

**Town of Medway
Zoning Board of Appeals Meeting
Sanford Hall
Town Hall
155 Village St, Medway MA**

MINUTES OF MEETING

December 6, 2017

Present: Chair Eric Arbeene; Vice Chair Brian White; Clerk, Carol Gould; Committee Members: Rori Stumpf, Bridgette Kelly

Also present: Mackenzie Leahy, Administrative Assistant, Community & Economic Development

Chairman Arbeene called the meeting to order at 7:38 PM.

Citizen Comments:

There were no members of the public that wished to make comments on items other than those already on the agenda.

Public Hearings:

7:35 P.M. – The Applicant, Ambassador Pools, seeks a Variance from 6.1 to accommodate a pool that was installed 4 feet from the rear property line at 7 Legion Avenue; the required setback is 10 feet.

The Applicant provided the Board with information regarding the internal location and layout of the condos for 5 and 7 Legion Ave and the affects that the layout had on the privacy of the homeowners. The Applicant explained that it is a nonconforming lot and use.

Mr. Arbeene concurred that the condos are unique to the neighborhood and do have a unique layout that makes it difficult to have backyard privacy.

Mr. Stumpf noted that the plans submitted to the building department had shown the pool in a different location than where the pool was installed. He questioned why the installers would still move forward installing the pool in a different location that what was shown on the plans without modifying the building permit or contacting the Applicant.

The Applicant provided the Board with additional information about the owner's son and why they wanted a pool for him. The son is in a wheelchair and disabled. The pool provides happiness to the son and the family.

The Applicant stated that other towns grant variances so long as no abutters provide comments or show up to the hearings in opposition and questioned, "At what point does local government become too stringent?" Mr.

Arbeene stated that wasn't a question for the Board, but as far as the Variance goes, all applicants must meet the same criteria.

The Applicant said that this wasn't the first time that he had issues with the Town. Mr. Stumpf stated that this was not an issue and that the Town does not like to see people not complying with the Town Bylaws and then asking for forgiveness. Ms. Kelly stated that there was a history of improper installations with the Town. The Applicant didn't agree and said that was not related to the application at hand.

Abutter Rosemary Harrington, 5 Legion Avenue, stated that there was no privacy for their condo, you could see into the windows from the pool. Ms. Harrington stated that ideally she would have liked to see a smaller pool, but at the least she would like to see more room between the house and the pool. However, if that was done, the setback would be reduced even more for the neighbors at 3 and 5 Cole Avenue.

The Board began deliberations.

Ms. Kelly stated that although she sympathizes with the homeowners, the Applicant has not provided any information which met the variance criteria.

Mr. White agreed with Ms. Kelly.

Mr. Stumpf stated that he sympathized with both the homeowner and the applicant and the cost and time invested in the pool, but felt that it did not meet the criteria.

Mr. Arbeene stated that the layout of the condominium was such that it should not have been created in the first place, there were unique circumstances related to the use and layout of the home (condos), but that does not related to the fact that the pool was installed in the wrong place. The yard was small and relocation of the pool was impossible. He did not see any circumstances related to shape, topography, or soil conditions that met the variance criteria.

The Board closed the hearing (Motion Mr. Stumpf, Second Mr. White, approved 4-0, Ms. Gould did not vote) and continued to deliberations:

1. *Circumstances relating to the shape, topography, or soil conditions of the subject property, which do not generally affect other land in the zoning district:*
 - a. The Applicant has not provided evidence relating to topography or soil conditions relevant to the requested variance.
2. *Substantial hardship caused by the circumstances from Criteria A.1 when the Zoning Bylaw is literally enforced:*
 - a. The Applicant has not provided evidence of substantial hardship, as defined by MGL 40A Section 10, due to the shape of, or other circumstances of, the subject property.

3. *Why/how the grant of relief would not nullify or derogate from the intent of the Zoning Bylaw:*

- a. The grant of relief would derogate from the Zoning Bylaw as the pool was installed which did not meet the Setback Requirements of Section 6.1 of the Zoning Bylaw and the applicant did not properly apply for a variance in accordance with the Zoning Bylaw and MGL 40A Section 10 prior to installation.

The Board finds that the Applicant did not meet the variance criteria, as defined by MGL 40A Section 10. (Motion Mr. White, second Mr. Stumpf, 4-0, Ms. Gould did not vote)

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board ***DENIED*** the Applicant, Ambassador Pools, a ***VARIANCE*** from Section 6.1 of the Zoning Bylaw to accommodate a pool at 7 Legion Avenue. (Motion Mr. White, second Mr. Stumpf, 4-0, Ms. Gould did not vote)

- The Applicant, Abenildo Neves, seeks a Special Permit under Section 8.3 of the Zoning Bylaw for a Home Based Business for truck, trailer, and equipment storage and a home office, for the property located at 1 Gray Squirrel Circle.

The Applicant provided an overview of the proposed Home Based Business. The Applicant showed the Board where he was proposing to store his vehicles. He provided an area on the plan that was an existing crushed stone turn-around off of the driveway. Mackenzie Leahy, Community & Economic Development Department explained that she requested the Applicant show any area that they had intended to store any of their vehicles. If the Applicant applied to the Board and was granted a special permit, but then stored the vehicles elsewhere, that would be a violation of the request and/or a permit, if granted. He stated that he had a class 4 2005 Volvo tractor cab vehicle and a box truck that he would like to keep at his house. Mrs. Neves explained that the Applicant had a small business that they ran. The primary business is in Raynham, but they would like to be able to park overnight.

Mrs. Neves explained that some of the trailers that are currently seen on the property are on site because of recent purchase of the home. They still have some personal items that had not been moved into the house, and in addition there were drainage basin and easement corrections that needed to be made.

Mrs. Neves stated that they would like to put a fence up along the perimeter of the property to hide the view of the trucks from the neighbors.

Mr. Stumpf noted that there is a bus stop at the intersection of Gray Squirrel Circle and Route 109 / Milford Street. Mr. Stumpf stated that the yard looked like an industrial yard at the moment. Mr. Stumpf stated that the property was in a residential district. The bylaw has strict criteria because the Town was finding that people were keeping large commercial vehicles in residential neighborhoods and the Town had no way to enforce removal of the vehicles. The Town passed a bylaw in 2015 to restrict the size, weight, and class of a vehicle. The Town has and enforces the bylaws to preserve community standards.

Ms. Leahy provided a summary of the information discussed thus far and what her understanding was of the Applicant's request.

Staff Bridget Graziano, Conservation Agent, and Jack Mee, Building Inspector and Zoning Enforcement Officer attended the hearing to provide comments.

Bridget Graziano, Conservation Agent, explained that issues first arose on September 18, 2017 when she visited the property with Jack Mee and noticed a number of issues. Ms. Graziano explained that the Commission had issued an enforcement order for the Wetlands infractions and the infractions to the drainage basin and easement. Ms. Graziano stated that she had tried to work with the Applicant, but the deadlines of the enforcement order had not been met. Ms. Graziano stated that Conservation Commission was very concerned with the property as it stood on the day of the hearing. Ms. Graziano stated that she and the Commission did need some of the equipment on site at the moment, but hopefully that only needed to be for seven more days.

Ms. Graziano stated that she additionally had concerns about the work underneath the power lines and the proposed area for storage of vehicles. She explained that she had spoken to Eversource, they had verified that the work under the Eversource easement was unauthorized. Ms. Graziano had concerns about other areas of the property under Conservation Jurisdiction. Ms. Graziano stated that she would like to see a commitment for deadlines and improvements from the Applicant to the Conservation Commission and that she would like to see that same commitment for the Zoning Board of Appeals.

Ms. Leahy clarified that although many of Ms. Graziano's comments did not pertain to the Special Permit application, due to the high volume of questions and concerns by neighbors and other Board and Committee members, Ms. Leahy had requested Ms. Graziano's attendance to explain the outstanding work that needed to be completed for the remainder of the property.

Jack Mee, Building Commissioner & Zoning Enforcement Officer (ZEO), viewed the site on the same date as Ms. Graziano and reviewed the trailers and cars on the property for compliance with zoning and HBB requirements. Mr. Mee met with Mrs. Neves and explained that the vehicles exceeded what was allowed with a HBB. Mrs. Neves asked if there was anything that they could do besides removing the vehicles. Mr. Mee explained that they could apply for a Special Permit with the ZBA. Mrs. Neves stated that she would like to apply to the ZBA and Mr. Mee entered into a verbal agreement that the bobtail could be on the property with no trailer, and that the trailer that he had originally seen with personal belonging would be emptied and removed from the property. Mrs. Neves filed the application, which took longer than expected. Mr. Mee has done random drive-bys and has not seen the truck there, or if it was there, there was no trailer. Mr. Mee explained that the box truck was an unregistered vehicle that was used as a portable maintenance shop which Mr. Mee red-flagged. Mr. Mee stated that it was a concern that the Applicant was doing commercial truck repair on the property. Mr. Neves explained that he does repairs for only his trucks and that it was a maintenance "runner" vehicle, in that if his truck broke down on the road, he would send out that vehicle to repair his trucks. Mr. Neves explained that his brother had a dealer's license plate that he used on the truck when he sent it out on the road.

Mr. Neves stated that he believed the trucks didn't make noise and that none of his neighbors had knocked on his door or told him that he had an issue with what he was doing, they just call the police.

Board Members Andy Rodenhiser, Planning and Economic Development Board (PEDB), Glenn Trindade, Board of Selectmen (BOS), and Dennis Crowley, Board of Selectmen, attended the hearing and spoke in opposition of the requested Special Permit.

Mr. Rodenhiser stated that the PEDB had work on the amendments to Section 8.3 of the Medway Zoning Bylaw. He re-iterated what Mr. Stumpf had said in regards to why the amendments were made—they provide the Board with the opportunity to include conditions and limitations on how Home Based Businesses could operate, while still recognizing that HBB are still important. Mr. Rodenhiser stated that the intent was never to allow an applicant to skirt around the law or the bylaw with requests that could comply with the bylaw in a different district.

Mr. Trindade urged the Board to deny the application; the applicant disregarded all requirements for permits with the Town.

Mr. Crowley stated that no matter what decision the Board made, whether it was an approval or denial, it would set a precedent for future applicants with similar requests.

Mr. White stated that he wanted to make sure that the Board focused on what was going to be happening short term for construction versus long term.

Abutters from 10 Gray Squirrel Circle, 16 Gray Squirrel Circle, 5 Gray Squirrel Circle, 8 Gray Squirrel Circle, 12 Gray Squirrel Circle, 90 Milford Street, 6 Gray Squirrel Circle, and 2 Gray Squirrel Circle, attended the hearing and spoke in opposition of the requested Special Permit.

Christina Oster, 10 Gray Squirrel Circle, stated that she believed the applicant did not meet Section 3.4 Special Permit Criteria and that the adverse effects do not outweigh the benefits of granting the special permit. She believed the proposed use was industrial in a residential neighborhood, that it was a hazard to the children that walk to the bus stop, that the use has already caused conflicts, it was a detriment as there is no existing street lighting, a potential hazard, there is increased refuse of diesel fuel, the site is visually unattractive as the applicant the property has been completely destroyed, the use has altered the character of the zoning district, it is not in harmony with intent of the bylaw or the master plan, and it has been detrimental to all of the residents of Gray Squirrel Circle already. Ms. Oster does not believe that the use can be properly mitigated to address all of the residents' concerns.

Lloyd Presswood, 16 Gray Squirrel Circle, stated that agreed with Ms. Oster. In addition, he was concerned because the applicant was parking under the electrical easement. If the applicant hit a guy wire or pole, the neighborhood would be trapped. In addition, the access road for Eversource was ruined by ATVs owned by the applicant, some of the road being on Mr. Presswood's property. He felt that a fence for screening would not adequately address the neighbors' concerns and the trucks would still be visible over the fence.

Patrick McMahon, 5 Gray Squirrel Circle, stated that he had 2 kids and was concerned about public safety. The Applicant was requesting to park his vehicles at home for convenience of not needing to drive back to his business location in Raynham.

David Habeeb, 8 Gray Squirrel Circle, stated that he had been living in the neighborhood for 5 years and had purchased a foreclosed home. He had invested money into his home and was concerned that he and his family were going to see their home values diminish. Additionally, he was concerned about the safety of the residents and the children.

James O'Toole, 12 Gray Squirrel Circle, was concerned about safety as well, especially the safety of the high power tension lines and the effects that would have on the neighborhood, Town, and State if something was to happen to them.

Richard Welch, 90 Milford Street, had the same concerns and didn't feel that it was an appropriate use for the neighborhood.

Michael Costello, 6 Gray Squirrel Circle, said that one of the major concerns for everyone in that neighborhood was initially the high power tension lines and they had to weigh that option. If they had a use like the one proposed, they wouldn't have moved in. He was also concerned about the property values.

Dan Cox, 2 Gray Squirrel Circle, stated that he lived across the street and also had an easement on his property. He stated that he shared some of the same concerns as the other residents in terms of the resale value. Mr. Cox also noted that he had spoken to Eversource when he moved into the home and discussed installing a fence along the roadway; Eversource said that wasn't possible, even with an opening for vehicles. Mr. Cox felt there was a problem with the plans as they stood.

Ms. Gould asked why the property was leveled and if there was a plan. Mr. Neves said that he was cleaning it up and he planned to landscape it.

Ms. Kelly stated that common sense would indicate that if all the residents in the neighborhood were in attendance at the meeting, there was a clear concern and that even though there didn't speak to him directly, that there are impacts for the residents.

Mr. Rodenhiser said that the PEDB had a hearing for Eversource for their expansion and they provided details about what was required for work under power lines and he could provide that information to the Board if they would like.

Mr. Stumpf stated that he felt the proposed use was not appropriate and that he could immediately think of six parts of the decision criteria for a Special Permit that were not met. The property was not an appropriate location for the proposed use because it was an industrial use in a residential neighborhood, the use does create a hazard to abutters, the use will cause undesirable lighting, visual, site, and operational attributes, the proposed use is not in harmony with the Zoning bylaw as it had been amended in 2015 to limit commercial/industrial vehicles in residential neighborhoods, and that the proposed use is detrimental to the public good and the neighbors.

Mr. Stumpf stated that he had a hard time seeing what the benefit would be for the neighbors. Mr. Neves said that he didn't want to benefit the neighbors, he wanted it to benefit himself. Mr. Stumpf stated that the applicant could easily park the vehicle locally in an appropriate location.

Mr. Stumpf stated that parking the car elsewhere would be better than having adversarial relationship with the applicant's neighbors.

The Board closed the hearing and began deliberations.

Ms. Kelly felt that the proposed use was detrimental to the neighborhood and was not an appropriate location for the use.

Ms. Gould agreed and stated that it should not be in a residential neighborhood.

Mr. Stumpf stated that he did not think the applicant met 3.4 Special Permit Criteria numbers 1, 3, 5, 6, 7, or 9.

Mr. White concurred.

Mr. Arbeene stated that the proposed use did not meet the decision criteria, there was a clear detriment based on the residents' testimony, the applicant's request skirt around what the intent was for a HBB and that he did not want the Board to set a precedent for future applicants.

The Board closed the hearing. (Motion Mr. Stumpf, second Mr. White, approved unanimously.)

The Board finds that the site is not an appropriate location for the proposed use. The Applicant has proposed an industrial/commercial use of parking a Box Truck with maintenance equipment and Class 8 Tractor Cab in a residential zoning district. **(Motion Mr. Stumpf, second Ms.Gould, approved unanimously.)**

The Board finds that the proposed use would create visual, site, and operational hazards. Visually, the property would look like an industrial use. The site does not adequately provide for adequate entry and exit of the vehicles. The site is located under high power tension structures which is a hazard to the residents, if the applicant were to ever hit a line with one of his trucks, in that residents would be trapped, and with potential rippling effect at the Town and State level if there was an outage because of a line going down. **(Motion Mr. Stumpf, second Ms.Gould, approved unanimously.)**

The Board finds that the proposed use creates a hazard to abutters, pedestrians, and the environment. Lack of a curb cut and wide turning radii for entry and exit of the vehicles pose a hazard to pedestrians as they may walk down the street, especially children walking down to and waiting at the bus stop. **(Motion Mr. Stumpf, second Ms.Gould, approved unanimously.)**

The Board finds that the proposed use is not in harmony with the Medway Zoning Bylaw. In 2015, Zoning was amended to restrict vehicles above Class 3 and Class 4, as determined by Gross Vehicle Weight Rating. The vehicles the applicant has proposed locate on the property exceed Class 4 Ratings. **(Motion Mr. Stumpf, second Ms.Gould, approved unanimously.)**

The Board finds that the response from the abutters indicate that the proposed use is detrimental to the public good. The proposed use may have impacts to the neighborhood's properties values and the general character of the neighborhood. **(Motion Mr. Stumpf, second Ms.Gould, approved unanimously.)**

The Board finds that the proposed use will have an adverse impact surrounding neighborhood and will alter the character of the residential zoning district with a large commercial vehicle visible and present at the entry of the neighborhood. **(Motion Mr. Stumpf, second Ms. Gould, approved unanimously.)**

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board ***DENIED*** the Applicant, Abenildo Neves, a ***SPECIAL PERMIT*** for a Home Based Business for a truck, trailer, and home office which exceed the Basic Requirements of Section 8.3 of the Zoning Bylaw for the property located at 1 Gray Squirrel Circle. **(Motion Mr. Stumpf, second Mr. White, approved unanimously.)**

Ms. Leahy explained the process for completing the decision and the requirements of the Board and the Applicant subsequent to the Board's vote and the decision being stamped in with the Town Clerk.

Any other business that may properly come before the Board:

Discussion of Zoning Board of Appeals Rules & Regulations Amendments – Tabled.

Corrections to 12 Applegate Road Decision

Ms. Leahy provided a document that explained correction that needed to be made in order to address conditions that the Board had voted on for the AFDU Special Permit Decision of 12 Applegate granted in November 2017 but had not made it into the written decision.

The Board approved of the request for corrections to the Decision of 12 Applegate Road on a motion by Mr. White, seconded by Mr. Stumpf, and approved unanimously.

Correspondence:

None.

Approval of Minutes:

11/15/17: Motion by Mr. White, seconded by Mr. Stumpf to approve the minutes as presented. Approved unanimously.

Upcoming Meetings:

January 3 – Ms. Leahy explained that hearings she was scheduling a hearing for 67 Village Street.

January 17 – Ms. Leahy explained that there were other applications she was aware of, but did not have any official submissions at the time.

Adjournment

A motion to adjourn was made by Mr. White, seconded by Mr. Stumpf and approved unanimously. The Board adjourned at 10:24 p.m.

Respectfully submitted,

Mackenzie Leahy
Administrative Assistant
Community and Economic Development