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COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

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DECISION

Applicant/Owner	Michael R. and Cheryl A. Feeley
Property Address	59 and 65 Durham Road, Dedham, MA
Zoning District	General Residence
Map and Lot	171/63 and 171/65
Application Date	April 11, 2018
Representative	Peter A. Zahka II, Esq., 12 School Street, Dedham, MA Michael R. and Cheryl A. Feeley, Owners
Legal Notice	The Applicant seeks to be allowed such variances and/or Special Permits required to reconfigure two (2) existing building lots (one with an area of 13,388 square feet of land and 140 feet of frontage, which is occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 10.7 feet, and one with an area of 6,666 square feet of land and 60 feet of frontage, which is vacant) into two (2) new building lots, one with an area of 14,634 square feet of land and 140 feet of frontage, which will be occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 10.1 feet, and one with an area of 5,420 square feet of land and frontage of 60 feet, which will have a single family dwelling constructed thereon with a side yard setback of 10 feet, and a rear yard setback of 20 feet in the General Residence zoning district and the Flood Plain Overlay District.
Section of Zoning Bylaw	<i>Town of Dedham Zoning Bylaw Sections 4.1, 4.5, 8.1, 9.2, 9.3, 10, and Table 2</i>
Date of Application	April 11, 2018
Date of Public Hearing	May 16, 2018
Date of Decision	May 16, 2018
Vote	5-0, unanimously approved

Voting Members

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

Date Filed With Town Clerk May 23, 2018

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held public hearings on Wednesday, May 16, 2018, in the Town Office Building, Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, and Jason L. Mammone, P.E. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:00 p.m., the Chairman called for the hearing on the appeal of Michael R. Feeley and Cheryl A. Feeley (hereinafter referred to collectively as the “Applicant”) to be allowed such variances and/or special permits required to reconfigure two (2) existing building lots (one with an area of 13,388 square feet of land and 140 feet of frontage which is occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 1.7 feet, and one with an area of 6,666 square feet of land and 60 feet of frontage which is vacant) into two (2) new building lots one with an area of 14,634 square feet of land and 140 feet of frontage which will be occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 10.1 feet, and one with an area of 5,420 square feet of land and frontage of 60 feet which will have a single family dwelling constructed thereon with a side yard setback of 10, and rear yard setback of 20 feet. The property is located at 59 and 65 Durham Road, Dedham MA, and is in the General Residence (GR) and Flood Plain Overlay (FPO) Zoning Districts. *Town of Dedham Zoning By-Law Section: 4.1, 4.5, 8.1, 9.2, 9.3, 10, and Table 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present were on behalf of the Applicant were Michael R. Feeley and Cheryl A. Feeley. Attorney Zahka had previously submitted a memorandum (Project Narrative), a certified plot plan, and photographs of existing conditions. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The Applicant is the owner of the real estate known and numbered as 59 Durham Road and 65 Durham Road, shown on Dedham Assessors Map 171, Lots 65 and 63, respectively (hereinafter referred to as the "Subject Property"). The Subject Property contains approximately 20,054 square feet of land and has 200 feet of frontage on Durham Road. According to the Zoning Map for the Town of Dedham, the Subject Property is in the General Residence (GR) Zoning District and the Flood Plain Overlay District (FPOD).

The Subject Property is laid out and shown as Lots 244 – 253 on a "Plan of Readville Manor in Dedham, Mass.," dated July 16, 1914, recorded with Norfolk Registry of Deeds as Plan No. 3474 in Plan Book 72 (hereinafter the "Record Plan"). The Applicant acquired Lots 244 – 249 in 1984. According to the records maintained by the Dedham Board of Assessors, a dwelling was constructed on some of these lots in 1905. Specifically, the original dwelling occupied Lots 247 – 249. Lots 244 – 246 have and continue to be vacant.¹ A review of the title to said Lots 244 – 249 indicates the same have been in common ownership since at least 1914. The Applicant acquired Lots 250 and 251 in 1987 and Lots 252 and 253 in 1988. An addition to the dwelling is now located on Lot 250. Lots 251 – 253 have always been vacant.

As a result of Section 4.5.1 ("Special Lot Size Exception for Dwellings") of the Dedham Zoning By-Law (discussed further below), the Subject Property currently consists of the following two (2) building lots:

- (1) One building lot consisting of Lots 247 – 253 and contains 13,388 square feet of land with 140 feet of frontage on Durham Road. This lot is occupied by a single-family dwelling with a front yard setback of 12.02 feet and a side yard setback of 1.7 feet.
- (2) One building lot consisting of Lots 244 – 246 and contains 6,666 square feet of land with 60 feet of frontage on Durham Road. This lot is vacant.

The Applicant desires to re-configure the two (2) existing building lots into two (2) new building lots as follows:

- (1) One lot will consist of Lots 244 – 250 and will contain 14,634 square feet of land with 140 feet of frontage on Durham Road. This lot will be occupied by the existing dwelling unit which will have a front yard setback of 12.02 feet and a side yard setback of 10.01 feet.
- (2) One lot will consist of Lots 251 – 253 and will contain 5,420 square feet of land with 60 feet of frontage on Durham Road. A new single-family dwelling will be constructed on this lot with side yard setbacks of 10 feet and a rear yard setback of 20 feet.

¹ There is a garage on these lots.

While the current configuration is “grandfathered,” the proposed reconfiguration does not enjoy such protection. The Applicant has requested the necessary variances to allow for such reconfiguration. Specifically, the new lot with the existing single family home requires variances for a front yard setback of 12.02 feet (instead of the required 20 feet) and a side yard setback of 1.7 feet (instead of the required 15 feet), and the new lot which is vacant requires variances for a lot area of 5,420 square feet (instead of the required 7,500 square feet) and for the new single family dwelling constructed thereon a side yard setback of 10 (instead of the required 15 feet and rear yard setback of 20 feet (instead of the required 25 feet).

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 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:

Owning 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.

In addition, most of the Subject Property appears to be in the FPOD. Section 8.1.5 of the Dedham Zoning By-Law provides that any work in the FPOD requires a special permit from the ZBA. The Applicant has requested such a Special Permit. In addition to requirements of Section 8.1 of the Dedham Zoning By-Law, Section 9.3.2 of the Dedham Zoning By-Law provides that, when acting upon requests for special permits, the Zoning Board of Appeals 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 the requirements and criteria for the issuance of the requested special permits and variances have been satisfied. With respect to any potential work in the FPOD, the Applicant indicates that the same will not interfere with the general purposes for

which the FPOD was established and will not be detrimental to the public health. The Applicant further notes that any building will require at least a stormwater management permit from the Dedham Conservation Commission. Relative to the requested variances, the Applicant states that literal enforcement of the Zoning By-Law would involve substantial hardship to the Applicant. The existing lot formed by combining Lots 244 -246 is a building lot. However, due to the soil conditions, shape, or topography of this lot, building on the same would be costly. Said lot is adjacent to land owned by the Town of Dedham, upon which appears to be an intermittent stream. Furthermore, the Applicant has been utilizing the same as a yard area for the dwelling on the other lot and would need to demolish the garage to accommodate a new dwelling. With the requested relief, the Applicant could reconfigure the Subject Property and establish a new building lot without these conditions and problems. Without the requested relief, there will be a severe financial hardship to the Applicant. Since there are no additional lots being created (i.e., there are two (2) existing building lots and with the requested relief there will still be only two (2) building lots), the desired relief may be granted without substantial detriment to the public good and without substantially derogating from the intent and purpose of the Zoning By-Law.

No one appeared in opposition to the application. Russel Roberts, of 64 Durham Road, (a resident across the street from the Subject Property) appeared at the hearing and stated his support for granting the requested relief. In addition, the Applicant submitted a petition in support of the application signed by five (5) abutters to the Subject Property.

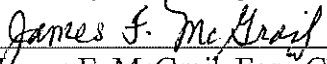
Upon motion duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA voted unanimously (5-0) to grant and approve the requested special permits and/or variances as required reconfigure two (2) existing building lots (one with an area of 13,388 square feet of land and 140 feet of frontage which is occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 1.7 feet, and one with an area of 6,666 square feet of land and 60 feet of frontage which is vacant) into two (2) new building lots one with an area of 14,634 square feet of land and 140 feet of frontage which will be occupied by an existing single family dwelling with a front yard setback of 12.02 feet and a side yard setback of 10.1 feet, and one with an area of 5,420 square feet of land and frontage of 60 feet which will have a single family dwelling constructed thereon with a side yard setback of 10, and rear yard setback of 20 feet, and for work in the FPOD.

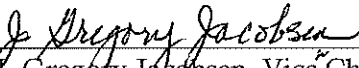
In granting said special permit, the ZBA finds that, after consideration of the criteria in Section 9.3.2 of the Dedham Zoning By-Law, the adverse effects of Applicant's proposal will not outweigh its beneficial impacts on the Town and neighborhood. In granting said variances, the ZBA finds that the 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.

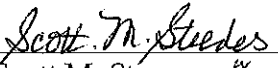
The Applicant is advised that, in accordance with MGL Chapter 40A, Section 11, no variance shall take effect until a copy of this decision bearing the certification of the Dedham Town Clerk that twenty days have elapsed after the decision has been filed with the Dedham Town Clerk and no appeal has been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

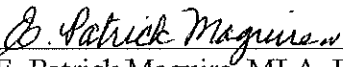
Date: May 16, 2018

Attest by the Zoning Board of Appeals:


James F. McGrail, Esq., Chair


W. Gregory Jacobsen, Vice Chair


Scott M. Steeves


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


Jason L. Mammone, P.E.

Attest by the Administrative Assistant:


Susan N. Webster