



Town of Medway
ZONING BOARD OF APPEALS
155 Village Street, Medway, MA 02053

Eric Arbeene, Chair
Brian White, Vice Chair
Carol Gould, Clerk
Bridgette Kelly, Member
Rori Stumpf, Member

**DECISION
SPECIAL PERMIT
1 GRAY SQUIRREL**



*20 Day Appeal
January 9, 2018*

Date Application Filed: October 18, 2017

Applicant(s): Abenildo Neves (the "Applicant")
1 Gray Squirrel Circle
Medway, MA 02053

Location of Property: The Project is located on a parcel of land in Medway located at 1 Gray Squirrel Circle (Assessor Parcel ID: 44-046).

Approval Requested: Special Permit under Section 8.3 of the Zoning Bylaw for a Home Based Business ("HBB") for a truck, trailer, and home office which exceed the Basic Requirements for use by-right.

Members Participating: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Members Voting: Eric Arbeene (Chair), Brian White (Vice Chair), Carol Gould (Clerk), Bridgette Kelly, and Rori Stumpf

Hearing Opened: December 6, 2017

Hearing Closed: December 6, 2017

Date of Decision: December 6, 2017

Decision: Denied



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I. PROCEDURAL HISTORY

1. On November 3, 2017, the Applicant filed a Special Permit Application, pursuant to G.L. c. 40A, as amended, and the Medway Zoning Bylaw, for a Home Based Business under Section 8.3 of the Zoning Bylaw to be located at 1 Gray Squirrel Circle.
2. Notice of the public hearing was published in the Milford Daily News on November 21, 2017 and November 28, 2017, and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A §11.
3. The public hearing was opened on December 6, 2017. The Board closed the hearing the same evening.
4. The Property is located in the Agricultural Residential I District. The frontage requirement is 180 feet and the minimum lot area requirement is 44,000 sq. ft. The front setback requirement is 35 feet and the side and rear setback requirements are 15 feet.
5. The Applicant's Wife, Maria Neves, was also in attendance at the hearing.
6. The Board notified Town departments, boards and committees of this application. The Board received written comments from the Conservation Agent and Zoning Enforcement Officer.
7. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

At the December 6, 2017 meeting, the hearing was opened by the Board. 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.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearings and comments submitted by Town departments, boards and committees placed in the public record during the course of the hearings.

A. Section 3.4 Special Permit Decision Criteria

1. *The proposed site is an appropriate location for the proposed use.*
 2. *Adequate and appropriate facilities will be provided for the operation of the proposed use.*
 3. *The proposed use as developed will not create a hazard to abutters, vehicles, pedestrians, or the environment.*
 4. *The proposed use will not cause undue traffic congestion or conflicts in the immediate area.*
 5. *The proposed use will not be detrimental to the adjoining properties due to lighting, flooding, odors, dust, noise, vibration, refuse materials, or other undesirable visual, site, or operational attributes of the proposed use.*
 6. *The proposed use as developed will not adversely affect the surrounding neighborhood or significantly alter the character of the zoning district.*
 7. *The proposed use is in harmony with the general purpose and intent of the Zoning Bylaw.*
 8. *The proposed use is consistent with the goals of the Medway Master Plan.*
 9. *The proposed use will not be detrimental to the public good.*
- a. 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.
 - b. 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.
 - c. 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.

- d. 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.
- e. 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.
- f. 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.

IV. DENIAL

Based upon the findings of the Board and testimony and information received into the record during the public hearing process, the Board ***DENIES*** 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.

1. Recording. This denial shall be recorded with the Registry of Deeds. However, failure to record this Decision shall not invalidate any finding or vote of the Board.
2. Any HBB operated on the premises which exceeds the basic requirements of Section 8.3 shall be a violation of the *Medway Zoning Bylaw* and this Decision. Any other work or use that deviates from this Decision shall be a violation of the *Medway Zoning Bylaw*.
3. The Applicants shall work with the Zoning Enforcement Officer and Building Department to take immediate measures to remediate violations of the Zoning Bylaw or this Decision.
4. Failure to cooperate in remediating violations of the Zoning Bylaw may result in Enforcement and/or Penalties under Section 3.1 Enforcement, Violations, and Penalties, of the Zoning Bylaw.

V. INDEX OF DOCUMENTS

A. The Special Permit application for the proposed HBB included the following plans and information that were provided to the Board at the time the application was filed:

N/A

B. During the course of the review, the following materials were submitted to the Board by Town Departments/Boards:

1. Comments: Zoning Enforcement Officer, Jack Mee, issued to Applicant November 1, 2017, received November 27, 2017
2. Comments: Conservation Agent, Bridget Graziano, received November 27, 2017, including three attachments:
 - a. Enforcement Letter dated September 22, 2017
 - b. Enforcement Letter dated November 17, 2017
 - c. Enforcement Ticket issued November 17, 2017
3. Correspondence: Community & Economic Development, Mackenzie Leahy, Applicant, dated November 16, 2017
4. Staff Report: Community & Economic Development, Mackenzie Leahy, dated November 16, 2017
5. Correspondence: Community & Economic Development, Mackenzie Leahy, Applicant, dated November 27, 2017
6. Staff Photos: from Site Visit dated December 5, 2017: Community & Economic Development, Mackenzie Leahy
7. Staff Lookup of Business, miscellaneous documents, fifteen pages, received December 5, 2017: Community & Economic Development, Mackenzie Leahy

D. During the course of the review, the following materials were submitted to the Board by the Applicant and Representatives:

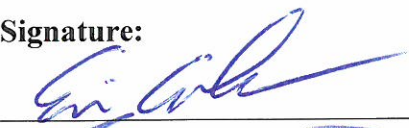
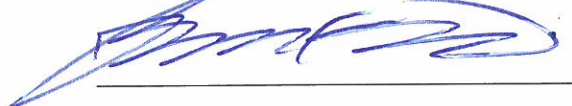
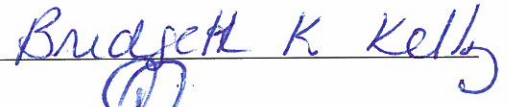
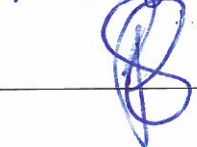
1. Existing Conditions Plan of Land, prepared by Colonial Engineering, Inc. of 11 Awl Street, Medway, MA, dated November 30, 2017
2. Additional Information, three pages, submitted by Applicant, received December 4, 2017

E. During the course of the review, the following materials were submitted to the Board by Residents:

1. Abutter Correspondence: Christina Oster, 10 Gray Squirrel Circle, to Community & Economic Development, Mackenzie Leahy, dated December 1, 2017
2. Comments: Christina Oster, 10 Gray Squirrel Circle, received December 4, 2017
3. Comments and 43 Photos, 3 Videos: Christina Oster, 10 Gray Squirrel Circle, received December 6, 2017
4. Comments: Daniel Cox, 2 Gray Squirrel Circle, received December 4, 2017
5. Comments: Brian Donovan, 90 Milford Street, received December 6, 2017
6. Comments: Lloyd Presswood, 16 Gray Squirrel Circle, received December 6, 2017
7. Comments: Maribeth Costello, 6 Gray Squirrel Circle, received December 6, 2017

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Rori Stumpf and seconded by Carol Gould, the Zoning Board of Appeals hereby ***DENIES*** 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.

Member:	Vote:	Signature:
Eric Arbeene	Yes	
Brian White	Yes	
Carol Gould	Yes	
Bridgette Kelly	Yes	
Rori Stumpf	Yes	

The Board and the Applicant have complied with all statutory requirements for the issuance of this Variance on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in G.L. c. 40A §15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty days (20) after the filing of this notice in the Office of the Medway Town Clerk.

In accordance with MGL c. 40A, Section 11, no variance or special permit shall take effect until a copy of the Decision 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, 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 within said twenty day period or that any duly filed appeal has been dismissed or denied. The fee for recording or registering shall be paid by the Applicant. A copy of the recorded Decision certified by the Registry, and notification by the Applicant of the recording, shall be furnished to the Board.