



TOWN OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

BOARD OF APPEALS CASE NO. 17-41

2017 NOV -6 P 3:05

PETITION OF PERDONI BROTHERS AND EVERSOURCE

TOWN CLERK  
FRAMINGHAM

DATE OF DECISION: OCTOBER 23, 2017

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of PERDONI BROTHERS AND EVERSOURCE (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 October 23, 2017 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 14, 2017 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 23, 2017 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and alternate Joseph Norton were present throughout the proceedings. 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.

The Applicant, Mr. John Mullen of Landscape Depot, Inc., was present with his Counsel, Attorney Joseph Antonellis. Mr. Antonellis explained the request to continue operation of the existing businesses (Landscape Depot, Perdoni Brothers, Perdoni Industries, and A1 Tree

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Services). He stated, historically this property was before the Board multiple times and that he believed that the property owner and tenants have contributed to major site improvements. Landscape Depot has successfully been able to continue operation while the property owner, NSTAR/Eversource continues site cleanup with the EPA. He stated, that in working collaboratively with the Fire and Health Department, last year's issue of mulch fires has been resolved because of the implementation of a monitoring system. He noted that there was an instance of tar seepage during the last year that was immediately reported to the Town's Health Department; that the pollution issues were the responsibility of the property owner; and that the tenants were being cooperative. Mr. Antonellis noted, the lease had been renewed for another ten years prior to this application submission and that NSTAR/Eversource was in the process of obtaining quotes to pave the North side of the aqueduct, totaling at roughly five acres, to help prevent future tar seepages. The paving will be done in phases over a year timeframe. Mr. Meltzer asked if other areas were being considered for pavement. Mr. Mullen responded, possibly the Wellesley Trucking area.

Mr. Ottaviani noted comments that had been received by the Health Department (including a letter to the Massachusetts Department of Environmental Protection [MassDEP]) and the Conservation Administrator.

Ms. Ronda Andrews (TMM 16) and Mr. William Labarge (TMM 16) urged the Board to only consider a one year renewal. Ms. Judy Grove (TMM 15) questioned who was responsible for cleanup of the site and what the plans were, and supported only a one-year extension. She expressed concern about paving over the aqueduct. Mr. Antonellis responded, the responsibility would fall on the landowner, Eversource. Mr. Richard Baritz (TMM 17) agreed that a one year renewal would be appropriate. Mr. Frank Demarco (TMM 16) questioned drainage and the environmental impact post pavement. Ms. Craighead clarified, the pavement would tame the existing environmental and contamination problem. Mr. Cosgrove stated, drainage would be considered by the Board of Health and MassDEP. Board members spoke in favor of a one year renewal.

## **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 14, 2017.
- 6.2. Filing fee in the amount of \$500.00.
- 6.3. Special Permit Decision for case no. 16-30 originally filed with the Town Clerk December 27, 2016.
- 6.4. Framingham Board of Health comments, dated 10/13/17 and 10/20/17.
- 6.5. Conservation Commission comments dated 10/18/17.
- 6.6. Site Plan entitled "PROPOSED CONDITIONS" prepared by GZA GeoEnvironmental Inc., stamped "Received" September 14, 2017 by ZBA staff.

Exhibit 6.6 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 14, 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. 16-30, and pursuant to the Zoning Bylaw.
- 7.3. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on October 8 and October 15, 2017 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 previously 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 same conditions listed in the previous decision in case no. 16-30, as follows:
  - 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, 16-30, and 17-39.
- 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