



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

Case No.: 2024-17

Date: December 23, 2024

Decisions: Denial of Section 6 Finding Without Prejudice
Denial of Special Permit Without Prejudice

Applicant/Owner: N&M RE Holdings LLC

Property Addresses: 1119 and 1059 Rear Union Street, Rockland,
Massachusetts 02370

The Rockland Zoning Board of Appeals has considered the petition submitted by N&M RE Holdings LLC, 1250 Long Pond Road, Brewster, Massachusetts 02631, c/o Grady Consulting, L.L.C., 71 Evergreen Street, Kingston, MA, for a Mass. Gen. L. c. 40A §6 Finding and Special Permit pursuant to Zoning Bylaw §415-16C.(6), Manufacturing, assemblage, processing and storage operations that are not offensive by reason of the emission of odor, fumes, dust, smoke, noise and/or vibration, or that would have a negative impact on the environment or conditions within the Town or adjacent towns; §415-33, Driveways; §415-79, Environmental performance standards; and §415-89, Special Permits, to allow applicant to construct a 7,000 square foot warehouse, contractor yard and for storage of materials. The proposed warehouse/storage building is to be accessed via Union Street. The location of the premises is known as and numbered 1119 and 1059 Rear Union Street, Rockland, MA. 1119 Union Street is located in both the R-2 Residence Zoning District, §415-9 and the I-2 Industrial Park Zoning District, §415-16 of the Zoning Bylaw, and is further identified as Lot 60, Map 18, on the Rockland Assessor's Maps. 1059 Rear Union Street is located in the I-2 Industrial Park Zoning District, §415-16 of the Zoning Bylaw, and is further identified as Lot 61, Map 18, on the Rockland

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Assessor's Maps. The owner of both properties is N&M RE Holdings LLC, 1250 Long Pond Road, Brewster, MA 02631.

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.

Advertised: October 31, 2024, and November 7, 2024, 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 November 19, 2024, and the public participation portion of the meeting was closed. On November 19, 2024, as disclosed in the next following public meeting when deliberations resumed, Zoom platform inexplicitly terminated the meeting without warning at 11:45 P.M. and the meeting was unable to continue or reconnect via Zoom. Once that happened any and all deliberations stopped and did not continue.

A virtual Continuance Public Hearing scheduled for November 26, 2024, was cancelled. A virtual Continuance Public Hearing was scheduled for December 3, however, the Board only had 3 members present and continued the hearing to December 10, 2024, when the Board deliberated and voted on the matter.

ATTENDANCE:

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

Also present: Town Planner Allyson Quinn.

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

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DISCUSSION:

The Chairman 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 November 19, 2024.

The applicant's representative, Kevin Grady of Grady Consulting, L.L.C., explained the applicant was seeking a Section 6 Finding and a Special Permit for storage of materials, assemblage, manufacturing that's not offensive for reasons of emission of odor, dust, smoke, noise, vibration, etc. as was read in the Legal Notice. The site plan was shown and a description of the lots was given along with an explanation of the business and its operations. The proposed warehouse and use were described including it's by right use. The storage of materials is which the Special Permit is being sought for.

He further explained that the Section 6 Finding was referred to the Zoning Board by the Building Commissioner/Zoning Enforcement Officer for access from Union Street. He described the differences in the zones on the site plan and showed that there was access to the I-2 lot through Lavina Avenue. He explained that the Finding was to access the industrial portion of the property through the residential zone. Union Street was then described. He further stated that the applicant would prefer to access the property through Union Street, a long, straight, wide road which is the main thoroughfare through the center of town. The alternative is access through Forest Street, Loretta Avenue, Ward Avenue, Warren Avenue and Lavina Avenue. The proposal before the Board would be to only use Union Street for access with emergency gated access only through Lavina Avenue.

The Union Street driveway layout was discussed and its conformity to Section 415-33 of the Zoning Bylaw was explained.

The Special Permit, §415-16C(6) (Manufacturing, assemblage, processing and storage operations that are not offensive by reason of the emission of odor,

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fumes, dust, smoke, noise and/or vibration, or that would have a negative impact on the environment or conditions within the Town or adjacent towns.) of the Zoning Bylaw, was discussed. The warehouse portion of the project is by right. The outdoor storage operations, which would be in the industrial portion of the property, are before the Board. A description of the storage operations and location was explained to the public. Setbacks and buffers were discussed. A sewer main and manholes were pointed out on the site plan.

§415-79, Environmental performance standards 1 through 10 were discussed. Natural Heritage standards for development and conservation restrictions were discussed. The entrance from Union Street was preferred over traversing the side streets and entering the site through Lavina Avenue. The business operations, employees and vehicle trips were discussed. The sewer connection was discussed as a low-flow generator. The dumpster area was outlined and would be shielded from view. Lighting was discussed and it was explained that there would be no perimeter lighting as there would be no night operations; lighting on the building would be hooded. The hours would be in compliance with the Zoning Bylaws. There is a FEMA flood zone on the property and no work would be done in that area. There would be further permitting through a filing with the Conservation Commission. Hours of the business would be Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturday 7:00 a.m. to 3:30 p.m.; no work on Sundays or holidays. Any work hours outside of those hours would need to be notified to the Building Commissioner and the Planning Board and would have to go through another approval process. A privacy fence would be installed along the perimeter and a 30 foot undisturbed landscape to residential abutters. A description of screening from the abutters and noise mitigation measures were also discussed.

The operations of N&M Excavating was further explained. As municipal contractors their work is off-site where their staging areas are allocated. During the winter they work off-site in Nantucket. This site would be their headquarters.

The Chairman then reiterated the rules of the hearing.

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

Gregory Tansey asked the applicant to clarify the type of work applicant does; the status of the residential house on the property and the types of vehicles

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they company operated. He confirmed the hours of operation of the business and the type of building lighting. He also asked about storage of materials.

Stephen Galley had no questions.

Robert Baker, Jr. confirmed the Building Commissioner referral as procedural. The distance from VFW Drive to the proposed driveway and nearest abutter were discussed. The differences between the term thickly settled on Union Street and the neighborhoods to Lavina street were discussed. The rear area of the site was discussed. Storage of materials was discussed. There would be no storage of gasoline or diesel and there would be no fueling of vehicles on the property. After hours work was discussed and the special circumstances that would be required in order to do that.

Robert Baker, Sr. asked about trucks coming back to the site after 6:00 p.m. Excavated materials from job sites potentially being processed on site were discussed but it is not the intent and the site is not intended to be a processing facility.

Robert C. Rosa, III asked about the elevation of the storage areas and the elevation of the proposed building. He asked about the low boy trailer and cab and how often on average it would leave the site. It was estimated at once a week as it remains on the job site. The number of employees using the site on the daily basis, however, most go directly to the job site. Processing of materials on site was discussed, however, it would be minimal and would be discussed with the Building Commissioner/Zoning Enforcement Officer in advance. However, it is not the intent of the project. Parking was again discussed. The Natural Heritage and environmental issues were discussed along with the Conservation Commission filing.

Stephen Galley then read the Town Planner's letter regarding the Open Space Committee meeting the prior night along with Natural Heritage and Planning Board filings necessary for this project to proceed and that the Zoning Hearing was only the first process in the steps to approval.

The Chair again explained the rules of the hearing and then opened the meeting up to members of the public.

No one spoke in favor.

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The following spoke in opposition:

Kenneth Zbyszewski, 1116 Union Street
Alex Zotov, 2 Stanley Avenue
Mary Parsons, 754 Union Street
Brandon Binsfield, 61 Warren Avenue
Kate Hanley, 1085 Union Street
Andrew DelPrete, 1126 Union Street
Theresa Buffum, 15 Conden Circle
Mauricio Ramos, 942 Union Street

The persons speaking were opposed to the project and specifically access via the residential frontage on Union Street.

The Chair then opened the hearing back up to the applicant.

The Chair then opened the hearing back up to the members of the Board.

Mr. Tansey asked if Attorney Galvin had discussed access with Mr. Ruble. A potential site visit was discussed but found to be not necessary.

Mr. Rosa entertained a motion to close the public portion of the hearing.

Robert Baker, Sr. makes a motion to close the public portion of the hearing.

Sr. Seconded by Robert Baker, Jr.

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

The roll call vote is unanimous, and the public portion of the hearing has been closed.

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The Chair read to the applicants the appeal process and stated a decision would be made later the same night after the public portion of the hearing, and that they were welcome to stay and await the result. The Chair also stated that if the relief was granted, one of the conditions would be to always show the Building Commissioner proof of recording of the decision.

DELIBERATION – SECTION 6 FINDING:

Stephen Galley asked about the placement of the driveway on residential property to access industrial property, however, the property is one large lot with two separate zoning districts. The driveway is currently used to access the residential portion of the property but the applicant is before the Board to access the industrial portion of the lot. Access by right was discussed through Lavina Avenue. The Board determines that it is less detrimental to all the neighborhoods to access the property through Union Street than it is to access the property from Lavina Avenue. Safety concerns of using Lavina Avenue to access the property were also discussed. The Board also feels that the requirements of Section 415-33 have been met by the applicant. The Lavina Avenue neighborhood is more thickly settled than Union Street in a comparison of the two neighborhoods. Barring someone from the use of their land was also discussed. It was felt that barring access from the use of someone's property could constitute an illegal taking by the town.

DECISION - SECTION 6 FINDING:

The Chair entertained a motion to approve the Section 6 Finding based on the fact it is less detrimental to have applicant come out on Union Street that So moved by Gregory Tansey.
Seconded by Robert Baker, Jr.

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

The roll call vote is unanimous and the Section 6 Finding was initially approved (see December 10, 2024, reconsideration and deliberation).

REASON FOR DECISION – SECTION 6 FINDING:

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The Board found that going through the residential portion of the property on Union Street is less detrimental than accessing the property by right through Lavina Street.

DELIBERATION – SPECIAL PERMIT

Robert Baker, Sr. discussed proposed conditions if the project was approved. Storage of materials, including construction materials, and the filing with Conservation Commission was discussed. Hours were discussed during the construction phase of the building. Outside storage of petroleum products shall not be allowed.

At this point, 11:45 P.M., technical difficulties caused the meeting to be automatically terminated. The Zoom platform inexplicitly terminated the meeting without warning and the meeting was unable to continue or reconnect via Zoom. Once that happened any and all deliberations stopped.

NOVEMBER 26, 2024

A virtual Continuance Public Hearing scheduled for November 26, 2024, and was cancelled.

DECEMBER 3, 2024

Board Members present: Robert C. Rosa, III, Gregory Tansey, Robert Baker, Jr.

The Chair explained that, although the Board had a quorum, a minimum of 4 members were needed to vote on the relief requested.

The Chair entertained a motion to continue deliberations to Tuesday, December 10, 2024, at 7:30 p.m..

So moved by Robert Baker, Jr.

Roll Call Vote: Robert C. Rosa, III – Yes; Gregory Tansey – Yes, Robert Baker, Jr. – Yes.

The Vote is unanimous and the public hearing is continued.

DECEMBER 10, 2024

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

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Also present: Land Use Counsel Robert W. Galvin, Jr.

The Chair entertains a Motion to open the meeting.

So moved by Robert Baker, Sr.

Seconded by Robert Baker, Jr.

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 hearing was opened.

The Chair read the notice with a continuance date of December 10, 2024.

The Chair gave a recap of what had happened previously and explained the technical difficulties with Zoom terminating the meeting automatically at 11:45 P.M. on November 19, 2024, and explained the continuances. He then explained that Rockland's Land Use counsel had stated that the Section 6 Finding by the Board does not apply and does not provide the relief that the applicant needs.

The Chair, at this point, on the advice of counsel, moves that the Board vote to reconsider its prior vote to grant a Section 6 Finding.

Seconded by Robert Baker, Sr.

At this point Attorney Galvin gave an explanation as to the zoning of the parcels and the access through the residential zone to the industrial use. There is no non-conforming use, therefore, there cannot be a Section 6 Finding. Relating to the Special Permit, since the applicant can get access to the commercial portion of the lot, a special permit could be granted, however, they cannot access the Union Street portion without a variance. He therefore, recommends to the Board that both the Section 6 Finding and Special Permit be denied without prejudice so that it does not preclude the applicant from coming back if they request the appropriate zoning relief within two years. He further explained that it's possible that the applicant could access the property through the other neighborhood by increasing frontage.

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 Section 6 Finding is reconsidered.

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DECISION – SPECIAL PERMIT:

Robert Rosa then moves that the Board vote to deny the requested relief including the Section 6 Finding and requested Special Permit without prejudice to the applicant's right to refile within two years on the ground that the applicant did not request the appropriate relief.

Seconded by Robert Baker, Sr.

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 Section 6 Finding is reconsidered.

Motion by Robert Baker, Sr. to adjourn.

Seconded by Robert Baker, Jr.

Roll Call Vote: Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes; Stephen Galley – Yes, Robert Baker, Jr. – Yes.

THIS DECISION, ALONG WITH THE CERTIFICATION FROM THE TOWN CLERK THAT NO APPEAL HAS BEN FILED, MUST BE RECORDED WITH THE PLYMOUTH COUNTY REGISTRY OF DEEDS AND PROOF OF RECORDING MUST BE FILED WITH THE BUILDING COMMISSIONER PRIOR TO THE COMMENCEMENT OF ANY USE.

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
Chair