

**DECISION OF THE BOARD OF APPEALS  
OF THE  
TOWN OF WESTWOOD**

**PROPERTY OWNER(S):** AMR Real Estate Holdings LLC  
800 Gessner Road, Suite 500  
Houston, Texas 77024

**PETITIONER:** Shane Oates  
Independence Engineering  
30 Commercial Street  
Raynham, Massachusetts 02767

**LAND AFFECTED:** 425 Providence Highway  
Westwood, Massachusetts  
Map 23, Lot 230

**HEARING:**

The Board of Appeals for the Town of Westwood held a Public Hearing according to the General Laws of the Commonwealth of Massachusetts on Wednesday September 20, 2023 via remote participation to amend a Special Permit granted by the Westwood Zoning Board of Appeals on February 9, 2001 to construct and operate an automotive sales and service dealership for Mercedes Benz, and amended on September 18, 2007 to transfer permit to a new owner, and amended again on August 5, 2008, to modify Condition 5 (sale of non-Mercedes trade -ins) and Condition 6 (parking inventory). Petitioner proposes to demolish and reconstruct the front of the existing Mercedes-Benz dealership building, resulting in a new building footprint and reconfiguration of the existing parking lot. The approved dealership use is not changing however, a modification to the existing 2001 Special permit is necessary as the project proposes changes to the originally approved plans cited in the decision. The property is located in the Highway Business (HB) zoning district.

**BOARD MEMBERS:** John F. Lally, Chair  
Michael L. McCusker  
Linda Walsh

**APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW**

**3.2 PURPOSES OF NONRESIDENTIAL DISTRICTS**

**3.2.1 Local Business.** LBA and LBB Districts are intended as locations for businesses to serve the Town or nearby residential neighborhoods with convenience goods and services, managed so as to reflect proximity to residential environs.

**3.2.2 Administrative-Research-Office.** ARO Districts are intended as locations for Businesses engaged in administrative, research and office activities or other uses which may have unusual requirements for space, light and air and which are clean and quiet and not detrimental to the residential use of adjacent property.

**3.2.3 Highway Business.** HB Districts are intended as locations for businesses to serve a larger market area from locations which abut or have access to major highways.

**3.2.4 Industrial.** I and IO Districts are intended as locations for businesses engaged in office, manufacturing, distribution, retail and restaurant activities.

**3.3 LOCATION OF DISTRICTS**

All districts referred to in this Section are located as shown on a map (the “Zoning Map”) filed with the Town Clerk, entitled “Town of Westwood, Massachusetts Zoning Map”, dated November 9, 2015, and said Map, together with all explanatory matter thereon, shall be deemed to be part of this Zoning Bylaw.

**SECTION 4.0 USE REGULATIONS**

**4.1 PRINCIPAL USES**

**4.1.1 General.** No building or structure shall be constructed, and no building, structure or land shall be used, in whole or in part, for any purpose other than for one or more of the uses herein set forth as permitted in the district in which said building, structure or land is located, or set forth as permissible by special permit in said district, and so authorized. In the case of lots lying partly within the Industrial District or Highway Business District of the Town of Westwood and partly within another abutting municipality, that portion of the lot lying outside of the Town of Westwood may be used to meet the zoning requirements of this Bylaw, and such lot may have effective access through such abutting municipality. However, in all other cases, no building or structure shall be constructed or used on a lot lying only partly within the Town of Westwood unless the Westwood portion of the lot shall meet the zoning requirements herein set forth, and the lot shall have effective access to the Town of Westwood. There shall be no more than one non-agricultural principal use for each lot in a Residential District, except as may otherwise be provided herein.

4.1.2 **Table of Principal Uses.** The Table of Principal Uses designates which Principal Uses are allowed in each zoning district.

A Use is permitted by right in any district under which it is denoted by the letter “Y”.

A Use is prohibited in any district under which it is denoted by the letter “N”.

A Use may be permitted by special permit from the Board of Appeals in any district under which is denoted by the letters “BA”.

A Use may be permitted by special permit from the Planning Board in any district under which is denoted by the letters “PB”.

PRINCIPAL USE	DISTRICTS												
	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
<b>4.1.5 COMMERCIAL USES</b>													
4.1.5.1 Agricultural Use, Non-exempt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4.1.5.2 Farm Stand, Non-exempt <sup>3</sup>	BA	BA	BA	BA	BA	BA	BA	N	N	N	N	N	N
4.1.5.3 Animal Hospital or Animal Clinic	N	N	N	N	N	N	N	BA	BA	Y	BA	BA	N
4.1.5.4 Funeral Home	N	N	N	N	N	N	N	BA	BA	BA	N	N	BA
4.1.5.5 Motel or Hotel on five (5) acres or more	N	N	N	N	N	N	N	N	N	N	BA	BA	N
4.1.5.6 Retail sales and services, less than 10,000 square feet	N	N	N	N	N	N	N	Y	Y	Y <sup>4</sup>	Y	Y	N
4.1.5.7 Retail sales and services, 10,000 square feet or more	N	N	N	N	N	N	N	N	N <sup>5</sup>	Y <sup>4</sup>	BA <sup>6</sup>	BA <sup>6</sup>	N
4.1.5.8 Motor Vehicle Sales and Rental; other open air sales	N	N	N	N	N	N	N	N	N	BA	N	N	N
4.1.5.9 Motor Vehicle General Repairs and Body Repair	N	N	N	N	N	N	N	N	N	BA	BA	BA	N
4.1.5.10 Motor Vehicle Light Service	N	N	N	N	N	N	N	BA	BA	BA	N	N	N
4.1.5.11 Car Wash	N	N	N	N	N	N	N	N	N	BA	N	N	N
4.1.5.12 Restaurant without entertainment, less than 10,000 square feet	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.13 Restaurant without entertainment, 10,000 square feet or more	N	N	N	N	N	N	N	PB	PB	Y	PB	PB	N
4.1.5.14 Restaurant with entertainment	N	N	N	N	N	N	N	PB	PB	PB	N	N	N
4.1.5.15 Fast Order Food Establishment	N	N	N	N	N	N	N	N	N	BA <sup>7</sup>	N	N	N
4.1.5.16 Coffee Shop	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.17 Ice Cream Parlor	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.18 Pet Care facility	N	N	N	N	N	N	N	Y	Y	Y	BA	BA	N
4.1.5.19 Commercial boarding or training kennel; Commercial breeder kennel; Veterinary kennel	N	N	N	N	N	N	N	N	N	Y	BA	BA	N
4.1.5.20 Professional Services Establishment	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y
4.1.5.21 Business Services Establishment	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y

PRINCIPAL USE	DISTRICTS												
	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
<b>4.1.5 COMMERCIAL USES, CONTINUED</b>													
4.1.5.22 Office of doctor or dentist not a resident on premises	N	N	N	N	N	BA	N	Y	Y	Y	Y	Y	Y
4.1.5.23 Bank, Financial Institution	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.24 Commercial Recreation, Outdoor	N	N	N	N	N	N	N	N	N	BA	N	N	N
4.1.5.25 Commercial Recreation, Indoor	N	N	N	N	N	N	N	BA	BA	BA	BA	BA	BA
4.1.5.26 Golf Course	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4.1.5.27 Personal Services Establishment	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.28 General Services Establishment	N	N	N	N	N	N	N	N	N	BA	N	N	N
4.1.5.29 Campground, wildlife preserve, fishing grounds operated not for profit	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4.1.5.30 Printing/copy/publishing establishment, less than 4,000 square feet	N	N	N	N	N	N	N	Y	Y	Y	Y	Y	N
4.1.5.31 Printing/copy/publishing establishment, 4,000 square feet or more	N	N	N	N	N	N	N	BA	BA	Y	Y	Y	N
4.1.5.32 Major Business Development per Section 7.2	N	N	N	N	N	N	N	PB	PB	PB	PB	PB	PB
4.1.5.32 Building Trade Shop in an establishment with less than 8,000 square feet	N	N	N	N	N	N	N	Y <sup>8</sup>	Y <sup>8</sup>	Y	Y	Y	N
4.1.5.34 Building Trade Shop in an establishment with 8,000 square feet or more	N	N	N	N	N	N	N	BA	BA	Y	Y	Y	N
4.1.5.35 Commercial laundry, dry cleaning, dye work, carpet cleaning	N	N	N	N	N	N	N	N	N	BA	BA	BA	N
4.1.5.36 Public Communications Use	N	N	N	N	N	N	N	N	N	BA <sup>9</sup>	BA <sup>9</sup>	BA <sup>9</sup>	N
4.1.5.37 Educational Use, Non-Exempt	N	N	N	N	N	N	N	BA	BA	Y	Y	Y	Y
4.1.5.38 Contractor's Yard	N	N	N	N	N	N	N	N	N	BA	BA	N	N
4.1.5.39 Medical Marijuana Establishment per Section 7.4	N	N	N	N	N	N	N	N	N	N	N	N	BA
4.1.5.40 Non-Medical Marijuana Establishment	N	N	N	N	N	N	N	N	N	N	N	N	N
4.1.5.41 Fire Arms/Explosives Sales and Service	N	N	N	N	N	N	N	BA	BA	BA	BA	N	N
4.1.5.42 Taxi Service	N	N	N	N	N	N	N	N	N	BA	N	N	N

PRINCIPAL USE	DISTRICTS												
	SRA	SRB	SRC	SRD	SRE	GR	SR	LBA	LBB	HB	I	IO	ARO
<b>4.1.6 INDUSTRIAL USES</b>													
4.1.6.1 Earth Material Movement per Section 7.1	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB	PB
4.1.6.2 Light Manufacturing	N	N	N	N	N	N	N	N	N	Y	Y	Y	N
4.1.6.3 Warehouse, wholesale or distribution facility without outdoor storage	N	N	N	N	N	N	N	N	N	Y	Y	Y	N
4.1.6.4 Warehouse, wholesale or distribution facility with outdoor storage	N	N	N	N	N	N	N	N	N	BA	BA	BA	N
4.1.6.5 Manufacturing	N	N	N	N	N	N	N	N	N	Y	Y	Y	N
4.1.6.6 Junkyard or Automobile Graveyard	N	N	N	N	N	N	N	N	N	N	N	N	N
4.1.6.7 Research and Development	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y
4.1.6.8 Self-Storage or Mini-Storage Facility per Section 7.6	N	N	N	N	N	N	N	N	N	PB	PB	PB	N
<b>4.1.7 OTHER USES</b>													
4.1.7.1 Pay-to-Park Outdoor Parking Facility	N	N	N	N	N	N	N	BA	BA	BA	BA	BA	N
4.1.7.2 Parking Garage	N	N	N	N	N	N	N	N	N	N	N	N	BA
4.1.7.3 Drive-Through Service	N	N	N	N	N	N	N	BA	BA	BA	BA	BA	BA
4.1.7.4 Temporary Structure, building or use not in conformance with this Bylaw, but not for more than one (1) year, or extended over more than a total of three (3) years	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA	BA

#### 4.2 NOTES FOR TABLE OF PRINCIPAL USES

- 1 Accessory dwellings may be allowed to the extent expressly allowed by the special permit.
- 2 Open Space Residential Development shall be permitted in the SRB, SRC and SRE districts and the uses delineated in Article 8.0, Special Residential Development, Section 8.3, Open Space Residential Development, shall be the allowed uses in OSRD projects.
- 3 Non-exempt farm stands on municipal properties are permitted and exempt from BA special permit requirements.
- 4 For only retail sales and services in the Highway Business District that do not require a special permit pursuant to other sections of the Bylaw and do not involve Adult Uses
- 5 Except for a retail grocery store which may exceed 10,000 square feet.
- 6 Retail sales and services in the Industrial and Industrial-Office Districts between 10,000 square feet and 50,000 square feet shall require a special permit from the Board of Appeals. Retail sales and services over 50,000 square feet shall require only a special permit from the Planning Board pursuant to Section 7.2, Major Business Development.
- 7 In addition to meeting all other requirements for a special permit for a Fast Order Food Establishment in the Highway Business District, the Applicant shall be required to submit the opinion of a qualified professional expert, and the data upon which such opinion is based, showing to the reasonable satisfaction of the Board of Appeals that the facilities for on-site parking (taking into account all other uses and activities that share the premises with the proposed use) will be sufficient to serve the employees and customers of such establishment without encroaching upon or using neighboring streets or property.
- 8 A special permit from the Board of Appeals shall be required if there is outdoor storage of equipment or materials.
- 9 Does not include wireless communications facilities.

#### 10.3 SPECIAL PERMITS

10.3.1 **Special Permit Granting Authority.** Unless specifically designated otherwise, the Board of Appeals shall act as the Special Permit Granting Authority.

**10.3.2 Application.** An application for a special permit for uses designated in the Zoning Bylaw shall be filed with the Town Clerk, who shall forthwith transmit it to the Special Permit Granting Authority. The Special Permit Granting Authority shall hold a public hearing within sixty-five (65) days of the filing date and shall render a decision within ninety (90) days from the date of the public hearing. Failure to take final action within the ninety (90)-day period shall be deemed to be a grant of the special permit.

**10.3.3 Decision.** Special permits shall be granted by the Special Permit Granting Authority, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the Town or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Bylaw, the determination shall include consideration of each of the following:

10.3.3.1 Social, economic or community needs which are served by the proposal;

10.3.3.2 Traffic flow and safety, including parking and loading;

10.3.3.3 Adequacy of utilities and other public services;

10.3.3.4 Neighborhood character, aesthetics and social structures;

10.3.3.5 Impacts on the natural environment; and

10.3.3.6 Potential fiscal impact, including impact on Town services, tax base and employment.

**10.3.4 Procedures.** An application for a special permit shall be filed in accordance with the rules and regulations of the Special Permit Granting Authority.

**10.3.5 Conditions.** Special permits may be granted with such reasonable conditions, safeguards or limitations on time or use, including performance guarantees, as the Special Permit Granting Authority may deem necessary to serve the purposes of this Bylaw.

**10.3.6 Plans.** An Applicant for a special permit shall submit a plan in substantial conformance with the requirements of the Special Permit Granting Authority.

**10.3.7 Regulations.** The Special Permit Granting Authority may adopt rules and regulations for the administration of this Section.

**10.3.8 Fees.** The Special Permit Granting Authority may adopt reasonable administrative fees and technical review fees for applications for special permits.

**10.3.9 Lapse.** Special permits shall lapse if a substantial use thereof or construction there under has not begun, except for good cause, within two (2) years following the filing of the special permit approval (plus such time required to pursue or await the determination

of an appeal referred to in M.G.L. Chapter 40A, Section 17 from the grant thereof) with the Town Clerk.

**FINDINGS**

In consideration of all of the testimony and exhibits and documents submitted before the Board, the Board makes the following findings of fact:

1. The Mercedes dealership currently operates with the benefit of a Special Permit issued by the Board of Appeals on February 9, 2001 pursuant to the Westwood Zoning Bylaws, Sections 10(b)(1), 10(b)(6), 10(b)12 and 12A (in effect in 2001) to construct and operate an automotive sales and service dealership of Mercedes-Benz passenger and sports utility vehicles. In a decision dated September 18, 2007, the Zoning Board of Appeals approved the transfer of the Mercedes property from Clair Limited Partnership to AMR Real Estate Holdings LLC. On August 5, 2008 the existing Special Permit was amended again to include under the definition of "Land Affected" to include 100 Everett Street, modify Condition No. 5 (sale of non-Mercedes trade-ins) to allow the sale of such trade-ins and to modify condition No.6 (parking inventory).
2. On November 9, 2009 the Planning Board endorsed an Approval Not Required (ANR) plan that combined the lots of 425 Providence Highway Assessor's Map 23 Lot 230 and the lot formerly known as 100 Everett Street, Assessor's Map 23 Lot 229 into one lot, currently known as 425 Providence Highway, Assessor's Map 23 Lot 230.
3. The Petitioner proposes to demolish and reconstruct the front of the existing Mercedes-Benz dealership building, resulting in a new building footprint and reconfiguration of the existing parking lot. The property is located in the HB (Highway Business) zoning district.
4. The property is primarily located in the Town of Westwood with a lot size of 4.21 acres. An additional parcel is located in the Town of Norwood consisting of 1.94 acres. The existing building is completely located in Westwood and the parking lot is located in Norwood.
5. The Applicant proposes demolishing and reconstruction to the east and south facing facades. This will extend a small portion of the building into Norwood and increase the building footprint from 56,500 square feet to 59, 549 square feet.
6. The newly reconfigured parking lot will have fewer spaces than are currently on site. The parking will decrease from 495 spaces to 463, with the majority of the spaces located in Westwood.
7. The Petitioner is seeking to amend the approved plans associated with the original Special Permit as required in Condition 1 or the original Special Permit.

8. The Petitioner received Environmental Impact and Design Review (EIDR) approval from the Planning Board on August 8, 2023 and a Land Disturbance permit from the Conservation Commission on September 13, 2023.
9. The Petitioner's requests will not have a material adverse effect on the value of the land and buildings in the neighborhood, or on the amenities thereof, or be detrimental to the normal use of the adjacent property, and they will not be injurious or dangerous to the public health or hazardous because of traffic congestion, or other reason, and any adverse effects of the proposed use do not outweigh its beneficial aspects, all in view of the particular characteristics of the site and of the proposals in relation to that site.
10. The Petitioner has met all the requirements for a Special Permit pursuant to the Westwood Zoning Bylaw.

**DECISION and CONDITIONS**

The Board of Appeals voted unanimously to grant the Petitioner's request to amend Condition #1 (Changes to the approved plans) in the existing Special Permit dated February 9, 2001 subject to the following conditions:

1. The Project shall be constructed in conformity with the site Plan titled: "Site Development Plans for Group One Automotive – Mercedes-Benz", prepared by the Independence Engineering LLC, 33 Commercial Street, Raynham, MA 02767 , dated March 14, 2023 and revised through August 8, 2023, consisting of 15 sheets and Architectural plan with town boundary entitled "Architectural Site Plan with Town Line (2023-03-29), prepared by J+MxD, dated March 29, 2023, consisting of one (1) sheet and substantial conformity with Architectural plan set entitled "Mercedes-Benz of Westwood", prepared by Johnson + McLean x Design, LLC (J+MxD), Fernandina Beach, FL and Woodland Park, CO, dated August 5, 2022, consisting of 16 sheets
2. Approval of this Special Permit shall be subject to such conditions set forth by the Planning Board's Environmental Impact and Design Review (EIDR) decision issued August 21, 2023 and the Conservation Commission's Stormwater Land Disturbance Permit granted on September 13, 2023.
3. If the Project, or any Condition imposed in this Decision, requires permit, license, or other approval from any other board, committee, or agency of the Town of Westwood or other regulatory agency of the Commonwealth or the federal

government, the Applicant shall make an appropriate application for the same, and shall obtain all required approvals prior to the start of any work.

4. The Applicant shall pursue completion of the Project with reasonable diligence and continuity.
5. This Special Permit shall not take effect until a copy of the Decision, bearing the certification of the Town Clerk that twenty (20) days have elapsed after the filing of the decision and either that no appeal has been filed or that an appeal has been filed within such time period, is recorded in the Registry of Deeds and indexed under the name of the property owner of record and the parcel address. A copy of these recordings shall be provided to the Building Commissioner, Town Clerk and the Board of Appeals.
6. **The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and any construction performed under the permit may be ordered to be undone.**
7. This Special Permit shall lapse within a specified period of time, of not more than two (2) years, which shall not include such time required to pursue or await the determination of the appeal referred to in Chapter 40A, Section 17, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of a permit for construction, if construction has not begun by such date except for good cause. Prior to the expiration of the Special Permit, the Applicants may apply for an extension of the Special Permit for a period not to exceed one (1) year if the substantial construction or use thereof has not commenced for good cause.

#### RECORD OF VOTE

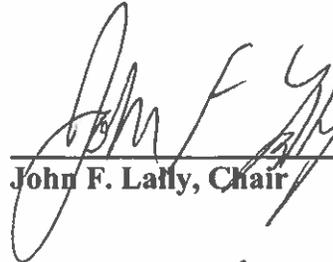
The following members of the Board of Appeals voted in favor of the Petitioners' request for a Special Permit amendment: John Lally, Michael McCusker, and Linda Walsh.

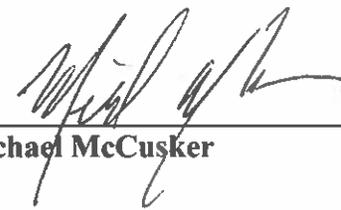
The following members of the Board of Appeals voted in opposition to the Petitioners' request for a Special Permit amendment: None.

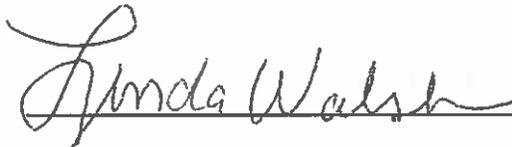
Received September 28, 2023 @ 3:56PM  
Westwood Town Clerk



**WESTWOOD ZONING BOARD OF APPEALS**

  
\_\_\_\_\_  
John F. Lally, Chair

  
\_\_\_\_\_  
Michael McCusker

  
\_\_\_\_\_  
Linda Walsh

9-28-23  
Date

425 Providence Highway