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ZONING BOARD OF APPEALS

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TOWN OF DEDHAM
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Jared F. Nokes, J.D.

DECISION

Applicant/Owner	Lorna Dempsey, 74 Bonham Road, Dedham, MA
Property Address	124 Milton Street, Dedham, MA
Zoning District	LMA
Map and Lot	113/40
Representative	Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
Legal Notice	To be allowed such Special Permits and variances as required to reconstruct a recently demolished nonconforming two-family house with a new two-family house with a side yard setback of 11.3 feet and a floor area ratio of 0.45.
Section of Zoning Bylaw	<i>Town of Dedham Zoning Bylaw Sections 3.3.2-3.3.7, 9.2, 9.3, Table 1, and Table 2</i>
Date of Application	May 24, 2018
Date of Public Hearing	June 20, 2018
Date of Decision	June 20, 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	June 27, 2018

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts, held public hearings on June 20, 2018, commencing at 7:00 p.m. 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, LEED AP, and Jason L. Mam-mone, P.E. These hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:40 p.m. the Chairman called for the hearing on the appeal of Lorna Dempsey to be allowed such special permits and variances as required to reconstruct a recently demolished nonconforming two-family house with a new two-family house with a side yard setback of 11.3 feet and a floor area ratio of 0.45 at 124 Milton Street, Dedham, Massachusetts. *Town of Dedham Zoning Bylaw Sections 3.3.2-3.3.7, 9.2, 9.3, Table 1, and Table 2*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present was Applicant Lorna Dempsey. With the application, Attorney Zahka had submitted a plot plan showing the proposed building location, a plan showing the former conditions, and a plan showing the elevation and floor plans for the proposed building. The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Subject Property, known and numbered as 124 Milton Street and shown on Dedham Assessor's Map 113, Lot 40, is owned by Applicant Lorna Dempsey. The Subject Property contains approximately 9,550 square feet of land, and has approximately 70.21 feet of frontage on Milton Street. The Subject Property was previously occupied by a pre-existing nonconforming two-family house, which has since been demolished. Said two family house had a front yard setback of 21.9 feet, side yard setbacks of 6.9 feet and 10.3 feet, and a floor area ratio (FAR) of approximately 45%. Pursuant to Table 2 (Table of Dimensional Requirements) of the Dedham Zoning By-Law, building lots in the LMA Zoning District require a minimum front yard setback of 30 feet, a minimum side yard setback of 15 feet, and a maximum FAR of 35%. According the Zoning Map for the Town of Dedham, the Subject Property is located in the Limited Manufacturing A (LMA) Zoning District.

The Applicant proposes to re-construct a new two-family house on the Subject Property. Pursuant to Section 3.3.7 of the Dedham Zoning By-Law, the Applicant, as a matter of right, could reconstruct the house on the same footprint and with the same volume and area. However, the Applicant proposes to re-configure the house (and not construct on the same footprint) to eliminate and/or decrease several nonconformities. Specifically, the proposed two-

family house will have a front yard setback of 30 feet, a left yard setback of 11.3 feet, a right yard setback of 15.2, and a FAR of approximately 45%. The same will be served by four (4) parking spaces, two of which will be located inside the garages.

As stated above, the original two-family house was pre-existing nonconforming. Pursuant to Section 3.3.2 of the Dedham Zoning By-Law the ZBA may award a special permit to change a nonconforming use if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The types of changes the ZBA may consider are those that change or substantially extend the use, or change from one nonconforming use to another, less detrimental, nonconforming use. Per Section 3.3.3 of the Dedham Zoning By-Law the ZBA may grant special permits to change, alter, extend, or reconstruct nonconforming structures. Per said Section 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.” In addition, Section 3.3.7 of the Dedham Zoning By-Law provides, in pertinent part, that:

A nonconforming structure may be reconstructed after a catastrophe or after demolition in accordance with the following provisions...

- c. In the event that the proposed reconstruction would (a) cause a structure to exceed the volume or area of the original nonconforming structure or... (c) cause the structure to be located other than on the original footprint, a special permit shall be required from the Board of Appeals prior to such demolition.

In addition, Section 9.3.2 of the Dedham Zoning By-Law provides that, when acting upon requests for Special Permits, the ZBA 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.

Pursuant to Section 3.3.4 of the Dedham Zoning By-Law a variance is required when the reconstruction of a nonconforming structure creates a new nonconformity. As noted above the proposed two-family house will have a side yard setback of 11.3 feet and a FAR of approximately 45%. Section 9.2.2 of the Dedham Zoning By-Law provides that 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:

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 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.

The Applicant respectfully submits it satisfies the above stated requirements and criteria for the issuance of the requested special permits and variances¹. The adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or neighborhood considering these requirements and criteria. The use (i.e., two-family house) remains the same, but the right side yard setback as well as the front yard setback are being brought into conformity with the requirements of the LMA Zoning District. Further, the some of the remaining non-conforming areas (such as left side yard setback) are “less nonconforming” than existed with the previously demolished two-family house. It is also important to note that pursuant to Table 1 (Principle Use Table) of the Dedham Zoning By-Law there are a number of commercial uses that are allowed as a right in the LMA Zoning District (and at the Subject Property) including but not limited to medical, business, and professional offices, banks, personal and general service establishments, and gas stations. Unlike the proposed new two-family, these uses are inconsistent with the residential character of the immediate neighborhood. Further, the Applicant currently has a legal right to rebuild the two-family house on the footprint of the previous two-family house. This would result in an even more nonconforming house being built on the Subject Property. If the variances are not granted, the Applicant will suffer a substantial financial hardship since the proposed two-family house could not be constructed.

¹ It is noteworthy that the ZBA previously granted special permits and variances to allow the original two-family house to be demolished and replaced with a four-family house (see ZBA Decision #06-30) and previously granted special permits to change the two-family house to a three-family house (see ZBA Decision #VAR-08-12-1577). Due to financing problems, neither project proceeded.


No one appeared in favor or in opposition to the requested relief. However, Applicant submitted a petition signed by over twenty (20) abutters and other interested parties indicating their support for the granting of the requested relief.

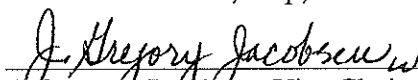
Upon motion being duly made by J. Gregory Jacobsen and seconded by Scott M. Steeves, the ZBA voted unanimously (5-0) to grant such special permits and variances as required to reconstruct a recently demolished nonconforming two-family house with a new two-family house with a side yard setback of 11.3 feet and a floor area ratio of 0.45. 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: June 20, 2018

Attest by the Zoning Board of Appeals:


James F. McGrail, Esq., Chair


J. Gregory Jacobsen, Vice Chair

Scott M. Steeves
Scott M. Steeves

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

Jason L. Mammone
Jason L. Mammone, P.E.

Attest by the Administrative Assistant:

Susan N. Webster
Susan N. Webster