



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 16-30

PETITION OF PERDONI BROTHERS

DATE OF DECISION: DECEMBER 13, 2016

2016 DEC 27 P 12:04
TOWN CLERK
FRAMINGHAM

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of PERDONI BROTHERS. (hereinafter the Applicant), for property located at 350 IRVING STREET. This Decision is in response to a Petition to renew a Special Permit for a Storage & Distribution Facility pursuant to the Zoning Bylaw (hereinafter the Application).

2. Property Owner

Eversource
1 NStar Way
Westwood, MA 02090

Applicant

Perdoni Brothers
6 Francis Road
Wellesley, MA 02482

3. Location

Property is located at 350 Irving Street and is identified by Assessors' Parcel ID 142-13-5870-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on December 13, 2016 the Board voted to GRANT the requested SPECIAL PERMIT renewal 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
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on September 8, 2016 pursuant to MGL, Ch. 40A, §9, the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on October 24, 2016 at 8:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and alternate Edward "Ted" Cosgrove were present throughout the proceedings. The Application was continued to 7:00 PM on December 13, 2016 to allow sufficient time for the Board to review Board of Health (BOH) comments. The alternate, Edward "Ted" Cosgrove was not present at the December hearing. 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.

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At the initial hearing on October 24, 2016, Ms. Craighead suggested that the Board wait to discuss the application after MassDEP and the Board of Health reviewed and provided comments on the Phase 2 report. Ms. Carol Bois, Licensed Site Professional, and Mr. Michael Hugo of the Board of Health were present, and mentioned that Eversource was required, by December 1, to identify remediation plans for areas identified as a risk. Ms. Bois suggested waiting to open the hearing for discussion after December 1 to allow sufficient time for review by MassDEP, BOH, and other Town departments. The Board agreed and continued the hearing to a special meeting at 7:00 PM on December 13, 2016.

On December 13, 2016, Attorney Joseph Antonellis was present with John Mullen, owner of Landscape Depot (LD) and the main tenant at 350 Irving Street, the property owned by Eversource. The Perdonis and A1 Tree Services, subtenants, were also present. Mr. Antonellis explained that the Applicant is before the Board requesting an extension to their expiring Special Permits. He explained the businesses' cooperative efforts to address Zoning Board, Conservation Commission, Board of Health, and Fire Department concerns. Mr. Ottaviani read into the record Fire Department comments, Conservation Commission comments, letters in support and opposition, and Board of Health comments. Mr. William Labarge (TMM 16), Ms. Judith Grove (TMM 16), Mr. Frank Demarco (TMM 16), Mr. Lloyd Kaye (P12), Ms. Rhonda Andrews (TMM 16), Ms. Laura Keith, Ms. Kathleen Demarco (TMM 16), Ms. Shirley Adams (P16), and Ms. Nancy Fitch (TMM 4) expressed concerns including the recent fires, pollution, taxes owed by the businesses, and the drain on Town resources due to monitoring. Mr. Charles Piso (P7) spoke in favor.

Mr. Ottaviani mentioned that Eversource intends to remain on the site and improve it. Mr. Antonellis commented that it is best that this site remains active so attention is given to it. He clarified that Landscape Depot is not a landscaping business; rather, it sells landscaping supplies and material to landscaping businesses. Mr. Ottaviani explained that the Applicant is before the Zoning Board because the original application was granted by the Zoning Board. Mr. Meltzer commented that the goal is to have Eversource clean up this site as much as possible and the Applicant has been compliant. Ms. Craighead commented that shutting down this site will not clean up the property or change the circumstances and that keeping it a viable business will be beneficial to the community.

Mr. Michael Blanchard, Director of Public Health commented that the goal is to have this site cleaned up as much as possible and mentioned that there are no hazards if the current businesses continue to operate during remediation. Mr. Meltzer asked, if MassDEP determines that the activity on the property is hazardous, whether MassDEP would have the power to order that operations cease and desist. Ms. Carol Bois, Board of Health, explained that MassDEP will be reviewing the analysis to confirm whether or not the businesses can continue to operate and if an imitate hazard or problem is found, MassDEP would be able to shut down the site. She praised Mr. Mullen for his cooperation with Town officials over the past year.

6. Exhibits

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

- 6.1. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on September 16, 2016.

- 6.2. Filing fee in the amount of \$1,000.
- 6.3. Public comments in support and opposition dated September 24, 2016, October 04, 2016, and November 27, 2016. Correspondence can be viewed in the Zoning Board Office at the Memorial Building.
- 6.4. Special Permit Decision for case no. 15-18 originally filed with the Town Clerk November 16, 2015.
- 6.5. Comments from the Framingham Board of Health, received 10/6/16 (including GEI Revised Phase II Comprehensive Site Assessment Executive Summary); 10/19/16; 10/24/16; 12/13/16.
- 6.6. "Landscape Depot, 350 Irving Street; Board of Health Conditions", adopted February 9, 2016.
- 6.7. Comments from the Framingham Fire Department, dated 10/20/16.
- 6.8. Comments from the Conservation Commission, dated 10/24/16.
- 6.9. Site Plan entitled "PROPOSED CONDITIONS" prepared by GZA GeoEnvironmental Inc., stamped "Received" November 13, 2015 by the Zoning Board staff.

Exhibit 6.9 shall be hereinafter referred to as the "Plan."

7. Findings and Conclusions

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

- 7.1. The property is located within the General Manufacturing (M) zoning district.
- 7.2. On September 16, 2016 the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of renewing a Special Permit as required by the prior decision in case no. 15-18, and pursuant to the Zoning Bylaw.
- 7.3. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on October 9 and October 16, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.4. The Board finds that the following conditions of approval of a Special Permit, per Section VI.E.3 of the Zoning By-Law, have been met:
 - 7.4.1. The specific site is an appropriate one for such a use or structure. *The use, as the Board previously determined, is allowed per the Zoning Bylaw for this zoning district by Special Permit. The site has historically been used for industrial, manufacturing or commercial uses. Landscape Depot and its tenants have been cooperative with the Town in complying with conditions. Although the site is contaminated from previous hazardous uses, the risk posed by this contamination is not incompatible with the current uses on the site, according to the Board of Health.*
 - 7.4.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *As a condition of the special permit, the Applicant has provided a site plan delineating the LD tenant space and sub-tenants, and is required to notify the Board of tenant relocation. Sufficient parking exists on site.*

- 7.4.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The use does not create a hazard to abutters, vehicles, or pedestrians. Eight of the 13 tenants have vacated the site, allowing LD sufficient and safe space to operate their business with the remaining tenants. No residential abutters are adjacent to the site. Adequate access to the site exists via Irving Street.*
- 7.4.4. Section VI.E.3.a (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. *Many commercial uses are allowed in the Manufacturing zoning district. Some uses require a Special Permit. The Board felt that Perdoni was most applicable to a Storage and Distribution Facility because the tenant stores machinery/equipment for off-site use.*
- 7.4.5. Section VI.E.3.a (5): All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *The existing municipal services are adequate and sufficient for the use.*
- 7.5. The Board grants this Special Permit subject to the following conditions:
- 7.5.1. The business shall be located as shown on the revised Plans displaying current tenant space delineation.
- 7.5.2. The Zoning Board office shall be notified by the property owner, tenant, or sub-tenant of any future relocations of the tenant businesses on the property due to site assessment, cleanup activities, or otherwise at time of relocation.
- 7.5.3. The hours of operation shall be Monday through Saturday 7:00 am – 5:00 pm.
- 7.5.4. This Special Permit shall be in effect for one year from the date of filing of the decision with the Town Clerk and any application for renewal shall be submitted to the Board at least sixty days prior to expiration of this Special Permit.
- 7.5.5. Major maintenance, including oil changes, of any vehicles and equipment/machinery shall occur off-site.
- 7.5.6. The Applicant shall be in compliance with all other site conditions as outlined in the Board's decision in case no. 16-29.
- 7.5.7. No subsurface digging shall be allowed on-site. The integrity of the asphaltic soil barrier shall be maintained.
- 7.5.8. The Applicant shall be in compliance with the following conditions of the Conservation Commission:
- 7.5.8.1. No excavation on Lot C is permitted and there shall be no expansion into any adjoining lots or those lots previously utilized by Perdoni Industries or Perdoni Brothers.
- 7.5.8.2. Lots I, J, K, L are excluded from any use associated with Landscape Depot or its sub-lessees. These lots may be utilized by Eversource during site remediation through approval of the Conservation Administrator and permitting.
- 7.5.8.3. Lots A, D, and H are not attributed to any use by any sub-lessee and may not be used without notification of both the ZBA and Conservation.

7.5.9. The Applicant shall be in compliance with any conditions imposed on the Site by the Massachusetts Department of Environmental Protection, Massachusetts Water Resources Authority, Board of Health, and Conservation Commission. This includes being in compliance with Board of Health monitoring procedures and reaching an agreement with the Massachusetts Water Resources Authority regarding aqueduct access and protection. Any violation of conditions imposed by regulatory authorities shall be deemed a violation of this Special Permit.

7.5.10. The Applicant shall report to the Board no later than six months from the date of filing of this decision, an update of site conditions.

7.6. 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.

7.7. 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.

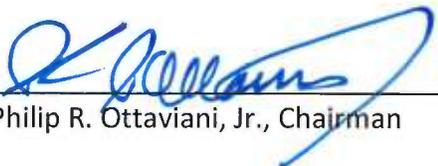
7.8. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official.

7.9. 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 MGL, Ch. 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