

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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## TOWN OF DEDHAM ZONING BOARD OF APPEALS DECISION



**Applicant:** Olga Magomegova  
**Property Address:** 66 Ware Street, Dedham, MA  
**Property Owner:** Olga Magomegova  
**Property Owner Address:** 66 Ware Street, Dedham, MA  
**Applicant Representative:** Kevin F. Hampe, Esq., 411 Washington Street, Dedham, MA

**Legal Notice:** The applicant seeks to be allowed a Special Permit to convert a single family dwelling with an in-law apartment to a two-family dwelling.  
*Town of Dedham Zoning Bylaw Section 7-2, 9-3, and MGLA Ch. 40A, Section 9*

**Section of Zoning Bylaw:**

**Zoning District, Map and Lot:** Single Residence B, Map 61, Lot 25  
**Date of Application:** April 14, 2017  
**Date of Public Hearing:** April 19, 2017 and June 21, 2017  
**Date of Decision:** June 21, 2017  
**Vote:** Unanimous denial, 5-0  
**Voting Members:** James F. McGrail, Esq., J. Gregory Jacobsen, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,® Jessica L. Porter, Jared F. Nokes, J.D.

**Date Filed with Town Clerk:** **JULY 6, 2017**

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held a public hearing on Wednesday, May 17, 2017, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Vice Chairman, Scott M. Steeves, and E. Patrick Maguire, MLA, RLA, CLARB, LEED AP.® Member Jason L. Mammone, P.E., recused himself from this hearing because his parents live across the

street from the Applicant. Chairman McGrail appointed Associate Member Jessica L. Porter, to sit in his stead.

The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11 and the Town of Dedham Zoning Bylaw. Legal ads were placed for two consecutive weeks in *The Dedham Times*. In addition, abutters within 300 feet of the property in question received notification of the hearings, and notification regarding each hearing was sent to the neighboring towns (Boston, Needham, Canton, and Westwood).

At 7:20 p.m., the Chairman called for the hearing on the petition of Olga Magomegova, 66 Ware Street, Dedham, MA, to be allowed a Special Permit to convert a single family dwelling with an in-law apartment to a two-family dwelling. The property is located at 66 Ware Street, Dedham, MA, and is in the Single Residence B zoning district. *Town of Dedham Zoning Bylaw Section 7-2, 9-3, and MGLA Ch. 40A, Section 9*

The Applicant was represented by Kevin F. Hampe, Esq., 411 Washington Street, Dedham, MA. The Applicant was also present for the hearing. The Applicant had submitted an Application for a Special Permit on April 14, 2017. This included:

- Zoning Board of Appeals application
- Mortgage Inspection Plan certified by Richard B. Betts, Registered Professional Land Surveyor, dated August 13, 1982
- Assessors Database information for property
- Petition statement prepared by Kevin F. Hampe, Esq.
- E-mail from Danny Rico, 62 Ware Street, Dedham, MA
- Elevations of first and second floors and attic of home

The minutes from the hearing are the primary source of evidence and is incorporated herein by reference. At the hearing, the Applicant was afforded an opportunity to make a full presentation.

The subject property is known and numbered as 66 Ware Street, Dedham, MA, and is shown on Dedham Assessors' Map 61, Lot 25. The certified plot plan indicates that the Subject Property contains 20,820 square feet of land and has 161.95 feet of frontage. According to the Dedham Zoning Map, the property is located in the Single Residence B zoning district. Currently, the



property is occupied by a single family home with an in-law apartment. According to the records maintained by the Dedham Board of Assessors, the dwelling was constructed in 1947.

Mr. Hampe, on behalf of Mrs. Magomegova, requested a Special Permit to convert a single family dwelling with an in-law apartment into a two-family dwelling. Under Section 7.2 of the Zoning Bylaw, there are three conditions that must be met and with which the Applicant complies:

1. Such house is located on a lot which has an area at least 50 percent larger than required for the construction of a single family home in that district.
2. No exterior enlargement is made which together with any changes made during the preceding five years increase the cubic content of the house by 20 percent or more.
3. No exterior change is made which, in the opinion of the Board of Appeals, alters the single family character of the dwelling.

The current dwelling was built in 1946 and renovated in 1985 with a one-story addition with an in-law apartment that had a living room, kitchen, and bathroom. Mr. Hampe attached copies of those building permits. In 2003, the Applicant, who bought the property in 2001, added a second floor over the one-story existing in-law apartment. The Assessors for the Town have been assessing the property as a two-family since the addition with the in-law apartment was built. The property is located on a 20,820 square foot lot in the Single Residence B zoning district. To be a buildable lot, a property needs 12,500 square feet. This means that the Applicant has more than 50% of what is needed. The house meets all other setbacks and coverage for the zoning district. The property is occupied by the Applicant, her son, and his girlfriend. There is adequate parking for four vehicles, or up to six if they are tandem parked.

The original house is on the right side of the dwelling (as noted in the Assessors Database), and has two floors. The first floor has an open dining room, kitchen, living room, and bathroom, and the second floor has three bedrooms and a bathroom. The existing in-law apartment is on the left. The first floor has a kitchen, dining room, and bedroom on the first floor. The second floor has a living room, computer room, and bathroom. The attic includes a large open room, which is used as a bedroom and for storage. In order to rent this out as a two-family, the Applicant would need to block off an exit between the two units, and add a doorway to the side where the in-law apartment is so the people using the rental property would have their own direct access to their unit. There are no plans to expand the exterior of the building. The Applicant has not, in the last five years, added any additional cubic feet to the structure. He believed that she has complied



with all the requirements of the Town of Dedham Zoning Bylaw, and requested that the Board grant a Special Permit to convert the dwelling from a single family dwelling with an in-law apartment to a two-family dwelling.

Mr. Hampe visited the site today. There was a truck in front of the property, which has been there for a while. This truck is her son's and had been bought at an auction. On the way back from the auction, the transmission totally blew out. As a result the truck has been there for a couple of months. It is the Applicant's intent to have it towed to a junk yard for salvage purposes. Mr. Hampe is aware that he gave the Board a plot plan from 1993. He said the structure is exactly the same as it was in 1993. He said he would be more than willing to provide an updated plot plan with a surveyor's stamp as required by the Board. Again, nothing has changed in the outside structure.

Ms. Porter asked where 64 Ware Street was. Mr. Hampe said the Assessors show only 66 Ware Street. She said it was hard for her to imagine that there could be enough tandem parking for six cars. Mr. Hampe said there are three spots across, at least, and then cars would park behind them. He said a fourth car could go behind whoever else was in the unit. Ms. Porter said there have been some complaints about the property. Given that Town Meeting debated lodging houses, she is curious as to how the change would limit the Building Department if it was ever rented to four people. If the Applicant was to take on multiple tenants, she wondered if changing it to a two-family restricts the Town's ability to handle that under the new Lodging House definition, allowing the Town more authority with the existing definition. Mr. Hampe said the definition right now is for four or more unrelated people in a house. This would be a two-family, and she would be able to have this on both sides. If she rented it out to a family on the second side, each unit would be separate. Ms. Porter wondered if the Town would have more authority to intervene if the applicant was to rent out to four unrelated people, as it is now, than if the Board granted the Special Permit and it was considered a two-family. Mr. Hampe said that, right now, it is a single family dwelling with an in-law apartment. The in-law apartment is for people related to the owner. As it stands now, the applicant could have up to three unrelated people living there. Ms. Porter asked whether, if it is converted to a two-family, she could have up to seven; Mr. Hampe said six or seven. His interpretation is that the bylaw applies to each unit, not the whole structure.



Mr. Maguire asked if there are other two-family houses in the neighborhood. Mr. Hampe said the neighborhood is mostly single family dwellings. There are one or two two-families, but most are single family. He said the two families are closer to Whitehall Street. Mr. Maguire asked if these were recent Special Permits. Mr. Hampe did not know. He said they are older structures that have probably been in existence for a while.

#### Audience

Danny Rico, 62 Ware Street, was in opposition. Ware Street is a dead end with multiple single family dwellings. There are children up and down the street. The increased traffic causes concerns for safety, and the street cannot support the increase. There are drop offs from Uber and taxis late at night, and he cannot sleep on his porch because of the noise, which is not respectful of the neighbors. He believes there is some type of rental operation occurring, although he does not know what it is, and people come and go at all hours. The location is a dumping ground for trash, i.e., refrigerators, sofa, TV, and dishwashers, raising health concerns. There is work going on in the house late at night. The applicant pays no attention to maintenance of the property, and there is a long police log. Dorothy Boulanger, 122 Ware Street, provided a letter in opposition, and said this will devastate the neighborhood. Kathy Seaman, 84 Ware Street, was in opposition when she learned it will be permanent. Mary Lou Mammone, 63 Ware Street, was in opposition, saying the applicant rented the in-law apartment for years. She said that people are working in the apartment now, but she does not know if they are allowed to do that. Virginia Swanson, 81 Ware Street, was in opposition. James Curley, 55 Ware Street, was in opposition, saying the road is like a highway at night. There was a truck leaking oil on the street a couple of months ago. He called the police, and it is gone now. Al Cedrone, 93 Ware Street, was in opposition. Harvey DeGrandis, 71 Ware Street, agreed with the neighbors. Peter McManus, 42 Ware Street, was opposed only to the effect that there may be an unrelated person at the house.

Mr. Hampe contended that the applicant has complied with all the Zoning Bylaw requirements and conditions. Mr. McGrail suggested that this be tabled until June 21, 2017, and make a decision at that time. The neighbors were invited to attend, but Mr. McGrail said the Board had heard them loud and clear. The Board needs to review the information before making a decision that is fair to the neighbors and the applicant.

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held a public hearing on Wednesday, June 21, 2017, in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Vice Chairman, and E. Patrick Maguire, MLA, RLA, CLARB, LEED AP.<sup>®</sup> Member Jason L. Mammone, P.E., recused himself from this hearing because his parents live across the street from the Applicant. Chairman McGrail appointed Associate Member Jessica L. Porter, to sit in his stead. Member Scott M. Steeves was absent from this hearing. Chairman McGrail appointed Associate Member Jared F. Nokes, J.D., to sit in his stead. Mr. Nokes had been given the full application and minutes from the May 17, 2017, meeting, so he was fully informed of the petition.

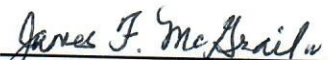
Mr. Hampe reminded the Board of his presentation at the May 17, 2017, meeting. The Board had requested that a dilapidated truck be removed from in front of the property. An updated site plan dated May 31, 2017, prepared by Paul Lindholm, P.E., 80 Tarbox Street, Dedham, MA, was also submitted as requested to take the place of the mortgage inspection plan prepared by Richard B. Betts, RLS, dated August 13, 1982.

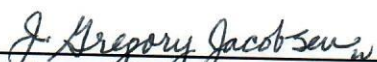
Mr. McGrail asked the audience for any new comments. Danny Rico, 62 Ware Street, said the positions of the neighborhood have not changed since the last meeting. Mr. Maguire asked if the Applicant had met with the neighbors, and she had not. Mr. McGrail said that the neighbors made it clear what they thought.

On a motion made by E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,<sup>®</sup> and seconded by J. Gregory Jacobsen, the Zoning Board of Appeals voted unanimously, 5-0, to deny the petition. Mr. McGrail stated that the adverse effects of the Applicant's proposal outweighed its beneficial impacts on the Town and the neighborhood, and would be substantially more detrimental to the neighborhood.

Date: June 21, 2017

Attest by the Zoning Board of Appeals:

  
James F. McGrail, Esq., Chairman

  
J. Gregory Jacobsen, Vice Chairman



E. Patrick Maguire

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

Jared F. Nokes

Jared F. Nokes, J.D.

Jessica L. Porter

Jessica L. Porter

Attest by the Administrative Assistant:

Susan N. Webster

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