



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

ZBA Case No.: 2023-12

Date: October 3, 2023

Decision: Denial of Use Variance
Denial of Special Permit for storage of commercial materials
Special Permit for commercial vehicle is moot

Applicant: Marcus Tullio Dias Martins

Property Address: 307 Concord Street, Rockland, Massachusetts

The Rockland Zoning Board of Appeals has considered the application submitted by Marcus Tullio Dias Martins, 307 Concord Street, Rockland, MA, for a Special Permit pursuant to Zoning Bylaws Sections 415-35F, Off-street Parking Requirements; 415-89, Special Permits; and 415-89.1, Variances, to allow applicant to use the rear portion of the property for outside storage and storage within box trailers for fencing materials, including loading and unloading of fencing materials to be used off-site and applicant is also seeking to park his Ford F-350 flat-bed truck overnight at the premises known as 307 Concord Street. The property is located in the R-1 Residence Zoning District, Section 415-8 of the Bylaw, and is further identified as Lot 21, Map 57, on the Rockland Assessor's Maps. The owner of the property is Marcus Tullio Dias Martins, 307 Concord Street, Rockland, MA 02370.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

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Advertised: August 30, 2023, and September 6, 2023, in the Patriot Ledger.

The Board lastly has taken into consideration testimony of the applicant, the public, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties.

A virtual remote Public Hearing was held via Zoom at 7:45 P.M. on September 19, 2023.

ATTENDANCE:

Board Members: Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr. and Stephen Galley.

Also present:

Building Commissioner/Zoning Enforcement Officer Thomas Ruble

MEMBERS VOTING: Chair Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr., and Stephen Galley.

DISCUSSION:

The Chair of the Zoning Board introduced the members of the Board advising the public that the hearing is being recorded.

The Chair asked the members of the ZBA for a roll call vote to open the public hearing. The ZBA members then took a roll call vote:

Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes; Stephen Galley – Yes, Robert Baker, Jr. – Yes. The vote was unanimous and the public hearing was opened.

The Chair read the advertised notice in the Patriot Ledger with a Public Hearing Date of September 19, 2023.

The applicant testified that he bought the property in December (2022) and that he owns a fence company. He parks his work truck on the property and stores fencing materials on the site as shown on the site plan. He stated that the previous owner left a storage trailer on the property. He further stated that he does not do any work on the property. He said he has received complaints about lots of cars on the property but they just had a baby and have lots of visitors. He does get fencing materials delivered to the property

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every 2-3 months and the delivery trucks pull into the driveway and into the back yard. He also stated that he has been in contact with Douglas Golemme because he leveled land in the rear of his property by the brook and that he fenced in the property.

The Chair, Robert Rosa, asked where the business is operated as a business is not allowed in a residential zone.

Applicant stated he has a home office but no show room and he works off site and does have an Abington location. He has storage of fencing on the site.

The Building Commissioner, Thomas Ruble, stated that this is not a business zone, it is a residential zone, and it's not allowed. It has not been allowed in the past, including others requesting to do the same on Concord Street.

The Chair then opened the meeting to the Board for questions.

Stephen Galley asked if the truck was commercial and the size of the truck.

Applicant stated it was a commercial truck registered to All State Fence.

The Chair asked if it was parked on the site as a convenience so that the applicant could go straight to work.

There was discussion about the size of commercial trucks that could be parked on residential property with a special permit and Mr. Ruble stated that the applicant was loading the truck on Concord Street. The Chair stated that that was operating a business on residential property and it was not allowed. The applicant stated parking the truck is not the problem and Mr. Rosa stated that storage is the problem.

Gregory Tansey asked about the storage containers. Applicant answered that he buys fencing material in bulk and stores the material and has a lot of fencing there but that most of the fencing material is delivered directly to the work site. Mr. Tansey also mentioned that there is gravel on the site with a well in the midst of the area and he is not in favor of a use variance in a residential area, the yard has conservation commission issues, access is squeezed along the property line and it would not set a good precedent.

Robert Baker, Sr. asked if the storage trailer has tires and applicant stated it was left by the previous owner. Mr. Rosa advised that conex boxes are allowed if adhered to zoning setbacks. Mr. Baker then asked about loading of fencing materials on the truck and applicant said they were sometimes higher than

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the cab on the truck. Mr. Rosa asked if the applicant loaded the fence sections by himself and was told that his family, a cousin who lives with him, and his father, who does not live there, helps load the materials onto the truck and that they are employees.

Robert Baker, Jr. said he had no questions but he noted that the application stated trailers, pluralized. The applicant said that the plan changed. Mr. Baker asked which prevails, the application or the plan, regarding the outside storage area and how many square feet. Applicant stated 40x70 and that deliveries are made in bulk once every 2-3 months by a big trailer truck and that he changed the delivery time from 7:00 a.m. to the middle of the day and that the materials were unloaded by a forklift. Mr. Rosa pointed out that he was receiving commercial deliveries for a business on a residential property.

Mr. Ruble stated that back in 2012 a neighbor was sent a cease and desist letter for doing the same thing and ended up moving the business out of town.

The Chair then opened the meeting up to members of the public, asking if any of the attendees would like to speak either in favor or opposed to this applicant.

No one spoke in favor.

Kathleen Boyd, 343 Concord Street, said she did send correspondence about her concerns and that they were not personal. She further stated the property is residential and there is too much going on in the neighborhood. She was concerned about containers not being inspected and does not want to set a precedent and she further stated that with the number of projects going on the street, their lives have been disrupted.

The Chair asked the members of the board for a motion to close the public portion of the hearing. So moved by Robert Baker, Jr. Seconded by Gregory Tansey.

The ZBA members then took a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous, and the public portion of the hearing has been closed.

The Chair read to the applicant the appeal process and stated a decision will be made later the same night and that the applicant was welcome to be present during deliberations and informed him of his obligation to request a certificate of no appeal. If no one has appealed to the Town Clerk, the certification and an attested copy of the original decision will need to be recorded at the Registry of

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Deeds to be valid, and the applicant must provide proof of recording to the Building Department.

DELIBERATION:

Mr. Rosa read the advertisement and reviewed the Bylaw for the Special Permit for the applicant's truck. Mr. Ruble stated the truck is being used for business even if it is undersized. Mr. Baker, Jr. stated if there were no other business functions on the property the applicant would be able to park it provided it fits. Mr. Tansey stated that the truck cannot be used for business purposes on the property but that the applicant could use the truck to commute. Mr. Rosa stated the truck is registered to the business. Mr. Ruble stated he would have to verify the height of the truck.

Mr. Rosa then started discussion on the variance. None of the board members were in favor of granting the variance as the Board upholds the Bylaws to prevent things from getting out of control. This is not a minor deviation from the Bylaw and could set precedent.

The Board then discussed storage of fencing materials on the property.

DECISION ON VARIANCE:

Robert Baker, Sr. makes a motion to deny the use variance and not approve it in residential zone as it does not fit the criteria for a use variance.

Seconded by Gregory Tansey.

Prior to the vote to deny the use variance, Mr. Baker, Sr. rescinds his motion.

Seconded by Robert Rosa.

Robert Baker, Sr. makes a motion to approve the use variance.

No member seconds the motion.

Stephen Galley makes a motion to deny the use variance.

Seconded by Gregory Tansey.

The ZBA members take a vote: yes to deny the use variance: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous and the use variance is denied.

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DECISION ON SPECIAL PERMIT:

Robert Rosa makes a motion to deny the special permit without prejudice for off-street parking of a commercial vehicle so that the applicant can prove it meets the criteria of the Bylaw.

Seconded by Gregory Tansey.

The ZBA members take a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous.

DECISION ON SPECIAL PERMIT:

Robert Rosa makes a motion to deny the special permit for storage of commercial materials on the property.

Seconded by Robert Baker, Sr.

The ZBA members take a vote: Robert Rosa – Yes, Robert Baker, Sr. – Yes, Gregory Tansey – Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote is unanimous and the special permit for storage is denied.

FINDINGS:

The Board found that the request for a use variance is not a minor deviation from the Bylaw and granting a variance in such a case would set a bad precedent to allow commercial uses beyond a customary home occupation in a residential zone.

The Board found that the request for a special permit for overnight parking of a commercial vehicle on the property is moot as the truck may fit the criteria of the Bylaw. The Building Commissioner may allow a truck that conforms.

The Board found that the storage of commercial materials is not allowed in a residential zone by right or special permit.

REASON FOR DECISION:

The Board found that the applicant did not meet the standard for a use variance. Only those uses listed in §415-37 are eligible for home occupations and the outside storage of fencing and other supplies is not

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permitted and the applicant is not able to meet any of the criteria for a use variance under the Bylaw. The Board found that the special permit for overnight parking of a commercial vehicle on the property was moot if the truck is compliant with the Bylaw. The Board found that a special permit for the storage of commercial materials is also not allowed in a residential zone.

NOTE:

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

By: 
Robert C. Rosa, III, Chairman