



# Town of Danvers Zoning Board of Appeals

1 Sylvan Street, Danvers, Massachusetts 01923 | p: 978-777-0001

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## Zoning Board of Appeals

### Members:

John Boughner, Chair  
Kenneth Scholes, Clerk  
Jeffery Sauer  
Kenneth Jarvinen  
Corinne Doherty  
Katie Hislop, Alternate

## May 22, 2023 7:00 p.m. ZBA MEETING MINUTES

Board members present: John Boughner, Jeffery Sauer, Kenneth Scholes, Ken Jarvinen, Corinne Doherty, Katie Hislop (alternate)

Staff present: Brian Szekely

John Boughner called the meeting to order at approximately 7:00 p.m.

### REGULAR ITEMS

***144 PINE STREET (I-1):*** Request to first modify a previously-issued variance (Docket #14-4492) to strike the conditioning language that prohibits outdoor storage on the subject site. The applicant is also requesting a Special Permit, with associated waivers or variances, in accordance with Section 9.3.B.2; Section 30.3 and Section 9.3.C of the Danvers Zoning Bylaw, to permit two storage containers for a period of more than 180 days on the property. To the extent such variances are deemed necessary by the Board, the applicant is requesting dimensional variances in accordance with Table 3 of the Danvers Zoning Bylaw to place the two storage containers approximately 3 to 4 feet from the side setback where 25 feet is required, and/or to place two storage containers closer (in various distances) to the rear setback where 25 feet is required, and/or to request a waiver in accordance with Section 9.3.C including where the two storage containers are situated closer than 10 feet from the nearest building (at varying distances) where 10 feet distance between container and building is required. **Request made by Brian Calkins of Elevation Foods (23-5015)**

Ken Scholes read aloud application for 144 Pine Street docket 23-5015.

Attorney Peter Calabrese-representing Elevation Foods. Provide hard copies of plan submitted after filing deadline. Shows existing conditions and concepts 1-3. Concept 3 was not in package prior.

Mr. Boughner-applicant thinks site is not required to comply with prior decision. Would like this addressed.

Attorney Calabrese-prior decision notes pallet stacking problem.

Mr. Boughner-more than pallet stacking issue. In 2014, site was in violation; written up by building inspector. Applicant appealed and was denied. Decision made by ZBA to grant Finding and Variance to increase size of the building and refrigeration trucks would go away. Outdoor storage of refrigeration trucks prohibited. Fence area to be created to store pallets. Reviewed timeline of violations, all meetings and decisions granted. Neighbors to Selectboard in fall 2022 as problem was continuing to occur. Should not have any outdoor storage.

Attorney Calabrese-fence should shield pallets-applicant will comply. Disagreement about definition of outdoor storage as noted in memo submitted. Issues with trailers: noise and aesthetics. Electric storage container silent. Other container is diesel. Will make diesel powered to electric. Propose to fence in area. Option 1 subject to more noise-further from loading dock.

Mr. Boughner-there should be no trailers at all per decision applicant accepted in 2014. You are currently in violation.

Attorney Calabrese-we disagree. Would like to find solution that allows business to proceed. Plan to phase out cold storage and production and have this be corporate office. No timeline for this. Option 2 notes alternate location for 2 trailers and pallets. Option 3 has trailer in different corner of building. Described movement of trailers throughout property for proposals submitted and gate locations.

Mr. Boughner-staff to please weigh in.

Staff-memo in board packet and provided to applicant prior to meeting. While it was unclear what outdoor storage or outdoor containers may be, decision was clear that all outdoor storage and containers would leave as condition of decisions. Applicant had opportunity to appeal decisions when granted and did not appeal.

Mr. Sauer-challenging location. Decision granted larger building so that trailers would be removed. Clear in decision. Timeline for corporate to come in and trailers to leave?

Brian Calkins (Facilities Plant Manager)-next 12-24 months.

Mr. Scholes-taxes paid on larger building?

Staff-correct.

Mr. Scholes-not paying taxes on trailers?

Attorney Calabrese-do not know answer regarding taxes on trailers. Outdoor storage and storage containers permitted by right in this zone for 180 days or less.

Mr. Boughner-180 days or less does not apply; trailers are always here.

Mr. Jarvinen-electric storage totally silent-are there compressors? Noise from that? Could hear motor from other one.

Ashkan Delfanazari (Mechanical Engineer-Elevation Foods)-no louder than a refrigerator. Similar sound to having two refrigerators running next to each other in a home.

Mr. Jarvinen-you got larger building, filled it and now you need storage? Grew out of space?

Brian Calkins-facility is full.

Mr. Boughner-why the need for trailers? Decision says refrigerated trucks would go away with granting of building.

Brian Calkins-growth with prepared foods products requires additional space. Dry storage in building.

Ms. Doherty-source of electricity for trailer? Expand electricity to second trailer? If trailer moved away, will need source for both. To Planning Director-which plan would Town prefer? Where pallets are now is not a good solution.

Ashkan Delfanazari-trailer close to building receives electricity from the building. Second trailer will require additional wiring. Would add electrical extension underground to reach trailers further away.

Staff-worked with Planning Department. Reviewed aerial view of property and abutters. Option one possibly but noise is the loading and unloading; do not have consensus of what makes most sense; highlighted concerns in memo. Pallet location not a good solution because against an abutter.

Ms. Hislop-no questions.

Mr. Boughner-sat on board for initial decision. Hours of operation? Vary depending on peak times? Trailers moved and pallets gone-how would facility operate without pallets?

Brian Calkins-facilities are 24/7 M-F. Two 8 hours shifts of production then 8 hours sanitizing. Receiving and shipping 7AM-4PM. Closed on Saturday and Sunday; may do a Saturday if backlog. Store pallets off site if need be.

Mr. Boughner-noise/decibel level of diesel vs. electric? Fuel regularly? Which is more efficient?

Ashkan Delfanazari-do not have decibel readings. Can provide if requested. Diesel fueled regularly when needed. Electric saves more money than diesel.

Mr. Boughner-why using diesel at all? Accept electric unit as condition?

Ashkan Delfanazari-availability of containers is issue. Contacted vendors and working to obtain electric trailer. Yes-would take condition.

Mr. Sauer-option 2-direction of trailers?

Ashkan Delfanazari-option 2 is costly-would have to rent lift to get trailers nose in. Would require ground repair.

Mr. Boughner-what is challenge besides refrigerated trailers? Forklifts at night? Noise?

Brian Calkins-movement at night in and out of buildings. Have addressed noise with employees. Forklifts do beep.

Phil Bolduc (137 Pine Street)-live across from Elevation Foods' commercial site. Proposal exacerbates already existing problem by having more movement between sites. Will be nonstop alarms, backup alarms, electric pallet jacks, forklifts, deliveries in the middle of the night. Work is nonstop. Take impact on us and neighbors into account. Conversations with neighbors-none are pleased. Turning this into office building would resolve things. Site has nonstop noise.

Mr. Boughner-how long have you lived there? Improvement since 2014 decision?

Phil Bolduc-owned since 2006. Cannot recall exactly when noise increase started. Increase in 18-wheeler traffic. Board welcome to property. Congestion, noise, volume of materials continuously moving. Nonstop.

Bill Bradstreet (Town Meeting Member Precinct 1)-how many complaints received since last meeting? Please address noise.

Mr. Boughner-do not have compliant count. Neighbors went before Selectboard addressing concern which prompted ZBA to reach out to Planning Department. Decision not being followed. How do we cut down on noise?

Attorney Calabrese-less moving vehicles, which can be addressed with trailer position. Reviewed option that may result in less noise.

Mr. Boughner-frustration is that all of this was supposed to go away with building expansion.

Mr. Jarvinen-abutter at 137 noted 18-wheeler trucks at 4AM. You'd stated deliveries are 7AM-4PM. Please explain this. Is all night noise from pallet jacks and production?

Brian Calkins-deliveries 7AM-4:30PM. We do not receive trucks at 4AM. Yes-all night noise pallet jacks and production.

Bill Bradstreet (Town Meeting Member Precinct 1)-drivers may arrive early to site-vehicle will still make noise.

Ms. Doherty-during cleaning shift (10PM-6AM), why are pallets moving?

Brian Calkins-production wraps up midnight-1AM.

Ms. Hislop-timeframe for turning to corporate within next 2 years. What is making timeline so far out?

Brian Calkins-getting other facilities ready to take production from this one.

Ms. Doherty-storage space-potential to get more there?

Brian Calkins-storage space is dry goods only.

Ms. Hislop-scale back production an option until corporate office transition?

Brian Calkins-would not meet sales demand.

Attorney Calabrese-presented options and legal arguments for why storage containers are allowed. Disagree with earlier decision. Violation is not intentional. This is a misunderstanding and disagreement about what decision means. Plan in place to make site corporate.

Mr. Boughner-take condition of no diesel and all electric?

Attorney Calabrese-yes would take condition.

Brian Calkins-would take condition of no diesel and will have it done in 30 days.

Mr. Boughner-board members-option 1, 2 or 3?

Mr. Sauer-not prepared to vote. Want to know how much louder diesel is than electric; have not seen plans for screening; how much noise from fork trucks; if gas-could they be electric; applicant to pick proposal. No, uncommitted or continue vote.

Mr. Scholes-was not on the board in 2014. Condition of decision is no outdoor storage with exception of pallets behind fence. Outdoor trailers illegal; like having two building on that lot that you aren't paying taxes on and utilizing as storage which is illegal. Definite "no."

Mr. Jarvinen-option 3 is favorite; in 30 days diesel will be electric. Condition of corporate offices within 12-24 months. Would need timeframe to vote yes.

Brian Calkins-cannot commit to exact time for corporate.

Ms. Doherty-2014 variance granted for addition and then expanded further. Not a "no" but not a "yes" until all conditions in place. Condition of moving items after certain hours. Assurance of when becoming corporate. Outdoor storage/containers and containers per bylaw cannot be electrified-applicant trying to work around bylaw. Applicant would need to come back to ensure compliance.

Ms. Hislop-not comfortable picking an option when there is a running violation or putting corporate interests above abutters' lifestyle. Not willing to choose an option.

Mr. Boughner-there are things that can be done. You are in violation. Trailers not permitted. Board needs more answers and assurances. Would want condition of periodic follow up. Do not like option of trailers at all. Decision was for trailers to go away. Would vote "no." Do not have votes to move forward. Recommend continuance.

Attorney Calabrese-applicant to check with corporate regarding phase out and conditions requested. Would like to continue.

Mr. Boughner-June 12, 26 and then once in July; once in August.

Attorney Calabrese-applicant would like to continue to August.

Mr. Scholes-noted different property that had submitted an application; applicant had tractor trailers for storage and board wanted all storage trailers gone. Allowing this sets precedent.

Mr. Boughner-seems operation needs trailers to function, but decision from 10 years ago says they would go away. Will need conditions. Continuing 3 months out is too far. Would continue to July 24. Board needs clear, concise plan; strong sense trailers should not be there; review delivery times; trucks idling.

Attorney Calabrese-will take July 24.

Motion to continue 144 Pine Street docket 23-5015 to July 24, 2023 made by Jeff Sauer. Seconded by Ken Scholes. In favor: 5. Opposed: 0.

Mr. Boughner-if you have updated plan, get to board the Tuesday before the meeting.

***28 DELAWARE AVENUE (R-III): Request for a Special Permit in accordance with Section 9.2 of the Danvers Zoning Bylaw to allow a 750 s.f. Extended Family Living Area on a pre-existing non-conforming undersized lot; Request for a Special Permit in accordance with Table 1 and Section 9.1.B of the Danvers Zoning Bylaw to allow four garage bays on the property where the maximum is three. Request made by William Fallon (23-5019)***

Ken Scholes read aloud application for 28 Delaware Avenue docket 23-5019.

William Fallon-builder for project at 28 Delaware Avenue. Owner is not present. Owners' parents would live in EFLA. Noted existing conditions and where addition would go. If board opposed to 4 garage doors, applicant open to having a false bay door since bylaw allows 3. Meets all setbacks.

Ms. Hislop-no questions.

Ms. Doherty-do not like 4 garage doors aesthetically. One false door doesn't address 4 doors.

William Fallon-will discuss with client. Neighbors have seen this and have not told us of any objections.

Mr. Jarvinen-common area?

William Fallon-common entryway noted on plans.

Mr. Jarvinen-may not qualify.

William Fallon-staff noted that that area being heated may make it qualify.

Staff-determination made by different staff. Doesn't talk about living area; just about common area. Intent seems to be living area. Stretch on definition.

Mr. Scholes-condition that two garage doors be one oversized door?

William Fallon-yes.

Staff-bylaw is if it can house 3 vehicles; it is not about the number of garage doors. Could do one oversized door, but one car.

Mr. Sauer-no questions.

Mr. Boughner-complying with square footage; meets setbacks; asking for 4<sup>th</sup> door and parking space. Common area is heated entryway at garage.

Bill Bradstreet (Town Meeting Member Precinct 1)-abutter complaints?

Mr. Boughner-no.

Ms. Hislop-if common area complies with bylaw, yes.

Ms. Doherty-vote no-issue with 4 bays. Too many doors. Remove bay and door and I would vote for this. Yes for EFLA; no for the door.

Mr. Jarvinen-would vote for this for both.

Mr. Scholes-okay with EFLA; not okay with 4<sup>th</sup> door.

Mr. Sauer-do not like 4 doors. Do not like EFLA design of common area. Would vote no to both.

Mr. Boughner-no on garage door. No on EFLA because of common area.

Mr. Sauer-may be opportunity to give EFLA residents more space if common area redesigned.

Staff-could get special permit for detached EFLA if there is no common area.

Mr. Boughner-withdraw garage request?

William Fallon-yes.

Mr. Boughner-do not have votes for EFLA without change to common area. Continue?

William Fallon-continue to June 12.

Motion to withdraw application for Special Permit for garage made by Ken Scholes. Seconded by Jeff Sauer. In favor: 5. Opposed: 0.

Motion to continue EFLA for 28 Delaware Avenue docket 23-5019 to June 12, 2023 made by Jeff Sauer. Seconded by Ken Scholes. In favor: 5. Opposed: 0.

Mr. Boughner-updated plans to board by Tuesday prior to meeting.

Motion to adjourn made by Jeff Sauer. Seconded by Ken Scholes. All in favor. Meeting adjourned at 8:45PM.