

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

IN THE MATTER OF: Thomas G. Carson
Petitioner

OPINION OF THE BOARD

**REQUEST FOR SPECIAL PERMIT
3 Sledding Hill Way**

Hearing: April 6, 2011
April 27, 2011
Decision: April 27, 2011

MEMBERS PRESENT: Joseph F. Musmanno, Chairman
David Cole
Anthony Biocchi
Peter Gluckler, Jr.
Carol Gould

THE WRITTEN OPINION WAS DELIVERED ON MAY 25, 2011, 2010

RECEIVED

MAY 26 2011

TOWN CLERK

*20 day appeal
June 15, 2011*

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 By-Laws of the Town of Medway, MA, 02053 and the Massachusetts General Law C40A, as amended, in which the petitioner, Thomas G. Carson, requests a Special Permit (V.AA.2.e.1) for a home based auto business at 3 Sledding Hill Way, Medway, MA 02053.

Hearing

Notice of the Public Hearing by the Zoning Board of Appeals in this matter was published in the Milford Daily News on March 23 and 30, 2011. Notice also was sent to all "parties in interest" and posted in the Town Hall as required by Massachusetts General Laws Chapter 40A, Section 11. The continuation was posted in the Town Hall as required.

The Public Hearings were held on April 6 and 27, 2011, and the record closed on April 27, 2011. At the hearing, four persons spoke in favor of; no one spoke in opposition to the application.

Hearing Summary

The Applicant, Thomas G. Carson, came before the Board on April 6, 2011 to request a Special Permit to conduct an in home auto business at 3 Sledding Hill Way located in the ARII zoning district. In 2008 and 2009, Mr. Carson was granted a Class II Motor Vehicle Dealer license by the Town at his previous residence. The license was granted by the Selectmen and several restrictions were placed on the license including the following: no sale of motor vehicles on premises, office for business purposes only, no automobiles stored or displayed on the premises at any time, and autos will be stored and/or repaired at an offsite location. Mr. Carson, as a hobby, researches autos for auction at the Adesa Auction in Framingham and only purchases autos for friends and family. In 2008, only 4 vehicles were purchased and in 2009, 3 vehicles were purchased, one of which was for personal use. Mr. Carson maintains a small office in his home to access the internet for email and to access the Adesa Auction website if looking for a vehicle. Mr. Carson is a full-time engineer working in Stoughton, MA and only uses the dealer license to enable him to attend auctions which are not open to the general public. Mr. Carson has an offsite location in Holliston for storage and in Millis for repair of any vehicles purchased.

Mr. Carson's application to the Building Commissioner, who would then submit a recommendation to the Board of Selectmen, was refused in a letter dated February 22, 2011. The letter suggested submission of an application to the Zoning Board of Appeals for a Special Permit. The Board reviewed the by-law, the Building Commissioner's

letter, the application and testimony of Mr. Carson and could not determine the basis of denial by the Building Commissioner or the exact section to which relief was being sought. Therefore, the Board voted unanimously to continue the hearing to April 27, 2011 to receive additional detail from the Building Commissioner and asked that he be in attendance.

On April 27, 2011 the hearing continued with both Mr. Carson and the Building Commissioner, Mr. John Emidy, in attendance. Mr. Emidy submitted a letter which was read into the record. The letter stated that Mr. Emidy was reluctant to recommend issuance of a Class II Dealer license without a review by the Zoning Board of Appeals pursuant to V.AA.3 of the By-Law to determine the appropriateness of the proposed home based business. Further, the letter stated that Mr. Carson's application was consistent with the intent of the by-law and may require conditions at the Board's discretion.

The Board then deliberated, determined that the application complied with the criteria set forth in the by-law and recommended that the Building Commissioner forward the application of Mr. Carson's Class II Dealer License to the Board of Selectmen for handling and issuance of the license.

Findings:

By vote of 5-0:

1. The Petitioner's proposed business appears to meet all the standards described in Section V.AA.2 of the Medway Zoning by-Law.
2. The authority of the Board to issue a Special Permit is restricted by Section V.AA.3 to home based business which do not comply with the standards of V.AA.2

Petition Dismissed:

By vote of 5-0:

In light of the foregoing findings, the request for a Special Permit is dismissed.


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.


IN ACCORDANCE WITH MASSACHUSETTS GENERAL LAW, CHAPTER 40A, SECTION 11 NO VARIANCE, SPECIAL PERMIT OR CONSTRUCTIVE GRANT OF A VARIANCE TAKES EFFECT UNTIL RECORDED IN THE REGISTRY OF DEEDS.



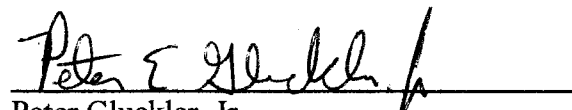
Joseph F. Musmanno, Chairman



David Cole



Anthony Biocchi



Peter Gluckler, Jr.

Carol Gould