

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

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



Dedham Town Hall
26 Bryant Street
Dedham, MA 02026-4458
Phone 781-751-9242
Fax 781-751-9225

Susan Webster
Administrative Assistant
swebster@dedham-ma.gov

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

**ZONING BOARD OF APPEALS
DECISION**

CLERKS OFFICE
2017 DEC 14 PM 2:51
TOWN OF DEDHAM

Applicant: Andrew Mulligan, 107 Willow Street, Westwood, MA 02090
Property Address: 914 High Street, Dedham, MA 02026
Property Owner: Thomas J. and Sharon S. Freedman
Property Owner Address: 914 High Street, Dedham, MA 02026
Applicant Representative: Peter Fenn, Esq., 53 Milk Street, Westwood, MA
Andrew Mulligan, prospective buyer

Legal Notice: The applicant seeks to be allowed a Special Permit to convert an existing single family dwelling, which has been used as a two-family dwelling for decades, into a two-family dwelling in the Town of Dedham Historic District.

Section of Zoning Bylaw: *Town of Dedham Zoning Bylaw Section 7.2.1*

Zoning District, Map and Lot: Single Residence B, Map 89, Lot 47
Date of Application: October 13, 2017
Date of Public Hearing: November 15, 2017
Date of Decision: November 15, 2017
Vote: Unanimous approval, 4-0
Voting Members: J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jessica L. Porter

Date Filed with Town Clerk: December 14, 2017

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts held a public hearing on Wednesday, November 15, 2017, at 7:00 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, Scott M. Steeves, and E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®.

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 October 24, 2017. Notification of the hearing was sent to the neighboring towns, Boston, Needham, Canton, and Westwood). 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.

Chairman James F. McGrail, Esq., recused himself from the above hearing because he is a direct abutter. The Acting Chairman, J. Gregory Jacobsen, appointed Associate Member Jessica L. Porter to sit in his stead. The Applicant was informed that there would only be four voting members for the hearing and that he would require a unanimous 4-0 vote for approval. He was given the option of continuing the hearing until December 2017, but he chose to continue.

At 9:00 p.m., the Acting Chairman called for the hearing on the petition of Andrew Mulligan, 107 Willow Street, Westwood, MA 02090, to be allowed a Special Permit to convert an existing single family dwelling, which has been used as a two-family dwelling for decades, into a two-family dwelling in the Town of Dedham Historic District. The property is located at 914 High Street, Dedham, MA, and is located in the Single Residence B zoning district, Aquifer Protection Overlay district, and the Historic District. *Town of Dedham Zoning Bylaw Section 7.2.1*

The Applicant was represented by Peter Fenn, Esq., 53 Milk Street, Westwood, MA 02090. The applicant, Andrew Mulligan, was also present for this 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 October 13, 2017. This included:

1. Zoning Board of Appeals application
2. Elevations of first and second floors
3. Mortgage inspection plan prepared by Olde Stone Plot Plan Service, LLC, 10 Edgewater Drive, P.O. Box 1166, Lakeville, MA 02347
4. Town of Dedham Assessors Property Sheet
5. List of proposed renovation to property

The subject property is known and numbered as 914 High Street, Dedham, MA, and is shown on Dedham Assessors' Map 89, Lot 47. The certified mortgage plan indicates that the Subject Property contains of 27,458 square feet of land and has approximately 150 feet of frontage on High Street (the Town of Dedham GIS map shows 143.7 feet) and approximately 185 feet of frontage on Village 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 an antique single family dwelling. According to the records maintained by the Dedham Board of Assessors, the building was constructed in 1840.

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 Sec-

tions 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 permits and variances 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.

Mr. Fenn explained that Mr. Mulligan has an agreement to purchase 914 High Street and hopefully re-develop it. This is an antique home in the Historic Districts Overlay District, built in 1840. It has not been well maintained for many years, and the applicant would like to purchase it and refurbish it. Currently, it is listed as a single family dwelling, but it has been used for many years as a two-family dwelling. Each space has kitchens, bathrooms, bedrooms, and living rooms. The applicant wants to legitimize it as a two-family dwelling, and is requesting a Special Permit to do so. Nothing will be changed on the property other than making the necessary improvements. The units will remain the same as they exist now. The property fits the criteria for square footage in that a single family dwelling requires 12,000 square feet, and the property is 27,458 square feet. Mr. Mulligan said he may add a garage, but this would not be a ZBA issue.

Mr. Maguire was concerned about the parking and how many vehicles could park there. Mr. Fenn said the site is .75 acres with an existing pea gravel driveway that can easily fit six cars. It can also be expanded, although they do not propose doing this. He said they would be happy to return to the Board next year to show the parking on a site plan. Mr. Maguire was not satisfied with this description. Mr. Fenn said they would be happy to reschedule the hearing so Mr. Maguire will have a site plan to review. They have a contract to go forward with the property to close within 30 days after the Special Permit is granted, so time is of the essence. Both he and Mr. Mulligan are concerned that someone else may buy the property and not preserve it as an historic dwelling. Mr. Maguire said that the house has been for sale for a long time, and he did not think another month would "kill" them. Mr. Mulligan said that he can put in parking by right, and it is not a ZBA issue. He offered to submit a memo of understanding to the Board. The driveway will be on High Street. The distance from the house to the property line on High Street is 115 feet. By right, anyone who owns the house, whether it is a single family dwelling or a two-family dwelling, can pour gravel or use asphalt. Mr. Maguire said that he is coming to the Zoning Board of Appeals to ask for something. He does not believe that Mr. Mulligan has presented enough information for him to say he is okay with that. Mr. Fenn asked if there are any other concerns the Board wants addressed.

Andrea O'Connell, 930 High Street, asked about a garage. Mr. O'Connell said they have been in their house for about 25 years, and were present when redevelopment was done for an in-law suite. There was a family that had multiple cars. He wondered what would happen if there were two separate households with two or three cars each. His concern is that there is nice grass between his house and this house, and this will be turned into a mess. Please note that he was very soft spoken, and some of his comments could not be heard. Mr. Fenn said they need to show the neighbors the site plan to explain the parking. The number of cars will be very similar to what it has been in the past.

Mr. Maguire thought Mr. Fenn was casually dismissing his concerns, saying that an in-law apartment and a two-family are two totally different things. He said this is not a simple thing. He said he is not 100% against it, but thinks there is not enough information on cars and a garage to say it is a good idea. Mr. Fenn agreed that they are legally two very different things. He said that there will not be a change in the physical layout or use of the property. There is no expansion of the property, no change in the footprint, and no increase in bedrooms or bathrooms. As a result, the density will not change. Mr. Maguire said that what is not shown is what is truly going to happen with the property. He said there could be many more cars, and these will impact people, and Mr. Fenn has not shown the Board that they are not having an impact on them. Mr. Fenn said he understood Mr. Maguire's concerns.

Karen Durham, 902 High Street, said she is excited that someone is going to fix the house and not tear it down. She also said that she does not see the driveway because it is on the other side of the house, so it will not be an issue for her. She hopes they get someone in there who is willing to put the money into it. Please note that she was also very soft spoken, and some of her comments could not be heard. Mr. Fenn said that the numbers do not work if the property is not a two-family dwelling, and it would be more likely that it would be removed and not redeveloped. They would like to preserve an historic structure and bring it back to what it should be. It will also help the property values of everyone in the neighborhood. An unidentified woman in the audience asked if the apartment is legal. Mr. Jacobsen said he believes it had been operating for many years without a permit. This is why the applicant is before the Board. The woman said this is of concern to her as a resident of Precinct 1 because there are so many houses like this and it would set a precedent. Mr. Fenn said this is not a precedent. There is a procedure that has to be followed, and it is up to the ZBA to allow it.

Mr. McGrail, speaking as a citizen and not a member of the Board, is a direct abutter, owning a two-family dwelling at 214-216 Village Avenue. He supports the conversion of the house. It is a huge house and is set up as a two-family. The driveway is rather large as well. He supports the petition because the property is a blight. He will also be renovating his property to bring it up to standard for the neighborhood. He said that no one will buy the house as a single family dwelling because it will take an extremely large amount of money to renovate it.

Mr. Mulligan said that the only other offers for the house have been from people who want to knock it down. Victor Divine, the realtor for the owner/seller, has been trying to sell it for over a year. He said there have been multiple offers, almost all similar to this one for a two-family. This is the only way that the numbers would work because of the extent of work and expense necessary. He said that every step in this process has been difficult, and it has taken a long time to get to this point. Mr. Maguire asked if the dwelling would be thoroughly renovated and then sold as two three-bedroom condominiums, not rentals. Mr. Mulligan said they would not be rented. He said that Stanton Lyman of the Dedham Historic Districts Commission considers the dwelling a very important home. The dwelling would be bought and renovated, "bells to whistles," and then sold as two three-bedroom condos. He asked if the Board would like a Memo of Understanding in which the Board details any concerns, i.e., landscape design, fencing of the neighbors' choice, number of parking spaces per unit. Mr. Fenn said things like this can be put as restrictions in condo documents if the Board required it.

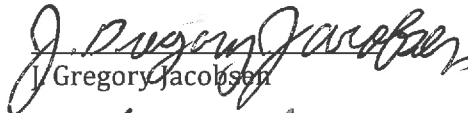
Upon motion being duly made by E. Patrick Maguire, MLA, RLA, CLARB, LEED AP® and seconded by Scott M. Steeves, the ZBA voted 4-0 to grant a Special Permit to convert an existing single family dwelling, which has been used as a two-family dwelling for decades, into a two-family dwelling in the Town of Dedham Historic District with the condition that no more than six (6) cars can be parked at the site. Mr. Steeves seconded the motion. The vote of the Board was unanimous at 4-0, with Mr. McGrail recusing himself from any part of the hearing or vote.

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: November 15, 2017

Attest by the Zoning Board of Appeals


Gregory Jacobsen


Scott M. Steeves


E. Patrick Maguire, LEED AP


Jessica L. Porter

Attest by the Administrative Assistant


Susan N. Webster