



Town of Danvers Zoning Board of Appeals

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Zoning Board of Appeals

Members:

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

July 24, 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.

Mr. Boughner-minutes from past five meetings-any comments? Noted missing items from April and May.

Ms. Doherty-minutes include typos/grammatical errors; suggestion for Staff to review minutes before being sent to board. Provided examples of errors.

Staff-utilizing new transcript service which requires editing after the fact-working internally on this and will make changes.

Mr. Boughner-will not make a motion to accept minutes at this time; subject to revision. Will address at August meeting.

CONTINUED 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)**

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

Peter Calabrese (Attorney representing Elevation Foods)-Noted items that board had concerns with at past meeting. Reviewed supplemental package that addresses concerns. Loading/unloading more efficient. Proposal to fence in area. Applicant will make diesel powered trailer unit electric; presented noise measurement report.

Mr. Boughner-both trailers running at same time or each trailer separately? All part of concept plan?

Peter Calabrese-noise reading is from each trailer. This is about reducing trailer noise. Changing type of refrigeration unit minimizes noise. Hours of operation-10pm cutoff on all machines and vehicles operating. Vehicles at site out of business hours and idling-signage received stating “no deliveries between 7:00pm and 7:00am” and “no operating equipment” during same time period. Fence enclosure and work estimate presented; close off trailer area.

Mr. Boughner-fence around trailer? Gates?

Peter Calabrese-noted fencing area on plans. Yes-will have gates.

Ashkan Delfanazari-(Mechanical Engineer-Elevation Foods-144 Pine Street)-reviewed layout of fencing plan presented. Three separate gates.

Peter Calabrese-reviewed area where pallets are stored outside. Adjusted pallets to manage height and organization of area. Existing conditions shown.

Mr. Boughner-is this existing area from 2014 agreement? No change in physical location?

Peter Calabrese-same location. Reviewed noise mitigation. Receipts presented for signs ordered.

Mr. Sauer-visited site almost every day for past two weeks. Electric trailers slightly quieter but are not quiet. Proposal may not be \adequate noise reduction.

Mr. Scholes-no questions.

Mr. Jarvinen-timeline change for office building? Timeline for product facility to be moved out West and existing becomes office?

Peter Calabrese-applicant unsure on firm deadline; business constantly changing. Plan is to transition but no firm commitment on timeline.

Mr. Jarvinen-no tentative plan? It may never happen?

Peter Calabrese-being discussed. Client has not given authorization to provide a specific date.

Ms. Doherty-attachment 6 – pallets – plan to put fence around pallets? Attachment 7-invoice for fencing-privacy slats option? In favor of privacy slats.

Ashkan Delfanazari-fencing exists around pallets. Image is of gate open. Privacy slats on fencing will be purchased if board would like them.

Ms. Hislop-will slats muffle or impact noise coming off trailers?

Ashkan Delfanazari-cannot say yes or no. Fencing tall enough to cover trailers. Depends on materials-cloth not a lot; harder plastic/vinyl may help with noise.

Mr. Boughner-agreement from 2016-why is that not applicable? Tonight's presentation helpful in limiting disruption to neighbors. Past agreement/minutes show trailers shouldn't be here. Mitigation efforts presented, but Variance was to increase building size so trailers would go away. How does that not apply?

Peter Calabrese-variance discusses outdoor storage; we are describing storage containers-bylaws have those as two distinct things. Argument presented in writing for why this is not outdoor storage but is storage container. After 2014 hearing, appears to be understanding with client and Town about trailers and trailers have remained; ambiguity in variance language. We are discussing storage containers which is not addressed. Client using trailers for years-notice from Town in 2022 that prompted this.

Mr. Boughner-when 2016 agreement came out, trailers went away and new building was built. Trailers reappeared at unknown time.

Staff-the 2014 decision was to address storage trailers and refrigerated trailers and creating space for all of that to be inside the wall.

Mr. Boughner-recorded agreement says applicant said those things would go away.

Bill Bradstreet (Town Meeting Member Precinct 1)-Town bylaws too ambiguous. Who would be responsible for enforcement of new sign locations? Suggesting people powered forklifts. Was housing authority notified of meeting? Solid fence around pallets?

Mr. Boughner-housing authority not a direct abutter so would not have been notified. Pallets will not stack higher than fence and will remain in said area. Addressed in prior agreement. Directional signs?

Staff- If only directional signs are needed, the Planning Division would still need to review and approve, but the applicant wouldn't have to come back to ZBA for directionals.

Mr. Boughner-Effort from applicant to address overall site problems. Staff to enforce as needed. Business in residential neighborhood is a challenge. Will ask applicant to take as a condition.

No longer seeking 3-4' setback? Applicant accept condition to work with Planning Department for placement of 7am-7pm delivery signage?

Peter Calabrese-no longer seeking setback. Will accept condition. Board to put a check-in timeframe on approval in fixed period of time.

Mr. Boughner-would like check-in at 6 months as condition.

Peter Calabrese-applicant agrees to 6 month check-in.

Mr. Sauer-visited site several times. Pallets look better-under level of fence; in correct location. Site cleaner. Electric trailer not much quieter than diesel. Fence won't deaden sound. Trailers in best place possible with plan but would vote "no." Would want more sound deadening.

Mr. Scholes-no one on board agreed to trailer placement on any plans presented. 2014 decision prohibits outdoor storage on site except for fenced in area dedicated to pallet storage. Provided example of a business that was required to remove outdoor storage that was not electrified as outdoor storage not allowed. Storage units should not be there-I vote "no."

Mr. Jarvinen-thought there would be an end to when trailers are on site. 6 month check-in to see if neighbors are okay with changes made. Would approve with 6 month check-in to confirm neighbors are satisfied. Vote "yes" with 6 month check-in.

Mr. Boughner-would be a review at that time and if in violation, Planning Department would be involved.

Staff-if petition comes back in 6 months, additional conditions can be added. Opportunity to modify variance.

Ms. Doherty-"yes" with 6 month check-in and all other conditions discussed to ensure all is in compliance.

Ms. Hislop-concern that this is ongoing violation. Allowing request would show disregard for previously issued variances. Would vote "no."

Mr. Boughner-appreciative of applicant reception to feedback. Effort to address noise and operations noted. Business is successful, but we were told 10 years ago that problem would be resolved and it has not. Would vote "no." You do not have the votes. You can withdraw without prejudice; we can take vote which will deny applicant for two years and be in violation with the Town; or continue and come back before the board. To staff-applicant currently in violation of existing variance and Planning Department informed them in April?

Staff-applicant informed prior to April. In violation; after 90 days, followed protocol to start fining; applicant hired counsel; Town allowed additional time to come to ZBA to resolve. If

approval not issued, need to be in compliance with original variance. If this is not done, fines will be retroactive. Several thousand dollars owed.

Peter Calabrese-would like continuance. 6 month check-in is a good timeframe. 30-45 day check-in will allow client enough time to determine future of site.

Mr. Scholes-sets a precedent for other businesses if we allow this.

Mr. Boughner-next meeting August 28. Revised plans received today. Updated plans required Tuesday before next meeting.

Staff-plans received today. To clarify-contact made with applicant in November 2022 to have storage trailers removed immediately.

Mr. Sauer-okay with continuance if substantially improved plan is provided.

Mr. Scholes-do not want trailers there.

Mr. Jarvinen-yes.

Ms. Doherty-okay with continuance.

Ms. Hislop-okay with continuance.

Motion to continue hearing for 144 Pine Street docket 23-5015 to August 28, 2023 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 5. Opposed: 0.

15 Purchase Street (R-1): Request a Variance, in accordance with Section 40: Definitions, to allow the construction of a new 1,716 square ft garage where only a 1,200 square ft structure is allowed by-right. Request made by Eduardo Pereira (23-5025)

Mr. Scholes-read aloud variance application for 15 Purchase Street docket 23-5025.

Mr. Boughner-reviewed case via YouTube. Five board members will vote on this.

Eduardo Pereira-also present Michael Lutrzykowski (assisting applicant).

Michael Lutrzykowski-noted concerns from board at prior meeting. Second floor full height space determined not needed-removed and roof pitch down to 6'. Second floor will be attic space. Presented revised plans.

Ms. Hislop-no questions.

Ms. Doherty-total square footage of new plans?

Michael Lutrzykowski-interior 1,716 sf. Outside perimeter 1,875 with zero second floor square footage.

Ms. Doherty-square footage same as prior-second story eliminated?

Michael Lutrzykowski-correct.

Mr. Jarvinen-total height?

Michael Lutrzykowski-21'4" down from about 29'8".

Mr. Scholes-no questions.

Mr. Sauer-no questions.

Mr. Boughner-reviewed discrepancy-original plan which did not show square footage from second floor. Significant reduction in square footage on revised plan. Reduced from about 2700 sf to 1876 sf.

Michael Lutrzykowski-revised plan notes what was initially presented to show changes made.

Mr. Boughner-plumbing for a bathroom? Approval stays with the property.

Michael Lutrzykowski-correct.

Bill Bradstreet (Town Meeting Member Precinct 1)-would this eventually be an apartment?

Ms. Hislop-condition on variance that it not be used for purpose other than approved?

Staff-variance is for a garage. Bathroom/plumbing in a garage should not raise suspicion.

Ms. Hislop-would vote for this.

Ms. Doherty-would vote "yes." Concerns addressed.

Mr. Jarvinen-vote "yes."

Mr. Scholes-vote "yes."

Mr. Sauer-vote "yes."

Mr. Boughner-in favor of revised plans. Will vote for this.

Motion to issue variance for 15 Purchase Street docket 23-2025 read aloud by Jeff Sauer.
Seconded by Ken Scholes. In favor: 5. Opposed: 0.

REGULAR ITEMS

42 Princeton Street (R-3): Request a Finding, in accordance with Section 3 of the Zoning Bylaw to allow for the alteration, expansion, or extensions of a nonconforming structure through the addition of a hot tub that will be located closer to the side property than permitted as of right. Request made by Paul Poirier (23-5027)

Mr. Scholes read aloud Finding application for 42 Princeton Street docket 23-5027.

Mr. Boughner-site visit-hot tub is in-please explain. Location of hot tub inside or outside setback? 17.4' on side setback of 20'.

Paul Poirier-received permit and filled in pool last year. Received permit to allow hot tub within certain setback, but it would block stair and doors behind garage. Hot tub not currently hooked up; pending approval from board. Currently in place where we would like it. 17.4' is correct.

Mr. Sauer-dwelling into setback-dimension from corner to lot line? Not encroaching more?

Paul Poirier-hot tub at 16.4 with house. Pre-existing nonconforming.

Mr. Scholes-pool setback?

Paul Poirier-inground pool 20+ years old-installed by previous owner. Encroached and has been filled.

Mr. Jarvinen-no questions.

Ms. Doherty-no questions.

Ms. Hislop-no questions.

Mr. Boughner-within existing house line?

Paul Poirier-not going further than existing. One foot inside back of garage.

Mr. Sauer-would vote "yes."

Mr. Scholes-will vote for this.

Mr. Boughner-Mr. Jarvinen stated he would vote for this.

Ms. Doherty-would vote for this.

Ms. Hislop-would vote for this.

Mr. Boughner-in favor. More in compliance.

Motion to issue finding for 42 Princeton Street docket 23-5027 made by Jeff Sauer. Seconded by Ken Scholes. In favor: 5. Opposed: 0.

83 Conant Street (R-2): Request a Variance, in accordance with Table 2 of the Zoning Bylaw to allow for the division of an existing lot to provide 12,111 sf. The balance of the property not to be a building lot but rather added to the land of the applicant. No new building lots are created as a result of the application. Request made by Clark and Heather L'Abbe, c/o Nancy McCann, Esq. (23-5028)

Mr. Scholes read aloud application for 83 Conant Street docket 23-5028.

Attorney Nancy McCann-presented on behalf of applicant. Also present Clark and Heather L'Abbe and Joe Small (Hancock Associates). Requesting lot area variance. Reviewed application and plans submitted. Noted history of property and acreage of surrounding properties. Maintaining historic lot line; no new structures. No other zoning relief needed.

Mr. Boughner-frontage requirement?

Attorney McCann-asked for frontage in case board thought it would be required, but frontage is not changing. Nonconformity not changing.

Staff-this is correct. Just square footage variance.

Ms. Hislop-no questions.

Ms. Doherty-what is hardship? If allowed, property would be nonconforming in frontage and lot size? Would not conform to zoning? Lot size would be too small and frontage wouldn't conform. Client intention with extra land? Plan just to attach to 24 Elliott Street?

Attorney McCann-hardship is irregular shape of lot. If allowed, would not be nonconforming because we would have a variance for lot area. Frontage would remain as it exists. No intention-just adding parcel to land they already have. No plan for anything else.

Mr. Jarvinen-no questions.

Mr. Scholes-ANR parcel B will say not a buildable lot?

Attorney McCann-correct.

Mr. Sauer-applicant to take condition that lot would never be built on?

Attorney McCann-if applicant wanted to build on parcel, would have to come back to board.

Mr. Boughner-questions have been answered.

Ms. Hislop-would vote for this.

Ms. Doherty-do not believe there is a hardship. Do not see need to grant this and create a nonconformity. I vote “no” as there is no hardship.

Mr. Jarvinen-approve with condition that Parcel B says non-buildable lot.

Mr. Scholes-would vote for this.

Mr. Sauer-would vote for this.

Mr. Boughner-struggle with hardship; concern of future of lots. Since non-buildable and would have to come before board, would vote in favor.

Motion to issue variance for 83 Conant Street docket 23-5028 made by Ken Scholes. Seconded by Ken Jarvinen. In favor: 4. Opposed: 1. Motion carries.

Mr. Boughner-staff-clear on minutes? Prior minutes with errors-can new minutes be generated? Prior to August 28 meeting, would like tonight’s minutes.

Staff-feedback clear. New minutes can be generated. Will have minutes of tonight ready prior to August 28.

Motion to adjourn made by Ken Scholes. Seconded by Jeff Sauer. All in favor. Meeting adjourned at 8:30PM.