



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2016 AUG 23 A 10:58

TOWN CLERK
FRAMINGHAM

BOARD OF APPEALS CASE NO. 16-18

PETITION OF MARCIO DE OLIVEIRA

DATE OF DECISION: AUGUST 09, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an appeal filed by MARCIO DE OLIVEIRA (hereinafter the Appellant), for property located at 733 WAVERLY STREET. The Appellant filed a Petition to overturn the Building Commissioner's decision that the property at 733 Waverly St. is a landscaping business (hereinafter the Petition).

2. Appellant

Marcio De Oliveira
P.O. Box 85
Framingham, MA 01704

Property Owner

Anthony Ferracamo
733 Waverly St.
Framingham, MA 01702

3. Location

Property is located at 733 Waverly Street and is shown on Assessors' Parcel ID 134-54-4575-000 (hereinafter the Site).

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on August 9, 2016 the Board voted to GRANT the requested appeal and OVERTURN the decision of the Building Commissioner by a unanimous vote of three members sitting on the application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
ROBERT SNIDER	YES
STEPHEN MELTZER	YES

5. Proceedings

The Petition was received by the Board on March 12, 2015 pursuant to M.G.L. Chapter 40A, §8, and the Framingham Zoning Bylaw. The Appellant presented the Petition to the Board at a duly noticed public hearing of the Board on July 12, 2016 at 7:15 PM in the Blumer Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Robert Snider, Stephen Meltzer, and alternate Joseph Norton were present throughout the proceedings. The hearing was continued to August 9, 2016 at 7:30. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

At the July 12, hearing, Mr. Richard Barbieri (7 Daisley Pl.) and Mr. William Labarge (TMM 16) spoke in favor of the appellant. Mr. Ottaviani felt that it was difficult to tell what was going on in the rear of the property where the subject use is located, behind a residence on Waverly St. The Appellant's leased property is located toward the rear of the lot near the adjacent solar farm. Mr. Ottaviani asked for a site visit, and Mr. Meltzer commented that he would like the Building Commissioner to defend his determination.

At the August 9 meeting, Mr. Ottaviani explained that the Board conducted a site visit, and his view is that the use of the site is not a landscaping business because there is no mulch or other materials stored besides logs. He stated his concern that there is a residential use in front, and inquired as to whether two principle uses could exist on the same site. Mr. Tusino, the Building Commissioner, was present and explained that he thought the Appellant's use should be allowed, but that appropriate conditions needed to be in place. Mr. Snider stated that there was a problem of definitions; that this is different from landscaping; that the business really just stores and processes logs. He stated his concern about the height of the log piles, as they are close to the height of the power lines. He suggested regulating the height of the piles. Mr. Oliveira suggested he was willing to manage the height of the logs. Mr. Meltzer asked what a reasonable height would be. Mr. Oliveira suggested 10 feet. The hours of operation were agreed to be Monday through Friday, 7 AM to 8 PM. Mr. Ottaviani suggested a one-year permit limiting use of the commercial portion of the property to the storage and cutting of logs as currently the site is being used.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Letter from Deputy Building Commissioner to Appellant addressing proposed landscaping business, dated May 10, 2016.
- 6.2. Letter from Appellant to Department of Building Inspection dated May 31, 2016.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on June 08, 2016.
- 6.5. Planning Board comments dated 6/21/16.

7. Findings and Conclusions

Based upon its review of the Petition, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the Manufacturing (M) district.
- 7.2 On June 8, 2016, the Appellant filed the Petition with the Town Clerk for the purpose of overturning the May 10, 2016 determination of the Building Commissioner that the business on the property is a prohibited landscaping business.
- 7.3 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on June 27 and July 4, 2016 and mailed to all parties-in-interest, as defined by M.G.L. c. 40A, §11.

- 7.4 At the hearing on July 12, 2016, the Board voted to continue the hearing on August 9, 2016, so that a site visit could be arranged. The site visit occurred on Friday, August 5 with the Appellant's permission.
- 7.5 The Board finds that the use of the property as observed is not a landscaping business. The use of the site is limited to the storage and processing of logs, which have been acquired as part of Mr. Oliveira's tree services business. A landscaping business is typically more extensive, and would contain materials appertaining to a landscaper's operations, such as mulch piles, which are of greater concern than logs. The ZBA has historically treated tree services differently than landscaping businesses. In ZBA case no. 15-11, the Board determined that A1 Tree Service most closely resembled a Storage and Distribution facility, which is allowed in the M zoning district by special permit. The Board accordingly finds that the All Pro Tree Services site, leased and operated by the Appellant, Mr. Marcio de Oliveira, is a similar use and therefore is considered a Storage and Distribution facility. The determination of the Building Commissioner is OVERTURNED.
- 7.6 Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
- 7.6.1 The specific site is an appropriate one for such a use or structure. *The business is located adjacent to other industrial uses. It is an existing operation and there was no opposition to the use from abutters or members of the public.*
- 7.6.2 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking.
- 7.6.3 The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The log piles will be kept to a reasonable height at 10 feet and the business operations are located to the rear of the property a distance from the public roadway.*
- 7.6.4 The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *Storage and distribution is allowed in the Manufacturing (M) zone by special permit.*
- 7.6.5 All municipal services necessary to meet the needs of the proposed use are adequate and sufficient.
- 7.7 The Board grants this Special Permit subject to the following conditions:
- 7.7.1 The height of the log piles stored on site shall be no higher than 10 feet, so as to avoid complications with the power lines.
- 7.7.2 The hours of operation shall be: Monday through Friday from 7:00 AM to 8:00 PM.
- 7.7.3 The use of the site shall be limited to the storage and processing of trees and logs as currently used.
- 7.7.4 This special permit shall be valid for a period of one year. An application to renew the special permit shall be submitted to the ZBA at least 60 days prior to the expiration of this permit.

- 7.8 This Decision applies only to the requested Special Permit. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.9 If the rights authorized by this Special Permit are not exercised within two years of the date of filing of the Decision with the Town Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights for a period not to exceed six (6) months. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval. If the Board does not grant such an extension within thirty days of the date of application therefore, and upon the expiration of the original two-year period, such rights may be reestablished only after notice and a new hearing pursuant to MGL, Ch. 40A, §9.
- 7.10 This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.
- 7.11 The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to M.G.L. c. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By 
Philip R. Ottaviani Jr., Chairman