

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

James F. McGrail, Chairman
J. Gregory Jacobsen, Vice Chairman
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E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®
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Jared F. Nokes, J.D.

**ZONING BOARD OF APPEALS
DECISION**

TOWN OF DEDHAM

2017 NOV - 1 PM 2:31

CLERKS OFFICE

Applicant: James Rinaldi
Property Address: 58 Hamilton Avenue, Dedham, MA
Property Owner: James P. Rinaldi
Property Owner Address: 58 Hamilton Avenue, Dedham, MA
Applicant Representative: James Rinaldi

Legal Notice: The applicant seeks to be allowed a Special Permit to construct a one-story detached accessory building with a gable wall height of 25½ feet above finish grade and the overall height of the building being 25½ feet above finish grade.

Section of Sign Code: *Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements, Footnote 15*

Zoning District, Map and Lot: Single Residence B, Map 153, Lot 24
Date of Application: September 15, 2017
Date of Public Hearing: October 18, 2017
Date of Decision: October 18, 2017
Vote: Unanimously approved, 5-0
Voting Members: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jessica L. Porter, Jared F. Nokes, J.D.

Date Filed with Town Clerk: **NOVEMBER 1, 2017**

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held a public hearing on Wednesday, at p.m. in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, and Scott M. Steeves. In the absence of Members E. Patrick Maguire, MLA, RLA, CLARB, LEED AP® and Jason L. Mammone, P.E., Mr. McGrail appointed Associate Members Jared F. Nokes, J.D., and Jessica L. Porter to sit in their stead.

The hearings were duly advertised for two consecutive weeks in the *Dedham Times* in accordance with the requirements of MGL Chapter 40A, Section 11 and the Town of Dedham Zoning Bylaw. Notices of the hearing were sent to abutters within 300 feet of the property in question on September 22, 2018. Notification of the hearing was also sent to the neighboring towns, Boston, Needham, Canton, and Westwood) at that time. Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning Department.

At 7:00 p.m., the Chairman called for the hearing on the petition of James Rinaldi, 58 Hamilton Avenue, Dedham, MA. Mr. Rinaldi seeks to be allowed a Special Permit to construct a one-story detached accessory building with a gable wall height of 25½ feet above finish grade and the overall height of the building being 25½ feet above finish grade. The property is located at 58 Hamilton Avenue, Dedham, MA, and is located in the Single Residence B zoning district. *Town of Dedham Zoning Bylaw Section 4.1, Table of Dimensional Requirements, Footnote 15*

The Applicant represented himself at the hearing. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The Applicant had submitted an application for a Special Permit on September 15, 2017. This included:

1. Zoning Board of Appeals application
2. Certified As Built Plot plan prepared by Daniel G. MacIsaac, PLS, 18 Fairview Road, Canton, MA 02021
3. Petition signed by fourteen neighbors in support.

The subject property is known and numbered as 58 Hamilton Avenue, Dedham, MA, and is shown on Dedham Assessors' Map 153, Lot 24. The certified plot plan indicates that the Subject Property contains of 14,979 square feet of land and has 93 feet of frontage on Hamilton Avenue. According to the Dedham Zoning Map, the Subject Property is located in the Single Residence B zoning district. Currently, the property is occupied by a single family dwelling.

According to the records maintained by the Dedham Board of Assessors, the building was constructed in 1965.

Mr. McGrail explained that Mr. Rinaldi was in the process of constructing a one-story detached accessory building when the Zoning Bylaw for the Table of Dimensional Requirements was changed by adding Footnote 15:

Footnote 15: One-story detached accessory building exterior wall shall not be greater than 10 feet in height above the finished grade, and the overall height of the one-story detached accessory building shall not be higher than 15 feet above the finished grade.

This was changed on a Monday night at Town Meeting, and he began construction on Tuesday. He obtained the appropriate building permit, followed the procedure exactly, and was not ignoring the Zoning Bylaw. The detached accessory building will be used for storage; he may purchase an RV in the future. He is before the Board to rectify the situation. No one in the audience spoke in favor or against the petition. He has universal support of his neighbors, and presented a petition signed by fourteen neighbors in support:

Steven F. Reid, 59 Hamilton Avenue
Bernard Mulligan, 43 Hamilton Avenue
Andrew Keane, 35 Hamilton Avenue
Brian Cacciatore, 21 Glenway
Thomas Bergeron, 20 Glenway
Peter Brady, 25 Glenway
Lucinda Mosby, 15 Glenway

Dwayne Mosby, 15 Glenway
Rich Ricci, 67 Hamilton Avenue
Sharon Connolly, 64 Hamilton Avenue
Thomas Connolly, 64 Hamilton Avenue
Jacob Reid, 59 Hamilton Avenue
Eamon Connolly, 64 Hamilton Avenue
Donna Norton, 44 Hamilton Avenue

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 nonconforming single and two family residential structures, Section 3.3.5 of the Dedham Zoning By-Law provides, in pertinent part, that if "the nonconforming

nature of such structure shall 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 the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.”

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:

1. 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:
2. Social, economic, or community needs which are served by the proposal
3. Traffic flow and safety, including parking and loading
4. Adequacy of utilities and other public services
5. Neighborhood character and social structures
6. Impacts on the natural environment
7. Potential fiscal impact, including impact on town services, tax base, and employment

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 respectfully submits that the requirements and criteria for the issuance of the requested special permit are satisfied. Specifically, the Applicant's proposed changes, alterations, extension, and reconstruction of the nonconforming structures and uses is not substantially more detrimental than the existing nonconforming uses and structures and the adverse effects of the proposal do not outweigh its beneficial impacts.

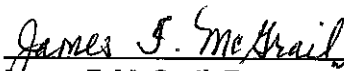
Upon motion being duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA voted 5-0 to grant a Special Permit for construction of a one-story detached accessory building with a gable wall height of 25½ feet above finish grade and the overall height of the building being 25½ feet above finish grade.

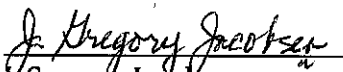
In granting said Special Permit, the ZBA finds that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood. Furthermore, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the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

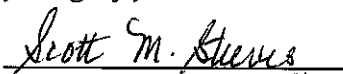
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no variance shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been 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: October 18, 2017

Attest by the Zoning Board of Appeals:


James F. McGrail, Esq.


J. Gregory Jacobsen


Scott M. Steeves

Jared F. Nokes
Jared F. Nokes, J.D.

Jessica L. Porter
Jessica L. Porter

Attest by the Administrative Assistant

Susan N. Webster
Susan N. Webster