

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF:

**Sean & Brad Currivan
D/b/a Auto Exchange
Petitioners**

OPINION OF THE BOARD

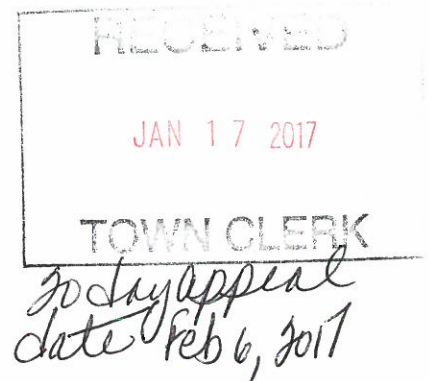
**REQUEST FOR SPECIAL PERMIT
REQUEST FOR VARIANCE
57 Main Street
Medway, MA 02053**

Hearing: January 4, 2017

Decision: January 4, 2017

MEMBERS PRESENT:

**David Cole, Chairman
Carol Gould, Clerk
Eric Arbeene, Member
Brian White, Member
William Kennedy, Member
Rori Stumpf, Associate Member**



THE WRITTEN OPINION WAS DELIVERED ON JANUARY 17, 2017

OPINION OF THE BOARD

This is a proceeding of the Zoning Board of Appeals of the Town of Medway, MA (hereinafter the Board) acting under the Zoning Bylaw of the Town of Medway, MA, 02053, and Massachusetts General Laws, Chapter 40A, as amended, in which the petitioners, Sean & Brad Currivan d/b/a Auto Exchange, requested a Special Permit under Section 5.5 D of the Zoning Bylaw to expand/extend the pre-existing non-conforming use to include sales and service of new and used snow plows; and a Variance from Section 5.4 Table 1 D to allow the outdoor storage of the snow plows.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on December 21, 2016 and December 28, 2016. Notice also was sent to all “parties of interest” and posted in the Town Hall as required by Massachusetts General Laws, Chapter 40A Section 11.

The following documents were received by the Board and included as part of the Application and file for this case:

1. Application received and stamped by the Town Clerk on December 15, 2016
2. Comments from Jack Mee, Building Inspector, dated December 16, 2016
3. Correspondence with Jack Mee, dated December 28, 2016
4. Correspondence with Bridget Graziano, Conservation Agent, dated December 28, 2016
5. Correspondence with Applicant, dated January 3, 2017
6. Staff Report, dated January 4, 2017
7. Correspondence from Bridget Graziano, Conservation Agent, dated January 4, 2017
8. “Plot Plan 1” of 57 Main Street received January 4, 2017
9. ANR Plan of Land for Lot “A” (57 Main Street) and Lot “B,” dated March 20, 1961, received January 4, 2017
10. “Plot Plan 2” of 57 Main Street, showing newly installed fence dimensions, received January 4, 2017 at the Public Hearing
11. Letter of Support for the “operation of used car sales lot and used and new snow plow sales” for Sean and Brad Currivan d/b/a Auto Exchange at 57 Main Street, signed by 17 members of the public, received January 4, 2017 at the Public Hearing

The Public Hearing opened and closed on January 4, 2017, and all deliberations were conducted and the Decision rendered on the same day. The Medway Zoning Board of Appeals members present during the public hearing were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; Brian White, Member; and William Kennedy, Member. The Board members voting were David Cole, Chairman; Carol Gould, Clerk; Eric Arbeene, Member; Brian White, Member; and William Kennedy,

Member. Associate Member Rori Stumpf was also present during the public hearing, however, he did not vote on this decision. There were no public comments made in opposition of the application during the public hearing.

Hearing Summary

The Applicants, Sean and Brad Currivan d/b/a Auto Exchange, as well as their attorney, Stephen Kenney, of Kenney and Kenney, appeared before the Board to discuss the request for a Special Permit under Section 5.5 D of the Zoning Bylaw to expand/extend the pre-existing non-conforming use to include sales and service of new and used snow plows; and a Variance from Section 5.4 Table 1 D to allow the outdoor storage of the snow plows, with respect to the property at 57 Main Street.

Chairman Cole noted that he had a limited association with the applicants, that he sends his cars there for inspections, however he stated that he had no financial interest and could conduct an unbiased hearing, but if anyone felt that he couldn't, they could object.

Mr. Kenney explained that the property was located at 57 Main Street and was owned by Sean Currivan Trustee and AKS Irrevocable Trust; the business that is operated there is Auto Exchange and it is located in the AR-I district. The present use of the property is a used car dealership and a state auto inspection center. The proposed use is the same as the present, but with the addition of sale and service of snow plows. The use is pre-existing nonconforming and it has been in operation for a number of years prior to zoning. The applicants are seeking a determination that this is an extension of the nonconforming use; and taking the position that it is not substantially more detrimental than the existing nonconforming use. The applicants are also seeking a variance from Table 1 D for outdoor retail sales [and storage]. Mr. Kenney stated that they did not believe the variance was necessary as the proposed use would be an allowable extension of the existing [nonconforming] use. The Building Inspector, Jack Mee, had visited and made the position that the applicant needed to have a determination made by the Board as a reasonable extension of the pre-existing nonconforming use. The applicants own and operate a used car dealership, pursuant to a used car dealership Class 2 license. The sales would be available during snow emergencies and would also provide parts to snow plows in the event that the parts break down during snow emergency. Mr. Kenney stated that there would be no adverse effects of the use being proposed and the use will not substantially change any use that is current at the property; and the proposed use is a logical extension of the existing business. Mr. Kenney stated that the use would not harm the surrounding neighborhood in any way and the applicants are not proposing any changes to the exterior of the property. The applicants recently built a white fence around the property. Mr. Kenney provided plans of record of to the Board, the first showing the plan, and the second showing the plan with the fencing on the plan.

Mr. Kenney stated that the applicants were visited by Jack Mee and the Fire Chief; they asked the applicants to clean up the property. In response, the applicants cleaned up the property and also installed the fence. The fence does encroach upon the abutting lot [59 Main Street], which is the home of Sean Currivan. The fence was built in this manner because it was a logical extension [straight back] instead of trying to follow the property line. Mr. Kenney stated that the applicants were proposing the storage of the snow plows within the fenced area excluding the area on the abutting property [59 Main Street].

Mr. Kenney stated that the applicants would like to have a number of snow plows exhibited in front of the property along with the used cars and have been doing so for a number of years. The applicants were following Jack Mee's advice to seek the determination by the Board that this is a reasonable extension of the existing use. Mr. Kenney explained that if the applicants cannot continued to sell the snow plows, it would have a serious impact on the business. As the business has developed,

they've developed this part of the business, and it has become a large part of their business. Sean and Brad work there with no employees and it is their primary means of income.

Mr. Kenney stated that the applicants distributed a letter of support which many of the residents surrounding the business have signed.

Chairman Cole asked if the applicants had previously been selling any auto parts. Sean Currivan answered that they were not, apart from changing bulbs during inspections. Chairman Cole noted that the applicants did thus, in fact, have a very limited sale of parts.

Ms. Mercandetti explained that because the applicants have a pre-existing nonconforming use, they needed to come before the Board to expand their use as the applicants are requesting something new for their business; and because the business is within AR-I district [they applied for the variance for outdoor storage].

Chairman Cole asked if the applicants were looking to repair the plows on-site. Sean Currivan explained that if a plow broke, it would come in to be repaired.

Chairman Cole asked if the plows would be mounted onto trucks on-site. Sean Currivan answered that they would be. Chairman Cole was concerned about the noise that the installation of the plows onto trucks would make. Sean Currivan replied that they have been installing the plows for years and there is little noise.

Chairman Cole asked how high the fence was; Sean Currivan answered that it is 6 feet and the plows are only 2 ½ - 3 feet. Chairman Cole noted that he assumed the plows that would be sold would be for regular trucks and not plows similar to the ones used for the Mass Pike; Sean Currivan answered that they would not be [plows similar to the ones used for the Mass Pike].

Mr. White read Jack Mee's comments on what the applicants would need to apply for: the sales and service of new and used snow plows, the storage of the snow plows, and the banner sign. Mr. Kenney stated that the banner sign had been removed and the applicants would deal with signage later on.

Chairman Cole asked if the storage would be for people's snow plows or just the plows being sold; Sean Currivan answered that it would only be the plows being sold.

Ms. Leahy read into record correspondence received by Staff. The Board received a comment letter from Jack Mee, Building Inspector, received December 16, 2016; correspondence from Jack Mee dated December 28, 2016; correspondence from Bridget Graziano, conservation agent, received December 28, 2016; and an email from Bridget Graziano on the present date, in which the applicants granted permission for a site visit—she determined that there were no wetland resources within 200 feet of the proposed expansion of business and the Conservation Commission had no jurisdiction of the area; and that Ms. Leahy had sent an email January 3, 2017 to ensure that the applicant would be providing the proposed storage area at the present hearing.

Ms. Leahy re-noted that the hearing before the Board was only for 57 Main Street, therefore any expansion into 59 Main Street must be excluded.

Chairman Cole expressed that as he understood, the application should be considered under the Special Permit and the Variance request was submitted as a "backup." Mr. Kenney answered that was correct.

Chairman Cole asked if there were any public questions or comments. Tony Biocchi of 25 Main Street stated that the business had been there for over 50 years and the applicants have been selling plows for a considerable amount of time. Mr. Biocchi expressed that part of his and the applicants' concern is making sure that the Town and residents have what they need with the sales of snow plows in order to have enough parking spaces in Town when there's snow. Mr. Biocchi also recognized that inspections and plow installation is done inside of the garage bays. Mr. Biocchi commended the applicants for clearing the back area and installing the fence so that nothing is seen. He stated that he was in favor of the business expansion and believed there was a need for it.

Mr. Arbeene asked if there were plows there currently; Brad Currivan responded that there were plows there currently.

Findings:

By a vote of 5-0-0:

1. The Board finds that the Applicants demonstrated that there is a pre-existing nonconforming use of the subject lot for used car sales and state inspections involving the limited sale of auto parts.
2. The Board finds that the sales and service of new and used snow plows and snow plow parts and accessories is a logical extension of the pre-existing nonconforming use.
3. The Board finds that the storage of snow plows within the portion of the fenced in area behind the existing building and in line with the existing building, and the display of a limited number of snow plows in front of the existing building, within the existing subject lot is a logical extension of the pre-existing nonconforming use of the lot.
4. The Board finds that the granting of the requested Special Permit would not be in conflict with any of the criteria for the grant of Special Permits set forth in section 3.4.C of the Zoning Bylaw and in particular that grant of the requested Special Permit would not involve noise or visual or other nuisances within a predominantly residential area.
5. The Board finds that granting of the requested Special Permit would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming use.

Relief Granted:

By a vote of 5-0-0:

The Board hereby grants to the applicants, Sean & Brad Currivan d/b/a Auto Exchange, at 57 Main Street, a Special Permit pursuant to section 5.5.D of the Zoning Bylaw for the sales and service of new and used snow plows, as well as parts and accessories therefor, subject to the following condition:

1. Outdoor storage of the snow plows shall be confined to the portion of the presently existing fenced in area lying behind the existing building and on the subject lot, except that not more than 12 snow plows may be displayed within the view of the public.

Since the Board believes that all necessary relief has been granted by the foregoing Special Permit, the Board hereby denies the application for a Variance.

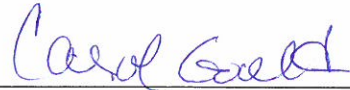
The Board hereby makes a detailed record of its findings and proceedings relative to this petition, sets forth its reasons for its findings and decision, incorporates by reference any plan or diagram received by it, directs that this decision be filed in the office of the Town Clerk and be made a public record and that notice and copies of its decision be made forthwith to all parties or persons interested.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to MGL c. 40A, Section 17, within twenty (20) days after the date of filing this Decision with the Town Clerk.

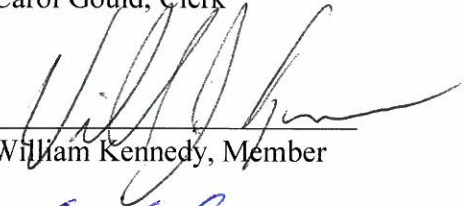
In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the decision bearing the certification of the Town Clerk that twenty days have elapsed after the decision has been filed in the Office of the Town Clerk and no appeal has been filed, or that if such an appeal has been filed, that it has been dismissed or denied, is recorded in the Norfolk County Registry of Deeds and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for recording or registering shall be paid by the owner or applicant.



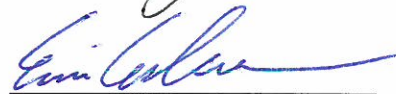
David J. Cole, Chairman



Carol Gould, Clerk



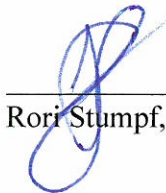
William Kennedy, Member



Eric Arbeene, Member



Brian White, Member



- Did Not Vote

Rori Stumpf, Associate Member