

**BOARD OF APPEALS
OF THE
CITY OF WALTHAM**

**MEMORANDUM
OF
ANTHONY VANARIA & SONS, INC.**

I. INTRODUCTION

Petitioner Anthony Vanaria & Sons, Inc. is the owner and operator of a landscaping company located at 44, 44-R, 56 Williams Street and 114 Felton Street, Waltham, Massachusetts (collectively, the “Locus”). The Locus is identified on the Assessor’s Map as R059-037-003C (44-R Williams Street), consists of approximately 60,777 square feet and is situated entirely within the Commercial Zoning District.

On December 4, 2020, Petitioner obtained a variance from the Zoning Board of Appeals in Case No. 2018-36 (“Case No. 2018-36”) for a variance from the 200’ minimum distance for a Truck Terminal from a Residential Building. A true and accurate copy of the City of Waltham Zoning Board of Appeals Decision dated December 4, 2020 is annexed hereto as Exhibit 1. In furtherance thereof, Petitioner obtained on May ___, 2020 a special permit from the City Council for the Truck Terminal as well as the Truck Storage use at the Locus. A true and accurate copy of the City of Waltham City Council Decision dated May ___, 2020 is annexed hereto as Exhibit 2.

Property History and Background of Use

Petitioner purchased the property in 2015. Prior to the Petitioner’s purchase, the Locus was used for commercial welding since the 1930s by ARC Welding at 44 Williams Street owned by the DiPronio family. Arc Welding **was** a heavy equipment repair business that performed repairs on cranes, steam shovels, heavy trucks, airport super snow blowers, excavation equipment, harbor facilities equipment, and other heavy equipment. Arc Welding had numerous tenants at the Locus that operated snow plowing, trucking and heavy trucking and contracting businesses.

In 1939, Anthony Vanaria (“Mr. Vanaria”) started his family’s landscaping business on Lexington Street in Waltham. In the early 1960s, Mr. Vanaria moved the business to the site of an old brewery at 40 Charles Street, Waltham. In 2001, Mr. Vanaria moved the family business to 45 Felton Street, Waltham.

In 2015, Mr. Vanaria’s grandson, Joseph Vanaria (“Joe Vanaria”), purchased the Ace Welding location with financing from a local bank, took title in the name of two nominee trusts, the Vanaria Nominee Trust and the Lee-Ang Realty Trust, and Joseph

Vanaria and moved Anthony Vanaria & Sons, Inc. to the Locus. Joe Vanaria did so believing that because of its continuous pre-existing non-conforming uses, the use of the property for a landscaping business was in compliance with zoning requirements.

Since Petitioner's purchase, the Locus has been used in furtherance of Vanaria's landscaping and snow plowing and removal business previously located at 45 Felton Street for, *inter alia*, storage of work trucks and equipment. Vanaria employed approximately 100 employees of which 90% are Waltham residents. The employees included landscapers and snowplowers, approximately 6 mechanics, and a small office staff. In 2020, economic necessities resulted in changes to the existing business model such that the landscaping and snowplowing business is being reduced to approximately half of its former size. The business will include a waste transfer station and organic product storage to serve both his continued landscaping business as well as other landscaping businesses in the vicinity.

As a result of the foregoing, Petitioner is seeking two variances, the first under Art. III, § 3.641 (Yard Waste Transfer Station), the second under Art. III, § 3.642 (Organic Product Storage) and also to renew the variance granted in Case No. 2018-36 due to its expiration while the case was pending at the City Council, or in the alternative, a variance for the Truck Terminal as granted in Case No. 2018-36.

Art. III, § 3.641 states, in pertinent part, that a Yard waste transfer station...may be granted by the City council after findings that facilities have been designed and will be developed so that no significant impairment will occur in relation to the convenience and safety of vehicular and pedestrian movements on adjacent street, properties and improvements and that the proposed use will be in compliance with all applicable

provision of the zoning ordinances, provided that no such station shall be placed within 300 feet from any residential structure or dwelling.

Art. III, § 3.642 states, in pertinent part, that Organic Product Storage use...may be granted by the City council after findings that facilities have been designed and will be developed so that no significant impairment will occur in relation to the convenience and safety of vehicular and pedestrian movements on adjacent street, properties and improvements and that the proposed use will be in compliance with all applicable provision of the zoning ordinances, provided that no such station shall be placed within 300 feet from any residential structure or dwelling.

Lastly, Art. III, § 3.646 states, in pertinent part, that a truck or private bus terminal...shall be allowed when a special permit therefor has been granted by the City Council, provided that no such yard is placed within 200 feet of any residential dwelling structure. Here, the designated area as shown on the Site Plan dated October 16, 2018 (the “Plan”) is located approximately 97.4’ from the closest residential dwelling. As a result of the foregoing, and in order to continue the landscaping business, Petitioner is seeking a variance from the Zoning Board from the 200’ minimum distance requirement set forth in Art. III, § 3.646.

It may also be noted that Vanaria had a traffic study performed in the summer of 2020 by Howard Stein Hudson, a Boston engineering firm. The firm’s report dated July 16, 2020 concluded as follows:

This study finds that the proposed change to the business model of Anthony & Vanaria & Sons, Inc. located at 44 Williams Street will not negatively impact Felton Street or the surrounding transportation network. Vehicular volumes generated by the proposed project will only add 28 trips to the network during the morning peak hour and 17 trips to the network during the afternoon peak hour. In the future condition, the

intersection of Prospect Street at Felton Street and Highland Street is shown to degrade to a LOS below acceptable levels of service during the afternoon peak hour, before the project is built. No mitigation is required to accommodate the traffic generated by this business.

A true and accurate copy of the Howard Stein Hudson Traffic Study dated July 16, 2020 is annexed hereto as Exhibit 3.

II. JURISDICTION

Massachusetts General Laws, c. 40A, §§ 9, 10 and 14 provide that this Board of Appeals has the power to grant variances if they are not a use prohibited by the Zoning Ordinance of the City of Waltham (the “Ordinance”). Petitioner is seeking a special permit for use(s) from the City Council. The variance in question here is for the dimensional requirement and not for any change in use.

Art. VII, §7.2 of the Ordinance authorizes this Board of Appeals to utilize all the powers granted to it by the General Laws and the Ordinance. Therefore, in that this Board of Appeals has both the power and authority to grant variance, Petitioner respectfully requests that its Application be granted.

III. VARIANCES

M.G.L. c. 40A, § 10 states in pertinent part that “the permit granting authority shall have the power . . . to grant upon appeal . . . a variance from the terms of the applicable zoning ordinance or by-law where such permit granting authority specifically finds that [i] owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting

generally the zoning district in which it is located, [ii] a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner . . . and that [iii] the desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.”

Variance Requested.

The variances sought are dimensional, specifically:

Yard Waste Transfer Station: In accordance with Art. III, § 3.641, a yard waste transfer station, as defined in Section 3.2582, shall be allowed when a special permit therefor has been granted by the City Council, provided that no such station is placed within 300 feet of any residential dwelling or structure. Here, the closest residential structure from the closest bin is 137.3 feet.

Organic Product Storage: In accordance with Art. III, § 3.642, organic product storage, as defined in Section 3.2583, shall be allowed when a special permit therefor has been granted by the City Council, provided that no such storage is placed within 300 feet of any residential dwelling or structure. Here, the closest residential structure from the truck yard is 137.3 feet.

Truck or Private Bus Terminals: In accordance with Art. III, § 3.646, a truck or private bus terminal, as defined in Section 3.249, shall be allowed when a special permit therefor has been granted by the City Council, provided that no such yard is placed within 200 feet of any residential dwelling structure. Here, the closest residential structure from the truck yard is 97.4 feet.

1. The Shape of the Locus.

In this instance, it is the shape of the locus that is unique and affecting this locus but not affecting generally the zoning district in which it is located. First, as stated *supra*, the Locus consists of four (4) pre-existing non-conforming lots. These lots, pursuant to the City Council Decision, are to be combined into one and Petitioner is in the process of doing the same, however, the process has been delayed in due to Covid. Petitioner will

have the property combined prior to filing the Development Prospectus for the special permits sought. The Locus, when combined, is an odd shaped, irregular lot. The ingress and egress for the truck terminal is located at 114 Felton Street. The Locus is a “rat-tail” lot which is abutted on the eastern side by other commercial/industrial uses. The Locus abuts the Boston & Main Rail Road to the South and then Williams Street along the westerly lot line. The Locus then jets in and around three residential properties and back to Felton Street. As a result of the shape of the lot and the location of the pre-existing building thereon, the only location on the lot appropriate for the Transfer Station, Organic Product Storage and Truck Terminal is along the easterly lot line which is the furthest from the residential structure at 116-118 Felton Street.

2. A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the Petitioner

In addition to the circumstances that especially affect this Locus, a literal enforcement of the provision of the ordinance in regard to the minimum required distance from a residential structure would create a hardship, financial and otherwise, for the Petitioner. Here, unfortunately, there is a pre-existing (non-conforming) residential structure that is located wholly within the Commercial District that directly abuts the Locus. Without a variance from the minimum required distance from a residential structure, Petitioner cannot operate the transfer station, organic product **storage** to even continue the use of the Locus in furtherance of their established landscaping company, a substantial financial hardship. The use of the Locus most recently has been a landscaping operation within the commercial zone alongside other commercial/industrial uses and the expansion to a yard transfer station and organic product storage, while reducing the landscaping operation, are appropriate uses at the Locus and in line with intent and

purposes of the Zoning By-laws property. Finally, Petitioner has located the transfer station, organic product storage and truck terminal area within the furthest area from the residential structure. Therefore, a literal enforcement of the ordinance would involve a substantial hardship to Petitioners, both financial and otherwise.

Here, the Locus is located in the proper zoning district, but due to a pre-existing and non-conforming residential structure, a literal enforcement of the ordinance would result in end of Petitioner's established landscaping business at the Locus, and preventing two uses ancillary to the current uses of the Locus, which is otherwise the correct and appropriate zoning district for said uses.

3. That the desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law.

The final statutory requirement of G.L. c. 40A, § 10 requires that the desirable relief be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. The criteria does not require zero derogation from the intent or purpose of the ordinances, as “[s]ome derogation from the [Ordinance’s] purpose is anticipated by every variance . . .” Cavanaugh v. DiFlumera, 9 Mass.App.Ct. 396 (1982). The Court further stated that “. . . unless the [granting of the variance] significantly detracts from the zoning plan for the district, the local discretionary grant of the variance . . . must be upheld . . .”

Here, the desired relief does not nullify or substantially derogate from the intent or purpose of the by-law as the variance that Petitioner is seeking will allow the petitioner to operate its landscaping business along with a yard transfer station and organic product

storage in the commercial zoning district as intended by the City of Waltham Zoning Code.

IV. CONCLUSION

In sum, Petitioner seeks to continue (and reduce) its longtime landscaping operation at the property while adding to the Locus a Yard Waste Transfer Station and Organic Product Storage as set forth on the plans submitted herewith. The proposed uses requires two (2) special permits from the Waltham City Council. However, in order to obtain these special permits for the Yard Waste Transfer Station and Organic Product Storage, Petitioner must first obtain variances from the 300' minimum distance requirement as well as the variance previously granted in Case No. 2018-36 for a variance from the 200' minimum distance requirement for a Truck Terminal.

Petitioner thanks you for your attention to this matter, welcomes your suggestions and look forward to completing this project in a manner amicable to the City of Waltham.

Respectfully Submitted,

Anthony Vanaria & Sons, Inc.,
By its attorneys,

Richard B. Michaud
Bernkopf Goodman, LLP

Two Seaport Lane
Boston, MA 02210
T: 617-790-3000
F: 617-790-3300

Bret Francis, Esq.
BBO # 658761
Scafidi Juliano, LLP
10 Hammer Street
Waltham, MA 02453
T: 781-210-4710
F: 781-210-4711

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