

Town of Westwood
Commonwealth of Massachusetts

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2018 APR 26 P 4: 09

ZONING BOARD OF APPEALS

TOWN CLERK
TOWN OF WESTWOOD

NOTICE OF DECISION

In compliance with Chapter 40A of the General Laws of the Commonwealth of Massachusetts, you are hereby notified that the Board of Appeals has unanimously voted to grant the Petitioner, Tesla Motors, Inc., its request for a Special Permit pursuant to Section 4.1.5.8 of the Westwood Zoning Bylaws, to allow motor vehicle sales.

PROPERTY OWNER(S): Rte One Management LD Trust,

LAND AFFECTED: 420 Providence Highway, Westwood, MA
Map 24 Lot 83

The signed decision for the petition was filed at the office of the Town Clerk on **April 26, 2018.**

Any appeal of this decision shall be made pursuant to the Massachusetts General Laws, Chapter 40A, Section 17 and a copy delivered to Office of the Town Clerk within twenty (20) days of the date that the decision was filed in the office of the Town Clerk.

**DECISION OF THE ZONING BOARD OF APPEALS
of the
TOWN OF WESTWOOD**

PROPERTY OWNER(S): Rte One Management LD Trust,

PETITIONER(S): Tesla Motors, Inc.
3075 Wilshire Blvd., Suite 330
Beverly Hills, CA 90211

LAND AFFECTED: 420 Providence Highway
Westwood, Massachusetts 02090
Map 24, Lot 83

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, March 21, 2018 at 7:00 PM in the Champagne Meeting Room, Carby Street Municipal Building, 50 Carby Street, Westwood, Massachusetts 02090, to consider the Petitioners' request for a Special Permit pursuant to Section 4.1.5.8 of the Westwood Zoning Bylaws, to allow motor vehicle sales. Property is located in the Highway Business (HB) District.

BOARD MEMBERS: David W. Krumsiek, Chairman
John F. Lally
David M. Belcher

APPLICABLE SECTION OF THE WESTWOOD ZONING BYLAW

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	
4.1.5 COMMERCIAL USES														
4.1.5.1 Agricultural Use, Non-exempt	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
4.1.5.2 Farm Stand, Non-exempt ¹	BA	BA	BA	BA	BA	BA	BA	N	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	N
4.1.5.4 Funeral Home	N	N	N	N	N	N	N	BA	BA	BA	N	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	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 ⁴	Y	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 ⁵	Y ⁴	BA ⁶	BA ⁶	N	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	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	N
4.1.5.10 Motor Vehicle Light Service	N	N	N	N	N	N	N	BA	BA	BA	N	N	N	N
4.1.5.11 Car Wash	N	N	N	N	N	N	N	N	N	BA	N	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	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	N
4.1.5.14 Restaurant with entertainment	N	N	N	N	N	N	N	PB	PB	PB	N	N	N	N
4.1.5.15 Fast Order Food Establishment	N	N	N	N	N	N	N	N	N	BA ⁷	N	N	N	N
4.1.5.16 Coffee Shop	N	N	N	N	N	N	N	Y	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	Y	N
4.1.5.18 Pet Care facility	N	N	N	N	N	N	N	Y	Y	Y	BA	BA	N	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	N
4.1.5.20 Professional Services Establishment	N	N	N	N	N	N	N	Y	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	Y

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 thereunder 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 Subject Property is located at 420 Providence Highway in Westwood.
2. The lot area of the Subject Property is approximately 153,031 (3.51 acres) where 10,000 sq.ft. is required.
3. The lot frontage of the Subject Property is over 400' where 100' is required.
4. The existing two-story building on the Premises has a floor area of approximately 41,298 sq.ft. and has in the past been used for motor vehicle sales and services pursuant to various non-transferable special permits granted by the Westwood Zoning Board of Appeals.
5. The Petitioner wishes to continue to use the Premises as a motor vehicle sales facility, involving the display, sales and delivery of automobiles, energy products and related parts, accessories and merchandise, and the employment of approximately 30 persons.
6. The Project will require a Special Permit pursuant to Section 4.1.5.8 of the Westwood Zoning Bylaw. The Board of Appeals is the Special Permit granting authority.
7. The Project will also require an Environmental Impact and Design Review (EIDR) pursuant to Section 7.3 of the Westwood Zoning Bylaw. The Planning Board is the EIDR Approval granting authority.
8. The Board has given full consideration to the local conditions that affect and may be affected by the Petitioner's proposed construction, and having particular expertise in said local conditions, have taken a view that any adverse effects of the Petitioner's proposed motor vehicle sales use will not outweigh its beneficial impact to the Town, or the neighborhood, in view of the particular characteristics of the site and the proposal in relation to that site.
9. The Petitioner's proposed motor vehicle sales use 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 it will not be injurious or dangerous to the public health or hazardous, 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 proposal 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 for a Special Permit pursuant to Section 4.1.5.8 of the Westwood Zoning Bylaw and upon the following conditions:

1. The Project shall be constructed in conformity with the submitted plan titled "Tesla - Westwood Delivery and Sales, 420 Providence Highway, Westwood, MA 02090", prepared by Callisonrtkl, dated February 26, 2018, consisting of nine (9) sheets ("Project Plans").

2. The Project Plans shall require EIDR Approval by the Westwood Planning Board and this special permit shall be subject to all conditions of said approval. In the event that the Planning Board requires changes to the Project Plans that have been approved by the Board of Appeals, the Petitioner shall make formal application to the Board of Appeals for a review of said changes, unless the Building Commissioner determines said changes to be de minimis, in which case said changes will be incorporated by reference into the Project Plans approved by the Board of Appeals and become effective as though they were originally included therein.
3. The Petitioner shall pursue completion of the Project with reasonable diligence and continuity.
4. The memorandum from the Board of Health to the Board of Appeals, dated March 14, 2018, shall be made part of this decision and shall be carried out as follows:
 - a. The applicant shall use a waste hauler, licensed by the Westwood Board of Health to dispose of construction debris;
 - b. If necessary, the applicant shall provide a portable toilet, licensed by the Westwood Board of Health;
 - c. Interior/exterior renovations or demolition require an asbestos survey conducted in compliance with DEP Asbestos Regulations; and
 - d. If hazardous materials will be stored at the facility, compliance with the Hazardous Materials Bylaw is required. The Health Director will determine if registration under the Hazardous Materials Bylaw is required after review of a list of chemicals/quantities provided by the applicant.
5. The Project shall be subject to the conditions of approval of all other permits, if any, required to be issued to the Petitioner by other boards or agencies of the Town of Westwood.
6. This special permit is granted to the Petitioner, Tesla Motors, Inc., and is non-transferable to any other entity without the issuance of a new special permit.
7. This decision shall be recorded at the Norfolk County Registry of Deeds and/or, if applicable, filed with the Norfolk Land Court Registry District, with proof of the recording/filing furnished to the Board of Appeals and Town Counsel.
8. The Property shall be used exclusively as a motor vehicle sales facility, involving the display, sales, and delivery of Tesla automobiles, energy products and related parts, accessories and merchandise. The Petitioner is specifically prohibited from using the Property for the sales, delivery, rental or service of any other motor vehicle manufactured by any other company or corporation except for such vehicles as may be traded in for Tesla vehicles sold on site.
9. Parking of all vehicles shall be on site, and the Petitioner shall instruct all of their employees, customers and business invitees to park their vehicles only on the Subject Property while working at or visiting the site.
10. Loading and unloading of all delivery vehicles shall be on site. The Petitioner is specifically prohibited from using Walper Street and Perwal Street for the loading and unloading of any deliveries.
11. The building, grounds and display aesthetics and function, including lighting and signage, shall be scrupulously maintained by the Petitioner, which maintenance shall be enforceable by the Town.

12. All shrubbery, plantings and other vegetation depicted on the Project Plans shall be planted and maintained as indicated thereon for so long as the Petitioner shall use the site as a Tesla sales and delivery facility.
13. The road testing of all vehicles shall be on Route 1/Providence Highway and or Route 128 only. The public ways leading to Route 1/Providence Highway and Route 128 may be used for ingress and egress purposes only. Road tests are specifically prohibited on all private ways and/or adjoining properties.
14. The Petitioner shall perform snow plowing operations in a manner that will keep the snow on the Subject Property.
15. The Petitioner shall use wireless phones and pagers for on-site contact with personnel and outside announcements using a Public Address System, if any, shall be limited to contact of customers on an occasional, emergency basis.
16. The Petitioner shall not use "carnival atmosphere" promotions on site, which shall include banners, streamers, balloons, "sale" signs, or other marketing/advertising devices.
17. The Petitioner shall fully enclose the dumpster/trash and recycling area with appropriate sight impervious fencing.
18. The Petitioner's contract plans and specifications shall contain a written direction that all contractors use Route 1/Providence Highway as the access/egress road to the Project Site.
19. The Petitioner's employees shall be notified in writing of the restrictions which apply to them as set forth hereinabove in paragraphs numbered 9, 10, 13, 14, 15 and 16, and shall be advised of the procedures in effect to enforce those restrictions. They will be advised that an employee who violates a restriction will be warned verbally for the first infraction, that a second infraction will result in a written warning, and that a third infraction may be cause for termination of employment.
20. The Petitioner shall provide to its concerned abutters the information necessary to contact the general managers of its Tesla sales and delivery facility and the Petitioner's General Counsel should they need to contact these individuals if any operational problems described hereinabove arise.
21. The hours of operation for motor vehicle sales and delivery shall be 8:00 am to 9:00 pm, Monday through Friday; 8:00 am to 7:00 pm on Saturday; and 10:00 am to 6:00 pm on Sunday.
22. The Petitioner shall not refer to or imply that this Tesla sales and delivery facility is located on the so-called "Route One/Norwood Automile" in any broadcast or written promotional materials or advertisements unless or until another automobile dealership in Westwood is permitted to do so.
23. 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.

24. **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.**
25. This Special Permit shall lapse if a substantial use thereof or construction thereunder has not begun, except for good cause, within two (2) years following the filing of this decision with the Town Clerk (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). Prior to the expiration of this Special Permit, the Applicant may apply for an extension 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 to grant the Special Permit for the above mentioned project: David W. Krumsiek, John K. Lally, and David M. Belcher.

The following members of the Board of Appeals voted in opposition to the grant of the Special Permit: None.



WESTWOOD ZONING BOARD OF APPEALS

2018 APR 26 P 4: 09

TOWN CLERK
TOWN OF WESTWOOD

David W. Krumsiek - Chairman

John F. Lally

David M. Belcher

3/21/2018
Date

420 Providence Highway-Tesla Motors, Inc.

