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BOARD OF APPEALS CASE NO. 18-25

PETITION OF LANDSCAPE DEPOT INC. 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 LANDSCAPE DEPOT, INC. 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

Landscape Depot Inc.
350 Irving Street
Framingham, MA 01702

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 31, 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 hear 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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The Applicant, Mr. John Mullen of Landscape Depot, Inc., was present with his Counsel, Attorney Joseph Antonellis. Mr. Antonellis explained the request to continue operation of the existing business. He mentioned, Landscape Depot's lease with Eversource shall expire in ten years, in 2028. He proceeded to update the Board that there have been no recent fires in the mulch piles; pile temperatures have been recorded and are compliant; storm water and conservation inspections have deemed compliant; and that a six-month report was submitted in March 2018. He stated, a seepage was discovered by a Landscape Depot employee and reported to the Board of Health, Eversource, and Department of Environmental Protection. In response, Eversource will be cleaning and paving the area on October 17, 2018. Mr. Meltzer requested that Landscape Depot inform ZBA staff when the pavement work was finished. Mr. Ottaviani suggested, and the Board agreed, that a one-year renewal was appropriate.

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. Six-month activity report, entitled "Landscape Depot", dated March 7, 2018.
- 6.4. Mulch Pile Temperature Monitoring Log, dated December 1, 2017, containing logs for the period since the last permit renewal.
- 6.5. Special Permit Decision for case no. 17-39 originally filed with the City Clerk November 6, 2017.
- 6.6. Conservation Commission comments dated September 24, 2018.
- 6.7. Framingham Board of Health comments dated October 9, 2018.
- 6.8. Site Plan entitled "PROPOSED CONDITIONS" prepared by GZA GeoEnvironmental Inc., dated February 2, 2016.

Exhibit 6.8 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. 17-39, 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 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 City 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 Landscape Depot 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 Landscape Depot 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 Landscape Depot was most applicable to a Storage and Distribution Facility because the tenant stores mulch and other materials on-site for customer purchase. It is not a landscaping company.*
 - 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. 17-39, 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-Friday 6:30am-5:00pm, Saturday 6:30am-3:00pm, and closed on Sunday.
 - 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. Dirt, woodchips, mulch, and any other similar material shall be stored on-site on asphalt or other impervious surface to serve as a barrier between the tenant material and the site soil.
- 7.5.6. No subsurface digging shall be allowed on-site.
- 7.5.7. The Applicant shall be in compliance with the Board of Health conditions in Exhibit 6.7 and in compliance with the Conservation Commission conditions in Exhibit 6.6.
- 7.5.8. The Applicant shall be in compliance with the Board of Health conditions in Exhibit 6.7 of Special Permit 17-29, copied below:

1. Pile Location/Height/Fire Safety

- A. The ZBA decision requires that “all dirt, woodchips, mulch and any other similar material shall be stored on-site on asphalt or other impervious surface to serve as a barrier between the tenant material and the site soil.” Landscape Depot must provide a clear delineation of the asphalt and impervious surface area on which the operation must be conducted. For the purpose of these conditions, our interpretation of an impervious surface is one that prevents cross contamination with the underlying subsurface coal tar related compounds from the former coal tar processing site.
- B. The height of combustible material, including, but not limited to, processed and unprocessed mulch and wood material piles, will be limited to a maximum of twenty-five (25) feet. This height restriction does not apply to non-combustible material such as loam or sand/gravel which is brought in for screening.
- C. In order to verify compliance with this condition, Landscape Depot must have a benchmark measuring system or other accurate means of measurement to ensure the piles do not exceed 25 feet in height.
- D. Landscape Depot must have appropriate equipment on site at all times capable of moving/managing piles of this height; this equipment must be equipped with Portable Class ‘A’ fire extinguishers.
- E. Landscape Depot must also provide fire access roads between piles of at least 30 feet in width and ensure that fire hydrants are accessible at all times.
- F. All finished mulch product must be stored on an asphalt surface.

2. Temperature Monitoring/Odor Control/Fire Safety

- A. Weekly temperature monitoring must be conducted and recorded to determine when unprocessed wood material piles needs to be turned.
- B. Piles must be turned when the internal temperature of a pile reaches 160 degrees Fahrenheit or at least every 30 days, whichever occurs first.
- C. An appropriate probe thermometer of six feet in length must be kept on site at all times.

- D. A detailed log must be kept on site at all times showing all weekly-recorded temperatures and the dates and times of when the piles are turned.
- E. Notification must be made to the Board of Health and Fire Department within 24 hours prior to Landscape Depot's turning of the mulch piles. Same day notice to each department is acceptable, by email and/or telephone.
- F. Landscape Depot will consider wind direction and time of day when planning for the turning of piles to reduce off site odor impacts; earlier in the morning is preferable as is a wind direction that affects the least number of neighboring residents.
- G. Piles must be misted or wetted during dry weather to ensure appropriate moisture content. A metered water supply must be provided for this purpose.

3. General Fire Safety

- A. Incinerators or open refuse burning is not allowed.
- B. Smoking is prohibited except in safe locations designated by the Fire Department. Signs indicating areas designated as safe for smoking shall be posted conspicuously. Designated smoking areas shall be provided with noncombustible ash receptacles. A sufficient number of 'NO SMOKING' signs shall also be posted conspicuously in all other areas.
- C. Proper construction equipment must be kept onsite at all times to assist in managing emergencies.
- D. Landscape Depot must have a written emergency plan in place for monitoring, controlling, and extinguishing spot fires.

4. General Operation

- A. Landscape Depot must ensure proper management of any hazardous materials on site to avoid spills or an accidental release.
- B. Landscape Depot must work to improve its general housekeeping of the operations, including providing better organization and layout of various stages of the mulching operation.
- C. Landscape Depot must ensure only "clean wood" products are used in the mulching process to prevent contaminants from entering the mulch product. The following items are prohibited from use in the mulching process:
 - 1. Wood from commingled construction and demolition waste;
 - 2. Engineered wood products; and
 - 3. Wood containing or likely to contain:
 - a. Asbestos

- b. Chemical preservatives such as, but not limited to, chromated copper arsenate (CCA), creosote or pentachlorophenol; or
 - c. Paints, stains or other coatings, or adhesives.
 - D. Landscape Depot is to maintain and document appropriate posted signage, letters to clients, and employee training on how to evaluate the incoming wood stream; samples of these were provided to the Board of Health in October of 2015 and should remain in use.
 - E. Landscape Depot is to have an operational plan on site at all times indicating appropriate procedures, policies, schedules, and documentation to ensure compliance with all of the conditions set forth by the Board of Health, in addition to any additional requirements set forth by the Zoning Board of Appeals, the Fire Department and/or the Conservation Commission.
 - F. Landscape Depot is to cooperate fully with any and all requests by Eversource and/or the Massachusetts Department of Environmental Protection (MassDEP) to conduct any testing, assessment, and/or remediation work required under the Massachusetts Contingency Plan.
 - G. Landscape Depot is to allow representatives of the Board of Health access to the site with the owner being notified by email and/or telephone.
 - H. Landscape Depot is subject to inspections by City officials (City of Framingham multi agency checklist to be developed).
- 7.5.9. The Applicant shall be in compliance with the following conditions of the Conservation Commission:
 - 7.5.9.1. There shall be no excavation on any portion of the entire site and all operations on Lots 2, N, F, and G are subject to the Order of Conditions issued to Landscape Depot as well as the ZBA permit. There shall be no expansion into any adjoining lots or those lots previously utilized by other sub-lessees.
 - 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 should not be used without notification of both the ZBA and Conservation.
 - 7.5.9.4. The applicant shall take all precautions when using heavy equipment on this site to ensure the long term stability of this material. Both the Amerrec side of Lot 2 and the paved portion show degradation of the protective surfaces and will require yearly inspection or the requirement to re-pave Lot 2 to provide some protection from the activities performed on the surface.
- 7.5.10. 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.

7.5.11. The Applicant shall report to the Board no later than six months from the date of filing of this decision, an update of site conditions.

7.5.12. 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.

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.

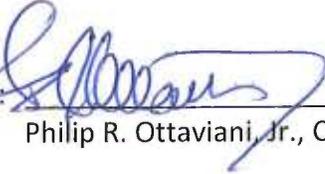
7.8. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including 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