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BOARD OF APPEALS CASE NO. 18-24

PETITION OF PERDONI BROTHERS AND NSTAR (EVERSOURCE)

DATE OF DECISION: OCTOBER 9, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of PERDONI BROTHERS and NSTAR (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

NSTAR (Eversource)
1 NStar Way
Westwood, MA 02090

Applicant

Perdoni Brothers
6 Francis Road
Wellesley, MA 02090

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 9, 2018 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 August 22, 2018 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 October 9, 2018 at 7:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and alternates Joseph Norton, Rick McKenna, and Edward "Ted" Cosgrove were present throughout the proceedings. Mr. Ottaviani read opened the hearings for all four 350 Irving St. cases to be heard simultaneously: 18-23, 18-24, 18-25, and 18-26. To dispel any appearance of potential conflict of interest, and as required by G.L.c.268A, section 23 (b) (3), Mr. Ottaviani read into the record a disclosure form. 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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Mr. Perdoni introduced himself and explained the operations of Perdoni Brothers and Perdoni Industries, owned and operated by himself and his father. He explained that there had been no changes to the business operation and requests a renewal of the existing Special Permit.

Mr. Ottaviani noted comments that had been received by the Health Department and the Conservation Administrator. Mr. Ottaviani spoke in favor of only a one-year renewal.

Discussion continued regarding A1 Tree Services and Landscape Depot, which were opened and voted as separate cases.

Ms. Ronda Andrews (7 Kendall Avenue) spoke in favor of a one-year renewal. District 8 City Councilor, Ms. Judith Grove spoke in favor of the letter submitted by the Board of Health and agreed that a one-year renewal was appropriate.

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 City Clerk on August 31, 2018.
- 6.2. Filing fee in the amount of \$1,000.00.
- 6.3. Special Permit Decision for case no. 17-41 originally filed with the City Clerk November 6, 2017.
- 6.4. Conservation Commission comments dated September 24, 2018.
- 6.5. Framingham Board of Health comments dated October 9, 2018.
- 6.6. Site Plan entitled "PROPOSED CONDITIONS" prepared by GZA GeoEnvironmental Inc., dated February 2, 2016.

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 August 31, 2018 the Applicant filed with the City 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. 17-41, and pursuant to the Zoning Bylaw.
- 7.3. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on September 24 and October 1, 2018 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*

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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. 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. 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 as the previous decision in case no. 17-41, as follows:
 - 7.5.1. The business shall be located as shown on the Plan 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 City 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. 16-30, 17-39, 17-40, 17-41, and 17-42.
 - 7.5.7. The Applicant shall be in compliance with the Board of Health conditions in Exhibit 6.4 and in compliance with the Conservation Commission conditions in Exhibit 6.5.
 - 7.5.8. The Applicant shall be in compliance with the Board of Health conditions in Exhibit 6.4 of Special Permit 17-41 copied below:

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- 7.5.8.1. The business shall be located as shown on the revised Plans displaying current tenant space delineation.
- 7.5.8.2. 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.
- 7.5.8.3. The hours of operation shall be Sunday through Saturday 6:00 AM – 6:00 PM.
- 7.5.8.4. 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.
- 7.5.8.5. Major maintenance, including oil changes, of any vehicles and equipment/machinery shall occur off-site.
- 7.5.8.6. The Applicant shall be in compliance with all other site conditions as outlined in the 16-29, 350 Irving Street, Landscape Depot, 16-31, 350 Perdoni Industries, 350 Irving Street, and 17-39, 350 Irving Street, Landscape Depot/NSTAR(Eversource) decisions.
- 7.5.8.7. No subsurface digging shall be allowed on-site. The integrity of the asphaltic soil barrier shall be maintained.
- 7.5.9. The Applicant shall be in compliance with the following conditions of the Conservation Commission:
 - 7.5.9.1. There 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.
 - 7.5.9.2. 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.
 - 7.5.9.3. 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.
 - 7.5.9.4. The Applicant shall be in compliance with any additional 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. Eversource shall pave the tar seep area as well as the western portion of the Landscape Depot property north of the aqueduct.
- 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.

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- 7.7. If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City 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. A request for extension shall require a new public hearing pursuant to MGL, Ch. 40A, §9. 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.
- 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 City 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 City Clerk.

ZONING BOARD OF APPEALS

By:



Philip R. Ottaviani, Jr., Chairman