



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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TOWN CLERK, ROCKLAND
JUL 2 '24 PM2:32

FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

ZBA Case No.: 2024-07

Decision: Grant of Variance

Date: July 2, 2024

Applicant: Melissa McInnis and Dennis S. Benoit

Property Owner: Melissa McInnis and Dennis S. Benoit

Property Address: 421 Forest Street, Rockland, Massachusetts 02370

The Rockland Zoning Board of Appeals has considered the application submitted by Melissa McInnis and Dennis S. Benoit, 421 Forest Street, Rockland, MA c/o Scott Golding, Esq., Drohan Tocchio & Morgan, P.C., 175 Derby Street, Hingham, MA, for a Use Variance, pursuant to Zoning Bylaws Section 415.89.1, Zoning Variances, and a Special Permit pursuant to Zoning Bylaws Sections 415-29 and 415-89, Number of buildings on a single lot, to allow applicant to maintain the existing 758 +/- sq. ft. single-family dwelling within the R-2 portion of the lot and construct a 2,250 +/- Sq. Ft. warehouse/storage building with accessory parking to be sited entirely within the I-1 portion of the property with proposed fencing and planted buffer area to provide enhanced separations between the existing dwelling and proposed structure. The proposed warehouse/storage building is to be accessed via an existing gravel driveway off of VFW Drive. The property is located in both the R-2 Residence Zoning District, Section 415-9 and the I-1 Limited Industrial Zoning District, Section 415-15, of the Zoning Bylaw, and is identified as Lot 79, Map 14, on the Rockland Assessor's Maps. The owners of the property are Melissa McInnis and Dennis S. Benoit, 421 Forest Street, Rockland, Massachusetts.

Applicant and Property Owner: Melissa McInnis and Dennis S. Benoit
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The Board certifies that it has complied with all statutory requirements relative to notice to abutters and 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.

Advertised: March 28, 2024, and April 4, 2024, in the Patriot Ledger.

The Board lastly has taken into consideration testimony of the applicant, the application materials, plans, and communications from various Town boards, abutters, and with interested parties, all of which are incorporated herein by reference.

A virtual remote Public Hearing was held via Zoom at 8:27 P.M. on April 16, 2024. A virtual Continuance Public Hearing was held June 18, 2024. Continuances were requested by the applicant and granted by vote of the Board for May 21, 2024, and June 4, 2024.

ATTENDANCE:

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

Also present:

Building Commissioner/Zoning Enforcement Officer Thomas Ruble.
Land Use Counsel Robert W. Galvin, Jr.

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

DISCUSSION

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

The Chairman 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. The vote was unanimous and the public meeting was opened.

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The Chairman read the advertised notices in the Patriot Ledger with a Public Hearing Date of April 16, 2024.

DISCUSSION ON APRIL 16, 2024

Attorney Scott Golding of Drohan Tocchio & Morgan, P.C. spoke on behalf of the applicant. He explained the history of the neighborhood and the process the applicant has gone through since they purchased the property in 2018, further explaining the proposed building, setbacks, parking and proposed landscaped buffer. He explained that the applicant is seeking a use variance to keep the single family dwelling on the residential portion of the lot and a special permit to construct a warehouse for storage on the industrial portion of the lot. He explained the history of the neighborhood and how the lot was split when VFW Drive was built. Plans were reviewed. He stated that in 2019 they received a Negative Determination from the Conservation Commission and that they had obtained a permit for the gate onto VFW Drive.

Mr. Rosa stated that there was a problem with the plans that were a violation of state law. Attorney Golding said that he would follow up on that. He also questioned the Negative Determination and Attorney Golding stated it was prior to the applicant cutting any trees on the lot; it was for the access and the gravel parking area.

Mr. Rosa asked if the Board members had any questions.

Gregory Tansey asked if the building was going to have bay doors in front for access. Mr. Benoit answered there would be 3 people doors for emergency access and there would be an overhead door facing VFW Drive and another on the right-hand side of the building. Mr. Tansey then asked how many vehicle trips per day were anticipated in and out of the property per day. Mr. Benoit answered they would leave the site at 7:00 a.m. and arrive back at 4:00 p.m. Ms. McInnis stated there would be no work conducted on-site and they have a contractor yard in Hingham. Mr. Tansey asked what type of materials would be stored on site and the applicant answered heavy equipment and machinery, service trucks, hands tools, service trucks and other equipment used in connection with their construction business.

Mr. Baker, Jr. had no questions.

Mr. Galley asked Attorney Galvin about property being bisected and if there was precedent. Attorney Galvin explained that the applicant is seeking a second use of the property and explained the limitations of the property and

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secondary structures and the significant issues with the property with the dual uses. Mr. Rosa stated there was no precedent.

Robert Baker, Sr. asked what type of trucks would be on the site. Applicant answered 10 wheelers with trailers, one ton and service trucks but no 18 wheelers and that the trucks would be parked inside at night. Mr. Baker, Sr. then asked about the slope of the property from VFW Drive and applicant stated it would be fairly level and would probably be a very minimal 2% grade. Grading was discussed. Mr. Baker, Sr. mentioned that the Highway Department was concerned about debris from trucks ending up on the streets and the applicant stated that the area would be paved with drainage and catch basins.

Mr. Ruble stated that if the project was approved by the ZBA it would have to go to the Planning Board for site plan approval. Mr. Rosa stated that if there was a problem with the grading the Planning Board would pick that up.

Robert Rosa asked why the applicant did not consider sub-dividing the property at the zoning lines. Attorney Golding stated both uses being sought are allowed within the respective zones but that could be discussed further. Mr. Rosa stated the Board is very conscious about setting precedent. Mr. Rosa then stated that the site plans would have to be revised.

Mr. Rosa then asked the members of the Board if they were in favor of a continuance or if they were ready to issue a decision. Mr. Baker, Jr. was not opposed to a continuance. Mr. Tansey stated he could go either way. Mr. Baker, Sr. said he would like to see the plans revised. Mr. Galley stated he was in favor of making a decision but was fine either way.

Mr. Rosa then asked Mr. Ruble about his concerns and Mr. Ruble stated that since the applicant was seeking a Special Permit and that if granted by the Board that would take care of the issue of the house having to be raised. He stated he wanted the applicant come back to the Board with revised plans.

Mr. Rosa then opened the meeting to the public.

No one spoke in favor.

Mr. Sean Gildea spoke against.

Ms. Kelly Thompson spoke against.

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Mr. Geoffrey Barlow voiced his concerns about the project.

Jessica Tracy spoke against. Tracy Family also spoke against.

Maureen Green spoke against.

Attorney Galvin then presented a time line of the clearing of the lot starting on April 5, 2019. By March 14, 2020, the residential buffer providing a natural screening was removed. The most current picture shows that the property has been cleared and the topography appears to be altered. This all occurred during the time frame of the current ownership of the property. Discussion ensued.

Mr. Rosa then stated that the Board is seeking more information and entertains a motion for a continuance.

Robert Baker, Sr. makes a motion to continue the public hearing on 421 Forest Street to May 21, 2024, at 7:30 p.m.

Attorney Golding sated that this date works for them.

The motion is seconded by Mr. Robert Baker, Jr.

The Board takes a roll call vote: Mr. Rosa - Yes, Mr. Tansey - Yes, Mr. Baker, Sr. - Yes, Mr. Baker, Jr. - Yes. Mr. Galley - No. The Board has voted to continue the public hearing by a 4 to 1 vote and the motion carries.

Mr. Rosa advises the applicant to submit all documents for the continuance at least one week prior to the scheduled hearing.

DISCUSSION ON JUNE 18, 2024

ATTENDANCE:

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

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

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Also present: Building Commissioner/Zoning Enforcement Officer Thomas Ruble and Town Planner Allyson Quinn.
(All Board members were participating remotely)

The Chairman introduced the members of the board advising the public that all are participating remotely.

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

The Chairman read the legal notice.

Attorney Scott Golding of Drohan Tocchio & Morgan, P.C. spoke on behalf of the applicant. He explained the revised plans filed on May 31, 2024, and that the applicant had spoken with the neighbors and their comments were taken into consideration. He further explained the zoning of each portion of the lot and that the applicant wanted to keep the both the residential dwelling unit and build a warehouse on this split lot.

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

Mr. Baker, Jr. had no questions.

Mr. Galley wanted to know if the residential dwelling unit was rented and applicant stated it was rented to one of their employees.

Mr. Baker, Sr. had no questions.

Mr. Tansey had no questions.

Mr. Rosa had no questions.

Mr. Ruble had nothing to say.

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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.

No one spoke in opposition.

Mr. Rosa stated that since no one spoke in opposition, that told him a lot about the applicant's efforts.

Mr. Robert Baker, Sr. moves to close the public portion of the hearing.

Seconded by Mr. Robert Baker, Jr.

The Board takes a roll call vote: Mr. Rosa - Yes, Mr. Tansey - Yes, Mr. Baker, Sr. - Yes, Mr. Galley - Yes, Mr. Baker, Jr. - Yes.

Mr. Rosa then told the applicant the Board would deliberate tonight and welcomed them to be present during deliberations and informed them they will receive a decision in the mail with a date stamp and informed them of their obligations 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 Deeds to be valid, and the applicants must provide proof of recording to the Building Department.

FINDINGS AND DECISION:

A motion was made by Mr. Robert Baker, Sr. to grant the use variance with conditions.

Seconded by Mr. Tansey.

The Board takes a roll call vote: Mr. Rosa - Yes, Mr. Tansey - Yes, Mr. Baker, Sr. - Yes, Mr. Galley - Yes, Mr. Baker, Jr. - Yes. The Vote is unanimous and the use variance is granted with conditions.

- 1) Conditions and circumstances are unique to the applicant's lot configuration and do not apply to the neighboring lands, structures or buildings in the same district.

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- 2) Strict application of the provisions of this bylaw would deprive the applicant of reasonable use of the lot, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighborhood lands, structures or buildings in the same district.
- 3) The unique conditions and circumstances are not the result of actions of the applicant taken subsequent to the adoption of this bylaw.
- 4) Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this ByLaw.
- 5) Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the district.

CONDITIONS:

1. An 8 foot privacy fence with a small single door access gate shall be installed to allow access to the residential portion of the lot.
2. The exterior of the residential dwelling, including landscaping, shall be renovated from lot line to lot line and maintained in good repair and fully habitable condition at all times and that it remain a single-family dwelling.
3. The building facing VFW drive shall have a different address than 421 Front Street.
4. No machinery on the industrial portion of the property shall be started before 7:00 a.m. or after 6:00 p.m. Monday through Fridays and 7:00 a.m. to 4:00 p.m. on Saturdays. No Sunday or holiday operating hours except for emergencies. There shall be no storage of materials on the site. All equipment other than trailers or trucks must be stored inside the building. There shall be no storage containers or box trailers stored on the site after construction is completed. No other businesses shall be allowed to store equipment on the site.
5. Construction activities shall be conducted only between the hours of 7:00 a.m. and 6:00 p.m. Monday through Fridays and 7:00 a.m. to 4:00 p.m. on Saturdays. No Sunday or holiday hours.
6. Meet all other requirements and conditions of all other town boards, commissions and departments in the Town of Rockland and the state.
7. A filing must be made with Conservation Commission and sign off shall be provided to the Planning Board prior to filing for site plan approval.

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8. Applicant shall comply with general conformance standards section 415.80.
9. If 3 complaints are received in a year, either pre-construction or post-construction, the applicant shall come back to the Zoning Board for a hearing.

The special permit is denied as moot.

REASON FOR DECISION:

The Board determined that if a use variance was granted for this lot, use variances would have to be granted to other properties in the area, however, if it was not granted, a residential house would have to be demolished. Although the Board is not in favor of granting use variances in general, they are also not in favor of losing a house to gain a vacant lot. Uniqueness of this lot is that it has more depth and land area than the other lots which frees up more parking space and vegetation. The creation of VFW Drive created the unique conditions with the intent that residential lots would front Forest Street with industrial uses fronting VFW Drive which was the intent of the zoning when this change was implemented.

THIS DECISION, ALONG WITH THE CERTIFICATION FROM THE TOWN CLERK THAT NO APPEAL HAS BEEN FILED, MUST BE RECORDED WITH THE PLYMOUTH COUNTY REGISTRY OF DEEDS PRIOR TO OBTAINING A BUILDING PERMIT AND PROOF OF RECORDING MUST BE FILED WITH THE BUILDING COMMISSIONER.

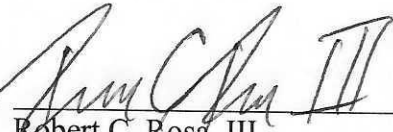
NOTE:

- ❖ 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.

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- ❖ 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