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TOWN OF DEDHAM
ZONING BOARD OF APPEALS
DECISION



Applicant: **Fadiz Fares**
Property Address: **105 Rustcraft Road, Dedham, MA**
Property Owner: **Fadiz Fares**
Property Owner Address: **105 Rustcraft Road, Dedham, MA**
Applicant Representative: **Peter A. Zahka II, Esq., 12 School Street, Dedham, MA**

Legal Notice: To be allowed such Special Permits or variances as required to modify, alter, or extend a pre-existing nonconforming single family dwelling on a pre-existing nonconforming lot for purposes of constructing an addition which will have a rear yard setback of 12 feet instead of the required 20 feet, and a front yard setback of 24 feet instead of the required 25 feet.

Section of Zoning Bylaw: *Town of Dedham Zoning Bylaw Sections 3.3.2, 3.3.5 Nonconforming Single and Two Family Residential Structures, 4.3.2 Special Setback and Yard Exception, 4.3.2 Special Permit, 9.3 Special Permits, 3.3.4 Variances, and Table 2*

Zoning District, Map and Lot: Single Residence B, Map 152, Lot 3
Date of Application: May 22, 2017
Date of Public Hearing: June 21, 2017
Date of Decision: June 21, 2017
Vote: Unanimously approved, 5-0
Voting Members: James F. McGrail, Esq., J. Gregory Jacobsen, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,[®] Jason L. Mammone, P.E., Jared F. Nokes, J.D.

Date Filed with Town Clerk: **July 12, 2017**

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday June 21, 2017, in the Town Office Building, Bryant Street, Dedham, MA. Present

were Members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,[®] and Jason L. Mammone, P.E. In the absence of Member Scott M. Steeves, the Chairman appointed Associate Member Jared F. Nokes, J.D., 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 7:20 p.m., the Chairman called for the hearing on the appeal of Fadiz Fares, 105 Rustcraft Road, Dedham, Massachusetts, to be allowed such special permits and/or variances required to modify, alter, or extend a pre-existing nonconforming single family dwelling on a pre-existing nonconforming lot for purposes of constructing an addition which will have a rear yard setback of 12 feet instead of the required 15 feet and a front yard setback of 24 instead of the required 25 feet, at 105 Rustcraft Road, Dedham, MA in a Single Residence B (SRB) Zoning District. *Town of Dedham Zoning Bylaw Sections 3.3.2, 3.3.5 Nonconforming Single and Two Family Residential Structures, 4.3.2 Special Setback and Yard Exception, 4.3.2 Special Permit, 9.3 Special Permits, 3.3.4 Variances, and Table 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant were Fadiz and Sandy Fares. Attorney Zahka had previously submitted a 3-page Memorandum, a certified plot plan, site photographs of the Subject Property, and renderings of the proposed addition. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

Fadiz Fares (hereinafter referred to as the "Applicant") is the owner of the real estate known and numbered as 105 Rustcraft Road, Dedham, MA (hereinafter referred to as the "Subject Property"). The Subject Property, shown on Dedham Assessors' Map 152, Lot 3, contains approximately 11,160 square feet of land and has approximately 103.65 feet of frontage on Rustcraft Street. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Single Residence B Zoning District. The Subject Property is currently occupied by a single family residential dwelling. According to the records maintain by the Dedham Board of Assessors, the dwelling was constructed in 1976. Said records further indicate a living area of 968 square feet. The existing dwelling has a rear yard setback of approximately 12.6 feet.

The Subject Property and existing dwelling are pre-existing nonconforming in a number of respects. Per Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law, building lots in the SRB Zoning District are required to have a minimum lot area of 12,500 square feet. As

stated above, the Subject Property has a lot area of 11,160 square feet. In addition, said Table 2 provides that dwellings in the SRB District require a rear-yard setback of 25 feet (20 feet for lots created prior to 1989). As stated above, the existing dwelling is approximately 12.6 feet from the rear property line. Section 10 of the Dedham Zoning By-Law defines as “nonconforming building, structure, or use” as “an existing legally established 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 size, dimensions, locations, or use of the building or land.” Therefore, the Subject Property and the existing dwelling are pre-existing nonconforming with respect to lot area and rear yard setback.

In order to accommodate his growing family, the Applicant proposes to construct an addition to the existing dwelling. The addition will be approximately 12 feet from the rear property line and approximately 24 feet from the front property line.

As stated above, the Subject Property and existing dwelling are considered as “nonconforming.” Section 3.3.5.4 of the Dedham Zoning By-Law provides in pertinent part that:

In the event . . . the nonconforming nature of such [nonconforming single and or two family residential] would be increased by the proposed reconstruction, extension, alteration or change, the Board of Appeals, may by Special Permit, allow such reconstruction, extension, alteration, or change where it determines that proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

In addition, Section 4.3.2 of the Dedham Zoning By-Law authorizes the ZBA to issue special permits to vary front and rear yard requirements in the case of irregular, narrow, or shallow lot or a lot unusual in shape. Section 9.3.2 of the Dedham Zoning By-Law provides that when acting upon requests for special permits, the ZBA must determine that the “adverse effects of the proposed use will not outweigh its beneficial impacts” after consideration of the six (6) enumerated factors set forth in said Section.

The Applicant submits that he satisfies the requirements and criteria for the issuance of the requested special permit. The proposed addition is consistent with and maintains the existing appearance of the dwelling. The proposed new construction will result in a home that is compatible in size with the neighboring residences. The Applicant will continue to use the home as a family residence. Accordingly, there will be no changes in traffic flow or parking. With respect to impact

on the environment, prior to the issuance of any building permit, the project will be received by the Conservation Commission.

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 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.

The Applicant submits that he satisfies the requirements for issuance of a variance from the rear yard setback requirement as well as the front yard setback requirement. The location of the existing dwelling on the Subject Property in conjunction with the shape of the lot makes it wholly impracticable for the Applicant to undertake the proposed addition to the dwelling and maintain a rear yard setback of 20 feet and a front yard setback of 25 feet. Accordingly, the Applicant will suffer a substantial financial hardship since it would either need to acquire additional land (or abandon the dwelling for a larger dwelling to accommodate its growing family).

No one appeared in opposition to the requested relief. The Applicant submitted a petition signed by four (4) abutters indicating their support for the requested relief. It is noted that the petition is signed by the abutters closest to the proposed addition.

Anthony Alessio	24 McKinley Avenue, Dedham, MA
Josephine Giannangelo	32 McKinley Avenue, Dedham, MA
Boni Giannangelo	32 McKinley Avenue, Dedham, MA
Laura Koebler	121 Rustcraft Road, Dedham, MA
Marichelle Lunn	111 Rustcraft Road, Dedham, MA

Upon motion duly made by E. Patrick Maguire, MLA, RLA, CLARB, LEED AP® and seconded by J. Gregory Jacobsen, the ZBA voted unanimously (5-0) to grant and approve such special permits and/or variances as required to construct an addition to an existing single family dwelling which

is 12 feet from the rear property line instead of the required 20 feet and 24 feet from the front property line instead of the required 25 feet at 105 Rustcraft Road, Dedham, MA.

In granting said special permit, the ZBA finds that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. Furthermore, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. 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.

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: June 21, 2017


James F. McGrail, Esq.

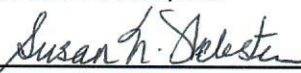

J. Gregory Jacobsen


E. Patrick Maguire, LEED AP


Jason L. Mammone, P.E.


Jared F. Nokes, J.D.

Attest, by the Administrative Assistant:


Susan N. Webster