



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

CITY OF FRAMINGHAM
CITY CLERK'S OFFICE

2017 DEC 26 P 2: 19

BOARD OF APPEALS CASE NO. 17-33

PETITION OF 170 WAVERLY STREET, LLC

DATE OF DECISION: DECEMBER 12, 2017

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of 170 WAVERLY STREET, LLC (hereinafter the Applicant), for property located at 170 WAVERLY STREET. This Decision is in response to a Petition to amend Special Permit #14-50 related to landscaping as required by the Zoning By-Law (hereinafter the Application).

2. Applicant

170 Waverly Street, LLC
154 Waverly Street
Framingham, MA 01702

3. Location

Property is located at 170 Waverly Street and identified by Assessors' Parcel ID 129-16-4417-000 (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 12, 2017 the Board voted to APPROVE the Application and AMEND the SPECIAL PERMIT by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

SUSAN CRAIGHEAD	YES
STEPHEN MELTZER	YES
RICK MCKENNA	YES

5. Proceedings

The Application was received by the Board on August 2, 2017 pursuant to MGL, Ch. 40A, §9, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on September 12 at 7:00 P.M. in the Blumer Community Room of the Memorial Building. The hearing was continued to October 23 at 7:00 PM and December 12 at 7:00 PM, at which point a decision was made. Chairman Philip Ottaviani recused himself from sitting on the Application and appointed Susan Craighead to chair the hearing. Ms. Craighead appointed Edward "Ted" Cosgrove and Stephen Meltzer as voting members, and Rick McKenna as alternate. Board Members Susan Craighead, Stephen Meltzer, and alternate Rick McKenna, were present throughout the proceedings. Mr. Cosgrove arrived

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late to the December 12 meeting, and Mr. McKenna served as voting member. 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 September 12 meeting, the Applicant's Attorney, Mr. Richard DeAngelis, requested to continue the hearing to October, to allow sufficient time for the property owner to address Conservation Commission comments. At the October 23 meeting Attorney DeAngelis explained the applicant was to meet with the Conservation Commission in November and requested to continue the ZBA hearing to December 12.

At the December 12 meeting, Attorney DeAngelis explained the amendment request did not consist of any changes to the use or operation. After Conservation Commission and Bohler Engineering review, it was determined that the Special Permit granted by the ZBA in 2014, was inconsistent with the Order of Conditions granted by the Conservation Commission in 2016. The request before the board was to amend the requirement of the two-to-six-foot landscaping along the rear property line, and to increase such strip to a consistent five feet.

Ms. Judith Grove (TMM 15) voiced concern regarding the Mary Dennison Park abutting the property.

Mr. DeAngelis clarified the only existing noncompliance was due the delay of soil boring activity to the rear of the property. He explained there was an open investigation regarding contamination that could result in the removal of the requested landscaping. It would be counterproductive to install and then remove, should it be deemed necessary.

Mr. Meltzer suggested incorporating the Conservation Commission's Order of Conditions and amending the ZBA Special Permit decision to reflect what was granted by the Conservation Commission. Ms. Craighead agreed with Mr. Meltzer and added, additional time should be given to the Applicant to comply with the boring request.

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 August 4, 2017.
- 6.2. Filing fee in the amount of \$500.00.
- 6.3. A letter in support of the Petition describing the proposed changes to the landscaping, submitted with application, August 2, 2017.
- 6.4. ZBA Decision for application #14-14, originally filed with the Town Clerk on May 30, 2014 and ZBA Decision for application #14-50, originally filed with the Town Clerk on September 30, 2014.

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- 6.5. Conservation Commission comments, dated September 11 and amended October 17, 2017.
- 6.6. Order of Conditions issued by the Conservation Commission, and dated June 29, 2016.
- 6.7. Site Plan entitled "Site Development Plans for Direct Auto Mall", prepared by Bohler Engineering, 352 Turnpike Road, Southborough, MA 01772, dated February 28, 2016 and notated by Ms. Craighead on 12/12/2017.

Exhibit 6.7 shall be hereinafter referred to as the "Plans".

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 August 4, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of amending ZBA Special Permit #14-50 relative to landscaping requirements.
- 7.3. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" August 28 and September 4, 2017 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.4. The Applicant and property owner, 170 Waverly Street, LLC, is before the Board to amend the most recent Special Permit #14-50.
- 7.5. Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
 - 7.5.1. The specific site is an appropriate one for such a use or structure. *This section of Waverly Street is primarily commercial uses. The lot is located next to an existing auto sales property (Direct Auto Mall).*
 - 7.5.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *The site will be used for additional storage of vehicles for sale. Adequate and appropriate facilities exist at the site.*
 - 7.5.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *Access to the site will not change, therefore a hazard to abutters, vehicles, or pedestrians will not be created.*
 - 7.5.4. 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. *The site is located within the Manufacturing zoning district.*
 - 7.5.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *There will not be an increase in municipal services needed.*
- 7.6. The Board grants this Amendment to the Special Permit with the following conditions:

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- 7.6.1. The conditions contained in the ZBA Decisions #14-14 and #14-50 shall remain in full force and effect, except that the landscaping shall comply with the Plan approved by the Conservation Commission (Exhibit 6.7).
- 7.6.2. The proposed automotive use and remaining landscaped areas shall be located as shown on the #14-50 Plan dated July 23, 2014.
- 7.6.3. As a condition of the #14-14 Special Permit approval, the landscaped buffer along the western edge of the property will be continuously 5 feet wide up to Waverly Street (no less).
- 7.6.4. As a condition of the #14-14 Special Permit approval, the designated landscaping areas shall be composed of weybush/boxwoods as shown on the photos/materials submitted and consistent with Exhibit 6.8 from ZBA Special Permit #14-14.-
- 7.7. 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.
- 7.8. 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 one-year period, such rights may be reestablished only after notice and a new hearing pursuant to MGL, Ch. 40A, §9.
- 7.9. 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.
- 7.10. 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: 
Susan Craighead, Vice-Chair

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