



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

November 13, 2023 7:00 p.m. ZBA MEETING MINUTES

Board members present: John Boughner (Chair), Jeff Sauer (acting Clerk), Ken Jarvinen, Corinne Doherty (present remotely). Absent: Ken Scholes.

Staff present: Brian Szekely, Planning Director

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

Motion to accept minutes from October 30, 2023 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

CONTINUED ITEMS

99 Dayton Street (R3): *Request a Special Permit to operate a Major Home Occupation, and to Appeal fines levied by the Zoning Enforcement Officer for operating a major home occupation and the parking of trucks and trailers on site. Request made by Michael Jones. (23-5041)*

Jeff Sauer read aloud application for 99 Dayton Street docket 23-5041.

Michael Jones-possible resolution is to park on street which is allowed. Provided photos showing where vehicles on street would be in relation to property, surrounding area and impact on other drivers. More detrimental to park on street.

Mr. Boughner-under bylaw considered major home occupation; requesting to park two commercial trucks and two commercial vehicles on property. Photos show parking on street versus on property.

Michael Jones-correct.

Mr. Sauer-removal of one trailer?

Michael Jones-one listed for sale. Second trailer possibly not necessary; second truck is necessary.

Mr. Jarvinen-no questions.

Ms. Doherty-currently 3 trucks and one that also has trailer?

Michael Jones-2 trucks and 2 trailers; one trailer for sale. Never had 3 trucks.

Mr. Boughner-to staff-photos from Mr. Jones show vehicle parked on Dayton Street – white lines-can vehicle park if not fully in white line? Some neighbors in favor; some opposed. Other vehicles on property? Trailer did not have valid sticker.

Staff-fog line as a traffic calming measure to narrow roadway. Not aware of parking restrictions. Fog line does not have to do with parking.

Michael Jones-other vehicles – 2 residential cars and a motorcycle. Trailer registered-have not received sticker from RMV. Clarify to neighbors-not looking to run business out of house.

Mr. Boughner-that is clear. If passed, would be conditioned under major home occupation?

Staff-can condition language specific to what is approved.

Mitch Abbatessa (4 Putnam Lane)-unsure at prior meeting if business would be allowed to grow. No problem with parking in driveway; would like conditions to limit number of vehicles. Okay with project if applicant in agreement with Town on limits. In favor as presented. Work hours have not been a problem yet.

Mr. Boughner-would be granting special permit with conditions-no more than two commercial vehicles on property; no more than two commercial trailers on property. Would need to come before board for any changes. Can condition work hours if needed.

Allen Cole (102 Dayton Street)-applicant outside at 7AM; notes noise from trailers and doing work on site including stripping mattresses. Business should not be allowed.

Mr. Boughner-to applicant-allotted full board of 5 members; only 4 present; could ask continuance if you would like. Required to have supermajority so all 4 present would need to be in favor.

Bill Bradstreet (Town Meeting Member Precinct 1)-white fog lines are edge of roadway. Plowing concerns if vehicles parked in roadway; narrowing of road. Hours of operation.

Staff-fog lines are not edge of roadway.

Mr. Boughner-accept condition of hours of operation? Accept 7AM-4PM?

Michael Jones-business typically between 7AM-3PM. Would accept 7AM-4PM as condition.

Mr. Sauer-processing/dismantling materials at house. Would vote for parking cars. Condition of no processing?

Michael Jones-Will accept condition of no processing.

Mr. Boughner-asking for vehicles only; not processing.

Allen Cole (102 Dayton Street)-noise and processing concerns. Slamming of trailers.

Mr. Boughner-applicant requesting special permit. Appreciate concerns. Applicant willing to accept conditions. If passed and not followed, planning department can enforce.

Ms. Doherty-request to come back in 6 months to ensure conditions being complied with.

Mr. Boughner-applicant to accept 6 month check in?

Michael Jones-will accept condition.

Mr. Sauer-parking on street worse outcome than driveway. Would approve application with conditions.

Mr. Jarvinen-would vote for this. Parking on street worse.

Ms. Doherty-will vote for this with conditions. On street parking worse.

Mr. Boughner-noted efforts of applicant with installing driveway. Vehicles on street would be more detrimental to neighborhood. Vote in favor. 2 commercial pick up trucks; 2 commercial trailers; no activity before 7AM or post 4PM; 6 month check in May 20, 2024.

Motion to grant special permit for 99 Dayton Street docket 23-5041 with conditions: 2 commercial pick-up trucks; 2 commercial trailers; no activity before 7AM or post 4PM; 6 month check in May 20, 2024; no processing materials on site and to appeal fines levied made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

REGULAR ITEMS

29 Andover Street, suite 3E (Route 114A): Request a Use Variance from Table 1 of Allowable Uses in the Danvers Zoning Bylaw to operate an indoor baseball training center in an existing building for children and teens in the region. Request made by Expos Baseball, LLC (23-5048)

Jeff Sauer read aloud application for 29 Andover Street, Suite 3E docket 23-5048.

Rich Gilbride, Sr-also present Rich Gilbride, Jr (applicants). Reviewed history of baseball training company and existing businesses at site. Goal to work with children regarding baseball career.

Mr. Boughner-review operations. Employees?

Rich Gilbride, Sr-3-4 hours after school typically 3:30-7PM. Small group and individual baseball training. Weekend hours. High school players. Rich Gilbride, Jr to run business 20-30 hours/week; I will assist.

Ms. Doherty-no questions.

Mr. Jarvinen-batting cage and machine?

Rich Gilbride, Sr-no machine; will have nets.

Mr. Sauer-previous location?

Rich Gilbride, Sr-sportsplex on route 1; use changed; needed new location.

Mr. Boughner-renderings? Age of clients? Reason before board? Require supermajority of 4 board members.

Rich Gilbride, Sr-space is empty. We are adding turf and netting. Noted suite on plan presented. All clients are high school age.

Staff-reason is table of uses does not allow this.

Ms. Doherty-would vote for this.

Mr. Jarvinen-would vote for this.

Mr. Sauer-would vote for this.

Mr. Boughner-appropriate use. In favor.

Staff-brings to attention that use table needs updating.

Motion to issue use variance for 29 Andover Street, Suite 3E (Route 114A) docket 23-5048 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

21 Tibbetts Avenue (R-2): Request a Finding under Section 3.11 and 3.12 of the Danvers Zoning Bylaw to demolish a pre-existing non-conforming garage on a non-conforming lot and build a new garage that will be located closer to the property line than allowed as of right. Request made by Philip Sudenfield (23-5049)

Jeff Sauer read aloud application for 21 Tibbetts Avenue docket 23-5049.

Philip Sudenfield-property owner. Reviewed existing conditions. Also present Joe Bettencourt (JMB Design Studio-Architect).

Joe Bettencourt-presented existing plot plan and pinch points. Noted challenges with existing configuration. Current garage does not comply with FEMA regulations. Reviewed proposed garage location, size and elevation. Tandem parking. Two storage areas attached to garage on side; storage on top. Project in keeping with neighborhood. Flood vents will be in new foundation. Working with civil engineer; may go to Conservation after this.

Mr. Sauer-lift one and lift two in garage?

Joe Bettencourt-will have lifts in garage to protect cars when waters rise.

Mr. Jarvinen-no questions.

Ms. Doherty-current garage 2'1" setback – what will new be? New fencing?

Joe Bettencourt-new will be 5'4". Fence in image existing; belongs to neighbor.

Mr. Boughner-does 5'4" include overhang? Would ask for revised plan at 4'8". Lifts for motor vehicles?

Joe Bettencourt-does not include overhang. Could limit to 4'8" overhang. Lifts for motor vehicles; one in front and one in back. Will raise cars so water does not damage cars. Will install flood vents.

Staff-if changing setback, would need to submit a revised plan.

Michael McCarthy (23 Tibbetts Avenue)-fence is 2' off of property line. Would extend fence all the way along property line but cannot install with existing garage at 21 Tibbetts Ave. Will have fence work done once garage is addressed. Is 5'4" off of fence? Love project. Good neighbor. Support project.

Mr. Boughner-off of property line. Applicant will adjust to 4'8".

Jeff Sauer read aloud letter in favor of project signed by neighbors at 5, 6, 13, 14, 16, 17, 19 Tibbetts Avenue.

Bill Bradstreet (Town Meeting Member Precinct 1)-condition that lifts only be used to elevate vehicle and not used for anything else?

Mr. Boughner-not something we can control.

Mr. Sauer-what he does in his garage is not our business.

Mr. Boughner-We are here to approve razing of one garage and construction of new. Staff noted board will see more lifts potentially along waterfront property.

Mr. Sauer-design is beautiful and appropriate for neighborhood. In favor.

Mr. Jarvinen-in agreement. Would vote for this.

Ms. Doherty-in agreement. Would vote for this.

Mr. Boughner-will vote for this. Neighborhood has transformed. Increasing setback helps neighbors. Would like updated drawing to reflect setback.

Motion to issue finding for 21 Tibbetts Avenue docket 23-5049 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

223 Conant Street (R-2): *Request a Finding under Section 3.11 of the Danvers Zoning Bylaw to expand a non-conforming building on an undersized non-conforming lot. Request made by Brian Almon (23-5050)*

Jeff Sauer read aloud application for 223 Conant Street docket 23-5050.

Brian Almon (223 Conant Street)-finding after the fact for 17' x 29' addition. Contractor applied for building permit; was approved and issued. Construction started then we were told to file for a finding.

Mr. Boughner-spoke with staff and building inspector. Clerical error?

Staff-225 Conant Street is doing the similar project and would be coming before ZBA.

Mr. Boughner-work started and you were not aware of needing the finding, correct?

Brian Almon-Yes. Understanding was work could continue and we would come in and apply. Carport and shed removed; replaced with addition. Master suite with mudroom and side entrance. Extension of home.

Mr. Boughner-overhang? Side setback 16'4"?

Staff-minimal overhang. Front setback encroachment. 30' required; will have 17'.

Mr. Sauer-average of front setbacks small?

Staff-would need to survey Conant Street for average setback-cost prohibitive.

Brian Almon-addition did not move further towards Conant Street.

Ms. Doherty-building permit applied and approved; after the fact, building inspector realized need to come before board?

Mr. Boughner-neighbor came in to do similar project which alerted staff that 223 Conant Street was missed. No fault of applicant.

Mr. Jarvinen-no questions.

Mr. Sauer-addition where carport is? Set back further than existing piece of house?

Brian Almone-addition 20' back from Conant Street. Rest of house is 14' back from Conant.

Mr. Boughner-square footage of addition? Existing home square footage?

Brian Almon-17' x 29' addition. Existing home is about 1,500 sf.

Ms. Doherty-shed remain?

Mr. Boughner-shed already gone. No plan for new shed.

Ms. Doherty-will vote for this.

Mr. Jarvinen-will vote for this.

Mr. Sauer-will vote for this.

Mr. Boughner-modest addition. Would vote in favor.

Motion to issue a finding for 223 Conant Street docket 23-5050 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

55 Brooksby Village Way; Walmart (Route 114A): Request a Variance under Section 9.3.B.2 of the Danvers Zoning Bylaw to allow at most 21 storage containers to be on site each year between September and January. Request made by WS Asset Mngmnt Inc, c/o Jennifer Hodes (23-5051)

Jeff Sauer read aloud application for 55 Brooksby Village Drive docket 23-5051.

Mr. Boughner-per the law, you are allotted a 5 member board. Four board members present. You can choose to not have a vote and have a continuance.

Phil Macchi (Macchi & Macchi Attorney-Norwood, MA)-counsel for and on behalf of applicant. Also present Jennifer Hodes (General Manager-Walmart). Reviewed variance request to allow storage containers. Noted existing conditions of lot and challenges around parking and storage locations. Bylaw allows 2 trailers. Increase in merchandise September-January and need to

accommodate this with storage on site. Noted hardships of storing merchandise off site if trailers were not allowed.

Jennifer Hodes-store manager-Walmart. 21 trailers on site-reviewed what the trailers are used for. Planning to schedule pick up for early January.

Mr. Boughner-October-January?

Staff-September-January.

Mr. Boughner-decision in 2017 regarding outdoor sales at Walmart-this is not being followed. Read aloud details of 2017 decision. Would like this rectified. Attorney Macchi aware of 2017 decision? 21 trailers on site are in violation currently. How does Walmart enforce?

Attorney Macchi-aware of decision.

Mr. Sauer-plaques at Home Depot for employees to know what to do.

Mr. Boughner-challenge if decision is not followed.

Attorney Macchi-suggest granting variance for this year and refile to amend and come back before board with further conditions.

Mr. Sauer-would not vote for variance tonight. No questions. Trailers noted in aerial photo presented.

Mr. Jarvinen-workflow? Area looks clean.

Jennifer Hodes-enough space between each trailer for forklift and to open and close trailers.

Ms. Doherty-no questions. Not ready to vote. Too many questions about property. Not in compliance; not ready to grant more relief.

Mr. Boughner-how long have you been manager? Not aware of prior agreement for outdoor sales? 21 trailers all delivered in September? How many prior to September? Trailers loaded via loading dock in rear? Customer entrance in rear? Garden center area? All 21 trailers holiday related? Gated in rear?

Jennifer Hodes-manager since August 2022. Not aware of prior agreement. Trailers delivered September 1; none prior. Garden center open May-July in rear. Additional pallets for holiday season. Not gated – gate in back of building at connection to Brooksby Village.

Mr. Boughner- Trailers off loaded via forklift?

Jennifer Hodes-yes. Brought into dock in back. Can use cart to unload box as needed for customers.

Mr. Sauer-forklifts propane? Hours of loading and unloading trailers?

Jennifer Hodes-propane. 7AM-4PM or 5PM.

Mr. Boughner-security concerns? Store hours? Restocking times? Knowledge of outdoor agreement and sales? To Attorney Macchi-would need plan in order to move forward and Walmart needs plan to inform managers of decisions.

Jennifer Hodes-all trailers have locks and alarms on them. Hours 6AM-11PM. First shift at 5AM and then trailers loaded and unloaded typically 7AM-noon/1PM. No overnight. Stores armed and locked overnight. Did not have knowledge of agreement until letter received; went to Town Hall.

Mr. Macchi-in agreement on needing a plan.

Bill Bradstreet (Town Meeting Member Precinct 1)-unfortunate that information is not passed on to new manager.

Mr. Boughner-minutes from 2017 available.

Attorney Macchi-would like to request continuance.

Mr. Sauer-dislike approving after the fact; not opposed to 21 trailers being there with hours and not disrupting neighbors. Not ready to grant variance tonight.

Mr. Jarvinen-no problem with 21 trailers. With continuance can continue to use.

Ms. Doherty-no problem with 21 containers. Not ready to rule on variance. Would vote to allow to have and access for now and continue application for variance. In favor of check in period to be finalized at further variance discussion.

Mr. Boughner-trailers not detrimental; question why 21. Would like plan that says agreements will be followed. Site clean and well run.

Attorney Macchi-will call corporate; work in progress.

Jennifer Hodes-variance filing is updated in Walmart system so that information is accessible in my absence.

Mr. Boughner-lack of process and violations have caused this.

Jennifer Hodes-cannot speak to what had been done prior to me; system now up to date.

Mr. Boughner-how do we know that this has been entered in to be in certain hours and at certain areas? Noted pattern of doing something that should not be done, enter agreement; agreement not followed. Reluctant to enter another one.

Jennifer Hodes-can enter in prior variance information into system. Can provide documentation.

Mr. Boughner-continuance-November 27 or December 11?

Attorney Macchi-December 11, 2023.

Motion to continue 55 Brooksby Village Way docket 23-5051 to December 11, 2023 made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved.

Mr. Boughner-additional documents will be needed Tuesday prior.

Motion to adjourn made by Jeff Sauer. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Unanimously approved. Meeting adjourned at 9:00PM.