

**Town of Hopedale
Decision of the Hopedale Zoning Board of Appeals
July 20, 2022**

Case: 2-2022

Applicant(s):	Mauricio A. Oliveira Patriots Custom Auto Inc.
Property Owner: Property:	Hopedale Airport Industrial Park 6 Airport Road, Hopedale, MA 01747
Application Filed:	February 11, 2022
Hearing Dates:	March 30, 2022, May 18, 2022, June 15, 2022, and July 20, 2022

Relief Sought: Applicant is seeking a special permit for used motor vehicle sales.

Decision: Following the closing of the public hearing on July 20, 2022, the Zoning Board of Appeals voted unanimously to issue a special permit for used motor vehicle sales with the following conditions:

1. Hours of operation shall be Monday through Friday 10 a.m. to 4 p.m.
2. The business shall comply with all applicable state and federal laws.
3. Display of vehicles for sale shall be limited to indoors.
4. Automobile repairs shall not be made on the property.

Certification

This is to certify that the above action was taken in compliance with the statutory requirements as set forth in Chapter 40A of General Laws, and that copies of this decision and plans referred to in this decision, if any, were filed with the Town Clerk on _____, 2022.

Special Permit or Variance is not in effect until the decision is recorded with the Worcester County Registry of Deeds and the building permit will not be issued until proof of recording is presented.

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PERSUANT TO GENERAL LAWS, CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN 20 DAYS AFTER THE DATE OF FILING THIS DECISION IN THE OFFICE OF THE TOWN CLERK.



Christopher P. Hodgins, Chairman

**Record of Proceedings and Summary of Findings and Decision
Hopedale Zoning Board of Appeals**

Case: 2-2022

Applicant(s): Mauricio A. Oliveira and Patriots Custom Auto Inc.

Property Owner: Hopedale Airport Industrial Park

Property: 6 Airport Road
Hopedale, MA 01747

Hearing Proceedings

On February 11, 2022, Mauricio A. Oliveira and Patriots Custom Auto Inc., filed an application for a special permit to sell used motor vehicles at 6 Airport Road. The Zoning Board of Appeals (ZBA) scheduled a public hearing for March 30, 2022, and notified the Town Clerk, abutters and other interested parties, and requested publication of the notice in the Milford Daily News.

The Town Clerk posted the hearing notice on March 14, 2022. The Milford Daily News published the first notice on March 16, 2022, and published the second notice on March 23, 2022.

Public Hearing March 30, 2022

On March 30, 2022, the ZBA opened a public hearing on the application. Four members of the ZBA were present with one member (Nicholas Alexander) absent. Chairman Hodgens opened the public hearing, explained the process, and outlined the procedural posture of the application. Mr. Hodgens invited Mr. Oliveira to present his application. Mr. Oliveira said that he already has a permit for the business across the street. He is looking to move to this new location.

Mr. Hodgens then read from the application the relief being requested: “We are moving from 1B Airport Drive to 6 Airport Road to a bigger office to allow us more storage for our vehicles. Our current space does not have sufficient space for vehicles to be stored inside so we have procured a larger space to allow us to comply with our existing license restrictions (License # 20-12). Our business hours are also being adjusted to 10 AM – 4 PM (M-F). We would also like to increase the number of allowed vehicles to a maximum of ten (10) units, since our new location has a larger indoor space to accommodate more vehicles.” Mr. Oliveira had nothing else to add.

Mr. Hodgens invited questions and comments from ZBA members. Louis Costanza asked if there was a problem with this property. Mr. Hodgens provided the history of the property. On May 15, 2019, the ZBA issued a special permit to Josimar A. Dos Santos for the property at 1B Airport Drive for buying and selling used cars indoors with a limit of 5 cars. Repair work is not allowed. Mr. Oliveira verified that this is the current location of his business. He also operates a construction framing business. (Patriots Custom Auto and Patriots Custom Builders). Mr. Oliveira wants to separate the businesses, and the framing business will occupy the current location. He wants to move his car business to the new location at 6 Airport Drive.

Mr. Hodgens asked about an incident on January 4, 2022, as memorialized in a Hopedale Police report. Mr. Oliveira acknowledged the incident took place. A friend attached a dealer plate to one of his vehicles to move a car from one place to another. The police informed Mr. Oliveira that he is not allowed to attach plates. Mr. Oliveira said he understood and returned the dealer plate to his friend.

Mr. Costanza asked about other sales in town in addition to the airport. Mr. Oliveira said that he only sells vehicles at the current location. Mr. Costanza specifically asked about a vehicle with a sign on it on route 140 (Evergreen Way). Mr. Oliveira said that he does not sell in any location other than the airport.

Scott Savage asked about the layout showing a mechanic office. Mr. Oliveira said there will not be any repairs taking place at the new location. The only repairs that take place involve repairs of construction vehicles (connected with the framing business) at the current location.

Mr. Costanza asked if the business at the current location will continue to operate. Mr. Oliveira said the current location will only be for the construction framing business. Mr. Dos Santos no longer operates out of the location, and Mr. Oliveira is the sole occupant of that building.

Mr. Savage wanted to make it clear that the special permit will be for the sale of automobiles only, and there will be no repairs taking place. Mr. Oliveira said that he understood.

Mr. Hodgens read from the assessor's description of the property. The property contains 7/10 of an acre mainly classified as commercial, with a corrugated warehouse built in 1983, containing one unit. Mr. Oliveira verified that is the property. Mr. Hodgens referenced a Google Earth photograph depicting the property. Mr. Hodgens asked about parking. Mr. Oliveira said that there is parking for about 6 to 8 cars. Mr. Oliveira verified that he is only looking to display cars inside the building.

Mr. Costanza recommended that the police chief attend the meeting. Mr. Costanza said he believes we are missing some information.

Mr. Hodgens outlined the options – continuation or vote. All four votes would be needed for the special permit to issue. Mr. Savage suggested we continue the matter.

Building Commissioner Tim Aicardi (present) discussed his ability to inspect the property if needed. Mr. Oliveira knows now that he cannot attach plates. Mr. Aicardi said that he will be happy to inspect the property periodically if that would assist the ZBA in making a decision.

Mr. Hodgens asked about the hours of operation. Mr. Oliveira said he would operate 10 to 4 Monday through Friday. Mr. Hodgens reminded Mr. Oliveira that any signs have to be approved by the Building Commissioner. Mr. Hodgens then walked through a checklist of requirements for a special permit and asked any ZBA members to speak up if there is any disagreement with the conclusions: (1) use is in harmony with the general purpose of the by-laws given the nature of the other businesses in the area; (2) the applicant is in compliance with the current by-laws; (3) the use will not have a

detrimental impact on zoning district; (4) the master plan is not a factor; (5) there are no evident public safety concerns with the retail establishment; (6) sufficient off-street parking exists; (7) water, sewer, and groundwater issues are not adversely impacted; (8) and the small number of cars being sold will not have an impact on area traffic. Mr. Hodgens said the requirements for a special permit appear to be met, and he asked for input from other ZBA members. Mr. Costanza said he wants to check this out with the police chief before any vote is taken. Mr. Hodgens said that the members traditionally defer to other members who want to seek more information.

Mr. Hodgens asked Mr. Oliveira if he would agree to continue the public hearing. Mr. Oliveira agreed.

No members of the public or those notified as abutters voiced any objections to the application or to a continuance of the hearing.

The next meeting is scheduled for April 20. Mr. Hodgens said that he would send the continuance form to Mr. Oliveira for his signature.

Mr. Savage made a motion to continue the hearing to April 20 at 7 p.m. Ms. Biagetti seconded the motion. The motion passed unanimously.

Agreement to Continue

On April 11, 2022, Mauricio Oliveira signed an agreement to extend the time limits for a public hearing and decision on the special permit application.

Continued Public Hearing April 20, 2022

Due to a scheduling conflict with members of the ZBA, the continued public hearing did not take place. The applicant was notified that the public hearing would be continued to May 18.

Continued Public Hearing May 18, 2022

All five members of the ZBA were present for the May 18 continued public hearing. No one appeared for the applicant, and the ZBA voted to continue the hearing to the June 15 regular meeting date to give the applicant a chance to be present. Following the meeting, Mr. Oliveira indicated that he tried to appear via Zoom, but there appeared to be a connection problem that would not let him enter the meeting. He was notified that the hearing had been continued to June 15.

Continued Public Hearing June 15, 2022

All five members of the ZBA were present for the June 15 continued public hearing. Nicholas Alexander did not participate in the hearing discussions or voting because he had not had a chance to review the March 30 hearing that he missed. Once again, the ZBA discussed the application and the concerns raised by Mr. Costanza. Mr. Costanza indicated that he was still not satisfied with answers to his questions. Mr. Oliveira explained that he does not have a dealer plate because, in part, he does not yet have a special permit for his new location. A discussion followed about the feasibility of a condition that required acquisition of a dealer plate within a limited period of time.

Sandra Biagetti said that given the delays at the Registry of Motor Vehicles, it would be unrealistic to require compliance within a set period of time. Mr. Costanza reiterated that he was not satisfied.

Mr. Hodgens asked Mr. Alexander if he would be willing to review the audio/video recording of the March 30 hearing in order to get his input on this matter. Mr. Alexander said that he would do so. The ZBA voted to continue the matter to the next scheduled date of July 20. Mr. Costanza voted no.

Continued Public Hearing July 20, 2022

Four of five ZBA members were present with Mr. Costanza being absent. Mr. Hodgens provided a summary of the prior proceedings. Mr. Alexander executed a form certifying that he had reviewed the audio/video recording of the public hearing of March 30, 2022. Mr. Hodgens read from Article 3 of the Special Town Meeting Minutes of November 14, 2006. Through that article, Town Meeting accepted the provisions of G.L. c. 39, § 23D, which permits an absent board member to review an audio/video of a prior meeting to enable that member to vote on an issue.

No one appeared on behalf of the applicant. No members of the public or those notified as abutters voiced any objections to the application.

ZBA members continued to discuss the application as well as conditions that may be imposed to address concerns that had been raised. Mr. Savage made a motion to approve the application with the following conditions: (1) hours of operation Monday through Friday from 10 a.m. to 4 p.m.; (2) compliance with applicable state and federal law; (3) no outdoor display of vehicles for sale; and (4) no auto repairs. Sandra Biagetti seconded the motion.

A roll call vote on the motion followed:

Scott Savage	yes
Nicholas Alexander	yes
Sandra Biagetti	yes
Christopher Hodgens	yes

Mr. Hodgens declared the motion had passed unanimously, and the special permit would issue.

Summary of Findings and Decision

The subject property at 6 Airport Drive consists of approximately .707 acres with a single corrugated steel building with one unit (5200 square feet) built in 1983. The property is in a commercial zone under the Hopedale Zoning By-Laws. Used car sales are allowed in a commercial zone only with a special permit issued by the ZBA. Hopedale Zoning By-Laws § 11.3.

“The primary purpose of zoning with reference to land use is the preservation in the public interest of certain neighborhoods against uses which are believed to be deleterious to such neighborhoods.” Circle Lounge & Grille, Inc. v. Board of Appeal of Boston, 324 Mass. 427, 431 (1949). Special permit procedures have long been used to bring

flexibility to zoning classifications by providing for specific uses “which are not allowed as of right because of their potential for incompatibility with the characteristics of the district.” SCIT v. Planning Bd. of Braintree, 19 Mass. App. Ct. 101, 109 (1984).

An applicant does not have “an absolute right to a special permit.” MacGibbon v. Board of Appeals of Duxbury, 356 Mass. 635, 638, 639 (1970). The decision to grant or deny “special permits is within the discretion of the board.” ACW Realty Management, Inc. v. Planning Board of Westfield, 40 Mass. App. Ct. 242, 246 (1996). “Special permits may be issued only for uses which are in harmony with the general purpose and intent of the ordinance or by-law, and shall be subject to general or specific provisions set forth therein; and such permits may also impose conditions, safeguards and limitations on time or use.” G.L. c. 40A, § 9. Conditions may consider “protection of the neighborhood, the Town, and the natural environment” and may include limitations and restrictions designed to address specific features of the proposed use. Hopedale Zoning By-Laws § 10.6(e). Based upon the governing standard, the Hopedale Zoning By-Laws, and the facts presented at the hearings in the instant case, the ZBA exercises its discretion in favor of issuing a special permit with conditions.

A special permit may not issue unless the ZBA finds that “all of the requirements” of the Hopedale Zoning special permit criteria under Hopedale Zoning By-Laws §§ 10.6(d)(1)-(8) are satisfied. Based upon the information available at the public hearings, the ZBA concludes that if the applicant abides by the Hopedale Zoning By-Laws as amplified by the special permit conditions outlined by the ZBA, the special permit criteria will be satisfied.

Used car sales at this location will not have “detrimental effects which outweigh its benefits to the neighborhood, town or zoning district in which it is located.” Hopedale Zoning By-Laws § 10.6(1). The proposed use is well-suited for its location within the Hopedale Airport Industrial Park (“the Airport”) (the subject property being in a commercial zone notwithstanding the industrial label). The Airport is accessed from Plain Street and is generally concealed behind a tree line that separates the Airport from the adjacent homes. The subject property is very similar to other properties, structures, and assorted businesses throughout the Airport. Notably, there were no objections raised by any abutters, members of the public, or local officials. The ZBA is satisfied that the use will not “materially endanger or be hazardous to the public health and safety.” Hopedale Zoning By-Laws §10.6(3). The lot also contains sufficient off-street parking (about 6 to 8 spaces) that comfortably accommodates enough room for a business such as this that is not expected to generate a high level of traffic at any given time. Hopedale Zoning By-Laws §10.6(4). The proposed use will not impact water or sewer issues. Hopedale Zoning By-Laws §10.6(5). While there is some concern about the lack of sidewalks, the proposed use will not “create undue traffic congestion or impair pedestrian safety” given the proposed circumscribed nature of the business in a very limited geographic area. Hopedale Zoning By-Laws §10.6(8). The Master Plan is being developed and is not a factor that militates against a special permit. Hopedale Zoning By-Laws §10.6(2).

Based upon the foregoing, the ZBA hereby allows the application for a special permit with the following 4 conditions.

1. Hours of operation shall be Monday through Friday 10 a.m. to 4 p.m.
2. The business shall comply with all applicable state and federal laws.
3. Display of vehicles for sale shall be limited to indoors.
4. Automobile repairs shall not be made on the property.

Copies of this decision will be filed with the Town Clerk and sent to the applicant, Building Commissioner, and Tax Assessor.