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Jared F. Nokes, J.D., Associate Member



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TOWN OF DEDHAM ZONING BOARD OF APPEALS DECISION



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

James W. Devaney, Trustee, J & J Devaney Trust
111 River Street, Dedham, MA

J & J Devaney Trust

177 Wells Avenue, P.O. Box 9210, Newton, MA 02459

- Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
- James W. Devaney, Applicant, 177 Wells Avenue, P.O. Box 9120, Newton, MA 02459-9120
- Jamie Cook, Vice President, Global Partners, 800 South Street, P.O. Box 9161, Waltham, MA 02454-9161, Project Manager
- Camile A. Segel, Chief Financial Officer, Devaney Energy

Legal Notice:

The Applicant seeks to be allowed such Special Permits and/or variances as required for the removal of four (4) underground fuel storage tanks with a total capacity of 92,000 gallons and the installation of three (3) new underground fuel storage tanks with a capacity of 76,000 gallons and related pipes and apparatus which will be approximately three (3) feet from the rear property line and approximately 14 feet from the side property line at an inland fuel terminal (i.e., a change, alteration, extension, or reconstruction of a pre-existing nonconforming use and structures) in the LMA zoning district.

Section of Zoning Bylaw:

Town of Dedham Zoning Bylaw Sections 3.3.2 Nonconforming Uses, 3.3.3 Nonconforming Structures, 9.3 Special Permits, 3.3.4 Variances, and Table 2

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

Limited Manufacturing A, Map 129, Lot 1
May 22, 2017
June 21, 2017

Date of Decision: June 21, 2017
Vote: 5-0, unanimous approval
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 Scott M. Steeves, the Chairman appointed Associate Member Jared F. Nokes 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 7:13 p.m., the Chairman called for the hearing on the appeal of James W. Devaney, Trustee of the J & J Devaney Trust, of Dedham, Massachusetts, to be allowed such special permits and/or variances as required for the removal of four (4) underground fuel storage tanks with a total of capacity of 92,000 gallons and the installation of three (3) new underground fuel storage tanks with a capacity of 76,000 gallons and related pipes and apparatus which will be 3 feet from the rear property lone and 14 feet from the side property line at an inland fuel terminal (i.e., a change alteration, extension, or reconstruction of a pre-existing nonconforming use and structures) at 111 River Street, Dedham, MA, in the LMA Zoning District. *Town of Dedham Zoning Bylaw Sections 3.3.2 Nonconforming Uses, 3.3.3 Nonconforming Structures, 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 the Applicant were James W. Devaney, Trustee of the J & J Devaney Trust, Camile A. Segel, Chief Financial Officer, Devaney Energy, and James Cook of Global Partners (Project Manager). Attorney Zahka had previously submitted a 4-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.

James W. Devaney, Trustee of the J & J Devaney Trust (hereinafter referred to as the “Applicant”), is the owner of the real estate known and numbered as 111 River Street, Dedham, MA (hereinafter referred to as the “Subject Property”). The Subject Property, shown on Dedham Assessors’ Map 129, Lot 1, contains approximately 15,768 square feet of land and has approximately 90 feet of frontage on River Street. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the Limited Manufacturing A (LMA) Zoning District.

The Subject Property is currently occupied by a 2,952 gross square foot building, an overhead loading rack and canopy, and four (4) underground fuel storage tanks with a total capacity of 92,000 gallons (i.e., 3 @ 30,000 gallons and 1 @ 2,000 gallons). The Subject Property is used as an inland fuel terminal – a fueling station for trucks which then distribute the fuel off-site. According to the records maintain by the Dedham Board of Assessors, said building and underground fuel storage tanks were constructed in 1962. The existing underground tanks have a left side yard setback of 14 feet, and have no rear yard setback (and in fact actually encroach onto the abutting property). The building has a right side yard setback of 2 feet.

The existing uses and structures on the Subject Property are pre-existing nonconforming in a number of respects. Table 1 of the Dedham Zoning By-law does not contain a “use” similar to that which is conducted at the Subject Property. Further, there appear to be no special permits for such use. Therefore, the inland fuel terminal in the LMA Zoning District is a pre-existing nonconforming use. In addition, Table 2 of the Dedham Zoning By-law requires structures to have minimum side yard setback of 15 feet and a minimum rear yard setback of 25 feet in the LMA Zoning District. As stated above, the buildings and/or structures have a right side yard setback of 2 feet and a left side yard setback of 14 feet. The underground tanks also have no rear yard setback. (It is noteworthy that existing underground tanks encroach upon the abutting lot located to the rear of the Subject Property.) 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 uses/structures are pre-existing nonconforming with respect to the nature of the current use as well as dimensional deficiencies.

Due to their age, the Applicant proposes to replace the existing underground fuel storage tanks. Specifically, the Applicant proposes to remove the existing four (4) underground fuel storage tanks and to install three (3) underground fuel storage tanks with a capacity of 76,000 gallons (i.e., 1 @ 15,000 gallons, 1 @ 25,000 gallons, and 1 @ 36,000 gallons – the latter made up of a 30,000 gallon compartment and a 6,000 gallon compartment). The new underground fuel storage tanks will have a left side yard setback of approximately 14 feet and a rear yard setback of approximately 3 feet. No other changes or modifications of the Subject Property or building are proposed.

As stated above, the Subject Property and existing uses/structures are considered as “nonconforming.” Section 3.3.2 of the Dedham Zoning By-law provides that the Board of Appeals may award a special permit for a change or alteration to a nonconforming use only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. Section 3.3.3 of the Dedham Zoning By-law provides that the Board of Appeals may award a special permit to reconstruct, extend, alter, or change a nonconforming structure 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. Section 4.3.2 of the Dedham Zoning By-Law authorizes the ZBA to issue special permits to vary side and rear yard requirements in the case of irregular, narrow, or shallow lot or a lot unusual in shape. In addition, 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 it satisfies these requirements and criteria for the issuance of the requested special permit. The existing uses and structures are pre-existing nonconforming. The Subject Property is utilized as a fueling station for trucks that distribute the fuel off-site and will continue to be used as such. The Project is not designed to intensify that use. In addition, the current left side yard setback is 14 feet. The proposed underground fuel storage tanks will maintain the same left side yard. The existing tanks have no rear yard setback (and actually encroach upon the abutting property). The proposed underground fuel tanks will remain beneath the ground and out of sight with the exception of minor equipment necessary to operate the

underground fuel storage tanks. Accordingly, there will be no changes in traffic flow or parking nor will there be any impact on the environment.

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 it satisfies the requirements for issuance of the requested variance. The size of the proposed underground storage tanks in conjunction with other existing buildings upon a small lot (significantly smaller than the required lot area in the LMA Zoning District) makes it wholly impracticable for the Applicant to undertake the necessary upgrades and maintain a rear yard setback of 25 feet and a left side yard setback of 15 feet. Accordingly, the Applicant will suffer a substantial financial hardship since it would need to reduce the proposed underground fuel storage tanks by a significant amount, thus likely compelling the Applicant to abandon any upgrades to the current underground fuel storage tanks and/or require the Applicant to demolish the existing building to meet the dimensional requirements. In addition, relocating such tanks would cause a significant hardship for trucks to safely access the fuel terminal.

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.

Ryan Huntoon, East Dedham Building Supply	187 Milton Street
(illegible) Patel	197 Milton Street
Anthony Venuto	106 River Street
Mark Ingemi	422 Whiting Avenue

Upon motion duly made by J. Gregory Jacobsen and seconded by E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,[®] the ZBA voted unanimously (5-0) to grant and approve such special permits and/or variances as required for the removal of four (4) underground fuel storage tanks with a total of capacity of 92,000 gallons and the installation of three (3) new underground fuel storage tanks with a capacity of 76,000 gallons and related pipes and apparatus which will be 3 feet from the rear property line and 14 feet from the side property line at an inland fuel terminal at 111 River Street, 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 the 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.

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: June 21, 2017


James F. McGrail, Esq.


J. Gregory Jacobsen

E. Patrick Maguire

E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®

Jason L. Mammone

Jason L. Mammone, P.E.

Jared F. Nokes

Jared F. Nokes, J.D.

Attest by the Administrative Assistant:

Susan N. Webster

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