

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

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

**ZONING BOARD OF APPEALS
DECISION**

Applicant and Owner: Caroline and Brian Angel Burke
Property Address: 15 Williams Avenue, Dedham, MA
Case #: VAR-10-17-2270

Zoning District and Map/Lot: General Residence, Map 143, Lot 82
Application Date: October 11, 2017

Present and Voting: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jessica L. Porter

Representative: Brian Angel Burke

Legal Notice: The applicant seeks to be allowed such Special Permits and variances as necessary and required for a front yard setback of 12'5" instead of the required 20 feet, and a right side yard setback of 8'5" instead of the required 10 feet in a pre-existing nonconforming single family dwelling.

Section of Zoning Bylaw: *Town of Dedham Zoning Bylaw Sections 3.3 Nonconforming Uses and Structures, 3.3.2 Nonconforming Uses, 3.3.5 Nonconforming Single and Two Family Residential Structures, and 4.1, Table of Dimensional Requirements*

Zoning District, Map and Lot: General Residence, Map 143, Lot 82

Date of Application: October 11, 2017

Date of Public Hearing: November 15, 2017

Date of Decision: November 15, 2017

Vote: Unanimous approval, 5-0

Voting Members: James F. McGrail, Esq., 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

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TOWN OF DEDHAM

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held a public hearing on Wednesday, November 15, 2017, at 7:05 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.® Member Jason L. Mammone, P.E. was unable to attend the meeting, so Chairman McGrail appointed Associate Member Jessica L. Porter to sit in his 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 October 20, 2017, and November 3, 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.

At 7:05 p.m., the Chairman called for the hearing on the petition of Caroline and Brian Angel Burke, 15 Williams Street, Dedham, MA, to be allowed such Special Permits and variances as necessary and required for a front yard setback of 12’5” instead of the required 20 feet, and a right side yard setback of 8’5” instead of the required 10 feet in a pre-existing nonconforming single family dwelling. The property is located at 15 Williams Avenue, Dedham, MA, and is located in the General Residence zoning district. *Town of Dedham Zoning Bylaw Sections 3.3 Nonconforming Uses and Structures, 3.3.2 Nonconforming Uses, 3.3.5 Nonconforming Single and Two Family Residential Structures, and 4.1, Table of Dimensional Requirements*

Mr. Williams represented himself. 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/variances on October 11, 2017. This included:

1. Zoning Board of Appeals application
2. Certified plot plan prepared by Andrew C. Murphy, PLS, United Consultants, Inc., 850 Franklin Street, Suite 11D, Wrentham, MA 02093
3. Specifications for proposed addition prepared by Dennis Colwell Architects, Inc., 34 School Street, Suite 204, Foxborough, MA 02035
4. Photographs of existing conditions

The subject property is known and numbered as 15 Williams Avenue, Dedham, MA, and is shown on Dedham Assessors' Map 143, Lot 82. The certified plot plan indicates that the Subject Property contains 7,200 square feet of land and has 52 feet of frontage. According to the Dedham Zoning Map, the Subject Property is located in the General Residence zoning district. Currently, the property is a single family dwelling. According to the records maintained by the Dedham Board of Assessors, the building was constructed in 1900.

Mr. Williams said they live in a pre-existing nonconforming bungalow, and they would like to add a second floor to the dwelling. The front porch will be extended to the width of the building. They are seeking variances for front yard and right side yard setbacks. They have two children, a boy and a girl, and they currently share a room. They would like to stay in the neighborhood. No one spoke in favor or against the petition.

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:

“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:

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

are not substantially more detrimental than the existing nonconforming uses and structures and the adverse effects of the proposal do not outweigh its beneficial impacts.

No one appeared in opposition to the requested relief.

Upon motion being duly made by J. Gregory Jacobsen and seconded by Jessica L. Porter, the ZBA voted 5-0 to grant such Special Permits and variances as necessary and required for a front yard setback of 12'5" instead of the required 20 feet, and a right side yard setback of 8'5" instead of the required 10 feet in a pre-existing nonconforming single family dwelling.

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.

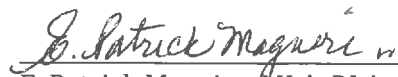
Dated: November 15, 2017

Attest by the Zoning Board of Appeals


James F. McGrail, Esq.



J. Gregory Jacobsen


Scott M. Steeves


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


Jessica L. Porter

Attest by the Administrative Assistant


Susan N. Webster