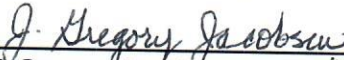
In granting of said special permits, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of the Applicant's proposal will not outweigh its beneficial impact on the Town and neighborhood, and that proposed changes,

alteration, extension and/or reconstruction of the nonconforming uses all structures are not substantially more detrimental than the existing nonconforming uses and structures. In granting said variances, the ZBA finds that the Applicant has satisfied the requirements Section 10 of Chapter 40A of the General Laws of Massachusetts, to wit: a literal enforcement of the Dedham Zoning By-Law requirements would cause a substantial financial hardship to Applicant, and that the relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Dedham Zoning By-Law.


The 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.

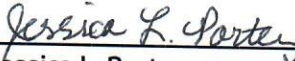
Dated: April 19, 2017


James F. McGrail, Esq.


J. Gregory Jacobsen


Scott M. Steeves


Jason L. Mammone, P.E.


Jessica L. Porter

Attest by the Administrative Assistant:


Susan N. Webster