



Town of Danvers Zoning Board of Appeals

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Zoning Board of Appeals

Members:

John Boughner, Chair
Kenneth Scholes, Clerk
Jeffery Sauer
Kenneth Jarvinen
Corinne Doherty

August 28, 2023 7:00 p.m. ZBA MEETING MINUTES

Board members present: John Boughner, Kenneth Scholes, Ken Jarvinen, Corinne Doherty.
Absent: Jeff Sauer

Staff present: Brian Szekely

John Boughner called the meeting to order at approximately 7:00 p.m. Will take additional time to review minutes and discuss at next meeting September 11.

CONTINUED ITEMS

144 PINE STREET (I-1): Request to first modify a previously-issued variance (Docket #14-4492) to strike the conditioning language that prohibits outdoor storage on the subject site. The applicant is also requesting a Special Permit, with associated waivers or variances, in accordance with Section 9.3.B.2; Section 30.3 and Section 9.3.C of the Danvers Zoning Bylaw, to permit two storage containers for a period of more than 180 days on the property. To the extent such variances are deemed necessary by the Board, the applicant is requesting dimensional variances in accordance with Table 3 of the Danvers Zoning Bylaw to place the two storage containers approximately 3 to 4 feet from the side setback where 25 feet is required, and/or to place two storage containers closer (in various distances) to the rear setback where 25 feet is required, and/or to request a waiver in accordance with Section 9.3.C including where the two storage containers are situated closer than 10 feet from the nearest building (at varying distances) where 10 feet distance between container and building is required. **Request made by Brian Calkins of Elevation Foods (23-5015)**

Ken Scholes read aloud application for 144 Pine Street docket 23-5015.

Attorney Peter Calabrese-presented on behalf of applicant. Applicant proposing phase out plan for trailers. Keep both trailers until 12/31/2023. On or before end of 2023, remove diesel powered trailer. Keep electric trailer until 12/31/2025; adhere to other conditions noted in prior meetings. Insulation wrapping on trailers will be installed to lower noise decibel.

Mr. Boughner-board was clear on expectations-needed updated plan showing removal of trailers that are in violation. Did not receive any plans.

Mr. Scholes-no questions.

Mr. Jarvinen-moving electric trailer sooner? One year as opposed to two?

Attorney Calabrese-possibly but depends on logistics. Phase out results in zero trailers using reasonable method.

Ms. Doherty-if we agree to this, would applicant accept all conditions from prior meetings? 6-month check-ins as condition? Insulation-how long does it take to come in and install?

Attorney Calabrese-agree to all conditions as discussed and agree to check-in conditions.

Ashkan Delfanazari-(Mechanical Engineer-Elevation Foods)-material available 24-48 hours. Will reduce noise 15 decibels. One-two days to install. Use on both trailers.

Mr. Boughner-problem has existed since 2016 but material can be available in 24 hours and installed in 2 days-why was this not already done?

Ashkan Delfanazari-with company for 7 months. Wanted approval from board to do this before taking action.

Mr. Boughner-phase out diesel trailer by end of this year; phase out electric by end of 2025? All conditions will be accepted? Condition to insulate trailers?

Attorney Calabrese-yes.

Ms. Doherty-include time restrictions and signage regarding deliveries.

Staff-reviewed scope of signs from prior meeting.

Attorney Calabrese-following through with signs.

Mr. Scholes-diesel unit – will be fenced and insulated for 4 months until it is removed at end of 2023?

Ashkan Delfanazari-yes. Fence installed within 10 business days once we have approval.

Mr. Boughner-condition of both trailers electric and no diesel?

Staff-was requested but not accepted as a condition.

Attorney Calabrese-both electric if we were keeping the trailers.

Mr. Boughner-do not want any trailers. Proposal to have one diesel, one electric?

Ashkan Delfanazari-correct. No contractor work for electric trailer-already connected.

Bill Bradstreet (Town Meeting Member Precinct 1)-prefer 4-month review. Decibel level measured. Manual forklift.

Attorney Calabrese-agree to 4-month review as condition.

Mr. Boughner-decibel readings at peak times through week.

Ashkan Delfanazari-will take decibel measurements at peak times and bring report to check-ins. OSHA requires forklift to make noise for safety measures.

Attorney Calabrese-reviewed plan that was submitted as supplemental plan for July meeting.

Brian Calkins (director of operations-Elevation Foods)-trying to do what is best for business and community. Removal of trailers may not solve issue; will cause deliveries to have to be doubled and tripled; may be more disruptive with increased traffic and increased deliveries.

Mr. Scholes-board did not agree to units being onsite. Storage units should not be there. Would vote no.

Mr. Jarvinen-would vote for this with stipulations agreed to.

Ms. Doherty-would approve with all restrictions in place and check-in every 4 months.

Mr. Boughner-plan agreed to in 2014 to alleviate problem has not been followed. Applicant did not follow ZBA decision. Appreciate efforts and suggestions. Would not vote for this. Detrimental to neighborhood and is a violation. You do not have the votes. Take a vote and deny which prohibits coming back for 2 years or withdraw without prejudice. If continued, you would still not have the votes.

Attorney Calabrese-if withdrawn, how much time to remove trailers?

Staff-fines tolled during process; if withdrawn, fines are still due. Board to determine how long until trailers need to be removed.

Mr. Boughner-how long would applicant need to remove trailers?

Attorney Calabrese-applicant to withdraw application and ask for 60 day grace period to remove trailers.

Mr. Boughner-will accept 60 days; applicant to pay fines due to the town.

Motion to withdraw application for 144 Pine Street docket 23-5015 made by Ken Jarvinen.
Seconded by Ken Scholes. In favor: 4. Opposed: 0.

REGULAR ITEMS

15 Popes Lane (HCZ): Request a Variance, in accordance with Table 3 of the Zoning Bylaw to allow for the removal of the existing building, which is non-conforming as to side setbacks, and construction of a new building which will be no closer to the side lot lines than the existing building. An existing non-conforming Use will be replaced with an office Use. Request made by David Campbell, c/o Nancy McCann, Esq. (23-5029)

Ken Scholes read aloud application for 15 Popes Lane docket 23-5029.

Attorney Nancy McCann-presented on behalf of applicant. Also present applicant David Campbell; Will Schkuta (Project Engineer-Morin-Cameron Group). Property currently nonconforming use; will replace with office which is permitted use. Reviewed what is being requested and scope of plan and setbacks. Office use only; no exterior storage; not a contractor's yard. Parking under building; required parking is onsite. Monday-Friday standard business hours; no weekend hours.

Will Schkuta-clarified setbacks as noted on plan. Drainage to be compliant with stormwater bylaw and state laws. Utilities-existing will be tied into; will use water or run new water service if deemed necessary.

Attorney McCann-reviewed floorplan and elevations. Will need site plan approval through Planning Board if approved by ZBA. Proposing office use in keeping with other uses in the area. Noted letter received from abutter Milan Patel which states being in favor of project. Requests from abutter regarding dumpster placement will be taken and curbing will be addressed to ensure runoff stays on applicant property and not flow to abutter.

Mr. Boughner-13 Popes Lane being redeveloped by-right? Will not read in letter of opposition from Mr. Patel as update was provided.

Attorney McCann-request to come before ZBA for 13 Popes Lane was withdrawn; went through site plan and approved and permitted.

Mr. Scholes-parking calculation discrepancy?

Attorney McCann-in compliance with parking requirement.

Ms. Doherty-did not receive floorplans. First floor garage; second story office space?

Staff-floorplan as presented is second floor. First floor is garage.

Attorney McCann-correct-second floor is office space.

Mr. Jarvinen-parking underground? Parking in rear?

Attorney McCann-no parking underground. Parking is on ground floor under building and parking in rear.

Mr. Scholes-signage? Lighting?

Attorney McCann-no signage proposed yet. No zoning relief being requested for signage. Lighting will go through site plan with Planning Board.

Mr. Boughner-3 bay doors on side of building or front? Height of doors? Steel frame? Curb cut changing? Entrance on same side as garage doors? Exterior stairs?

Will Schkuta-doors on face of building; appx 10'. Steel frame building. Curb cut will be adjusted during site plan. Entrance door on front and rear. No exterior stairs.

Attorney McCann-finding requested out of caution but per staff, just variance is needed.

Staff-correct.

Bill Bradstreet (Town Meeting Member Precinct 1)-will slope behind building be covered?

Mr. Boughner-will be addressed at site plan.

Ms. Doherty-will vote for this.

Mr. Jarvinen-will vote for this.

Mr. Scholes-will vote for this.

Mr. Boughner-will vote for this.

Motion to issue Variance for 15 Popes Lane docket 23-5029 made by Ken Scholes. Seconded by Corinne Doherty. In favor: 4. Opposed: 0. Motion carries.

80 Andover Street (Rt 114A): Request a modification to a previous Variance decision (docket 93-2703) to allow for two wall signs on the main building to be larger than allowed according to Section 37, and two sets of channel letters that will 27.38 square feet. Additionally, a new monolith style pylon is proposed to replace an existing pylon sign. **Request made by Amy Murray, c/o AG Signs and Graphics (23-5030)**

Ken Scholes read aloud application for 80 Andover Street docket 23-5030.

Kevin Michaud (owner-Michaud Mitsubishi)-presented plans for new signage.

Mr. Scholes-signage replaces flag sign in place now?

Kevin Michaud-correct.

Mr. Jarvinen-square footage difference from old to new?

Kevin Michaud-similar in size.

Ms. Doherty-parent companies requesting signage. Are you replacing all signs? “Parts and Service” changing to “Service?”

Kevin Michaud-replacing all. Reviewed changes and sign locations. New image program for Mitsubishi that all are being asked to change to as part of rebranding. Correct regarding Service sign.

Mr. Boughner-increase in size? Explanation of sizing. Signs lit? Sign package helpful for business?

Amy Mann (present remotely)-pylon sign smaller. Cantilever pole size; not monolith. Current wall sign 2’x33’. They are lit signs.

Kevin Michaud-lights off around 11PM. Color change improvement. Smaller than signage on other dealerships on Route 114.

Bill Bradstreet (Town Meeting Member Precinct 1)-assurance that pylon replacing existing is smaller than existing.

Amy Mann-smaller in size and height.

Kevin Michaud-poles lower due to National Grid easement over property.

Mr. Boughner-66 sf? Going to 200 sf?

Amy Mann-existing is 66 sf. Reviewed discrepancy in signage questions for clarity.

Kevin Michaud-need improved signage for building visibility.

Mr. Scholes-no problem with sign changes. Would vote for this.

Mr. Jarvinen-would approve this.

Ms. Doherty-would approve this.

Mr. Boughner-would vote for this. Staff to please clarify size.

Staff-Will note specific size of signs in decision.

Motion to modify previous Variance docket 93-2703 at 80 Andover Street docket 23-5030 made by Corinne Doherty. Seconded by Ken Scholes. In favor: 4. Opposed: 0. Motion carries.

11 Belgian Road (R-II) Request a Finding under Section 3.11.A (1 and2) to add a second floor to an existing non-conforming house. House is non-conforming with respect to side and front setback. The side setback (12.7') will remain unchanged, while the front setbacks is proposed to go from 24.8' to 20.8'. **Request made by Kristin Byrne (23-5031)**

Ken Scholes read aloud application for 11 Belgian Road docket 23-5031.

Kristin Byrne-noted plan to add 4' entryway to home to straighten stairway access to second floor.

Mr. Boughner-doing second floor addition?

Kristin Byrne-correct. Second floor currently unfinished.

Ms. Doherty-no questions.

Mr. Jarvinen-no questions.

Mr. Scholes-no questions.

Mr. Boughner-making closed in breezeway which is why it counts in setback? Second floor overhangs?

Kristin Byrne-correct with regards to setback. No overhangs on second floor.

Ms. Doherty-will vote for this.

Mr. Jarvinen-will vote for this.

Mr. Scholes-will vote for this.

Mr. Boughner-will vote for this.

Motion to issue Finding for 11 Belgian Road docket 23-5031 made by Ken Scholes. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Motion carries.

44 Locust Street (R-II): Request a Finding under Table 2 of the Danvers Zoning Bylaw to allow an addition that will be located closer to the side property line than permitted as of right. Current house and lot are nonconforming due to side and front setback, lot size and frontage. Proposed addition will be located 3.3' from the side property line, where currently the side property line is 3.6' from the house. **Request made by Elena Brousseau c/o Costas Apostolo Poulos (23-5032)**

Ken Scholes read aloud application for 44 Locust Street docket 23-5032.

Eric Gjerde (SeaGlass Architects)-presented on behalf of applicant. Also present is owner. Reviewed plans with regards to addition to property.

Mr. Scholes-no questions.

Mr. Jarvinen-utilizing existing slab? 3" closer to side setback?

Eric Gjerde-will not reuse slab. 3" closer. Overhang will not pass existing overhangs.

Ms. Doherty-nice addition to property. Condo documents-3 condos now. Exclusive use of condo 3? Condo documents allow owner of unit 3 to build 6' x 10' deck at rear of unit 3. This does not comply with that. Did owner obtain approval to expand? Are all condo owners present? If approved, would want all condo and unit owners in favor.

Eric Gjerde-exclusive use of unit 3. Obtained approval and all owners present. If approved, recommend to owners to update condo documents to reflect this.

Mr. Boughner-great add on to building. Bulkhead access-how will other owners access? Rationale for setback change? Existing slab removed/new one poured? Skylights?

Eric Gjerde-noted access on floor plan that all owners can use. Go through 3-season porch to access bulkhead. Setback change to accommodate angle of lot. New slab will be poured. Skylights were added to plan at a later date to add light in on roof. 4-12 pitch.

Ms. Doherty-condo documents allow 2 skylights; 3 on plan. Suggestion to amend on condo documents.

Eric Gjerde-yes. Will do.

Mr. Scholes-noted hardships. Will vote for this.

Mr. Jarvinen-will vote for this.

Ms. Doherty-will vote for this.

Mr. Boughner-improvement to property. Incorporate into condo documents. Will vote for this.

Motion to issue Finding for 44 Locust Street docket 23-5032 made by Ken Jarvinen. Seconded by Ken Scholes. In favor: 4. Opposed: 0. Motion carries.

19 Cornell Road (R-III) Request a Finding related to Section 3.11 of the Danvers Zoning Bylaw to construct an addition that will be located closer to the side setback than allowed as of right. House is pre-existing non-conforming due to side setback (12.7' where 20' is required) and lot is non-conforming due to size (18,060 sf where 30,000 sf required). Request made by Christopher and Marissa DiNardo (23-5033)

Ken Scholes read aloud application for 19 Cornell Road docket 23-5033.

Chris DiNardo-reviewed plans to extend home with to accommodate growing family. Plan to match pre-existing nonconforming setback but will not extend beyond existing nonconformity. Town easement on other side of property so could not go into that area.

Ms. Doherty-no questions.

Mr. Jarvinen-no questions.

Mr. Scholes-no questions.

Mr. Boughner-tree in front yard-impact of addition on tree? Addition on slab? Square footage of addition?

Chris DiNardo-large tree is neighbor's and will not be impacted. Other tree will be removed if necessary or trimmed back. Yes-addition on slab. 560sf addition.

Stephen Ciacera (25 Cornell Road)-abutter to neighbors. In favor of project. Chris takes good care of property.

Ms. Doherty-will vote for this.

Mr. Jarvinen-will vote for this.

Mr. Scholes-will vote for this. Nice to hear that neighbor is in favor.

Mr. Boughner-understand property constraints. In favor.

Motion to issue Finding for 19 Cornell Road docket 23-5033 made by Corinne Doherty. Seconded by Ken Scholes. In favor: 4. Opposed: 0. Motion carries.

58 Burley Street (R-II): Request a Special Permit under Section 9.2 to build an Extended Family Living Area (EFLA) that will be located in a detached structure and greater than 750 sf (867 sf proposed). Request made by Jason Comeau & Michelle Russell c/o James DiBurro (23-5034)

Ken Scholes read aloud record for 58 Burley Street docket 23-5034.

James DiBurro-presented on behalf of applicant. Reviewed purpose and plans for ELFA. Noted history of property, existing conditions and proposed plans. Garage currently has storage space above, which is where EFLA would go for family.

Mr. Boughner-discrepancy on square footage? Area conducive to elderly parents?

James DiBurro-initially noted 867sf and seeking 886sf. Growing family and this will allow more space. Parents in good health and okay with stairs.

Mr. Scholes-will this have its own address? Family members only.

Staff-cannot have separate address.

James DiBurro-will be addressed to main residence.

Mr. Jarvinen-common shared area? Main entrance in rear?

James DiBurro-shared is garage space below. Main entrance in rear.

Ms. Doherty-floorplan has a walk in closet?

James DiBurro-correct.

Mr. Boughner-challenging space for aging parents and its oversized. Doesn't have common area. Patio area? Egress? Pool being installed? Plan for fencing?

James DiBurro-when garage was built, EFLA was not in mind. Since garage is oversized, EFLA is larger. Stairs at back of property. French door opens to patio area. Egress through area itself. Fencing is part of plan.

Nancy Sweeter (60 Burley Street)-at residence for 47 years. Apartment next door is concerning. Is space considered an apartment?

Mr. Boughner-Extended Family Living Area-comes with a deed restriction. Owner can only have family members live there. Not an apartment; cannot be rented.

Staff-if sold and new owner wants to use EFLA, would have to sign affidavit or abandon living space.

Nancy Sweeter (60 Burley Street)-great neighbors. More concerned about if they sell what would happen.

Mr. Boughner-reviewed rules of ELFAs; enforceable action if rules are not followed.

Bill Little (15 Sherwood Ave)-too big. Looks like extra house on the lot; stretch to call it in-law place. Not in favor.

Mr. Scholes-on fence; detached and large. EFLA requires special permit and with new ownership, requires new owners to do the right thing.

Mr. Jarvinen-detached is challenge. Lacking common area. Challenge to inspect. Sets bad precedent to approve these type of detached properties. Would vote no.

Ms. Doherty-garage is very large. Detached challenge with no common space. Too big. Would vote no.

Mr. Scholes-would vote no.

Mr. Boughner-structure is existing. Not conducive to aging grandparents but could be another family member. Would be a yes, but you do not have the votes.

James DiBurro-condition that upon sale to next buyer, that cookware removed and deed restriction relinquished?

Staff-not comfortable putting that on a decision.

Mr. Boughner-becomes unenforceable. Okay with square footage. You can continue and try to bring square footage into compliance. Continue; vote and if denied, cannot come back for two years; or withdraw. If at 750 would that change things for the board?

Mr. Scholes-no issue with square footage proposed.

Mr. Jarvinen-okay with square footage.

Ms. Doherty-square footage not the issue.

James DiBurro-applicant would like to continue to September 25th with revised proposal.

Mr. Boughner-updated plans required Tuesday before the meeting.

Motion to continue 58 Burley Street docket 23-5034 to September 25, 2023 made by Ken Scholes. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Motion carries.

Staff-will have minutes for next meeting.

Motion to adjourn made by Ken Scholes. Seconded by Ken Jarvinen. In favor: 4. Opposed: 0. Meeting adjourned at 9:10PM.