



## TOWN OF BOLTON

### ZONING BOARD OF APPEALS

Town Hall, 663 Main Street, Bolton, MA 01740  
Phone: 978-779-3308 Fax: 978-779-5461

**Decision to Uphold the Building Inspector's Decision to Issue a Cease and Desist Order of  
the Home Occupation at 423 Harvard Road, Bolton, MA**

Petition: Petition for Relief from the Building Inspector's Decision

Petitioner: Tiago Vieira  
VRSF (Business Name)  
423 Harvard Road  
Bolton, MA 01740

Premises: 423 Harvard Road, Bolton, MA 01740  
Bolton Assessor's Map 4.D Parcel 20  
Residential Zoning District

Owner: Tiago Vieira  
423 Harvard Road  
Bolton, MA 01740

Date Petition filed with Town Clerk: June 12, 2018

Home Occupation: Use Premises for the receipt, sorting, packaging and/or distribution of goods, products and materials (primarily automobile parts).

#### **PROCEDURAL HISTORY**

1. On June 12, 2018, the Petitioner, pursuant to M.G.L. Chapter 40A, Sections 8 and 15, filed an Administrative Appeal with the Zoning Board of Appeals (ZBA) appealing the Bolton Building Inspector's decision to issue a Cease and Desist Order dated April 26, 2018 of the Home Occupation at the Premises.
2. A public hearing on the Petition was noticed for Wednesday, July 18, 2018. Notice of the public hearing was published in the Clinton Item on June 29, 2018 and July 6, 2018. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing.
3. The ZBA commenced the public hearing for the Petition on Wednesday, July 18, 2018 at the Houghton Building, 697 Main Street, Bolton, MA at 7:00 p.m. at which time all those opposed or in favor could be heard.

4. The ZBA continued the public hearing to August 2, 2018, August 7, 2018, August 28, 2018, and September 17, 2018 to provide for additional time to receive supplemental comments and information, and to conduct a site visit of the Premises. The continued hearing on Thursday, August 2, 2018, was held at the Houghton Building at 7:30 p.m. The continued hearing on Monday, August 7, 2018, was canceled due to failure to post the agenda 48 hours prior to the meeting. The continuation of the public hearing was then noticed for August 28, 2018. Notice of the public hearing was published in the Worcester Telegram & Gazette on August 11, 2018 and August 18, 2018. Both notices were posted for 14 days in the Bolton Town Hall, and mailed to parties of interest at least 14 days before the public hearing. The continued hearing on Tuesday, August 28, 2018, and Monday, September 17, 2018, were held at Bolton Town Hall, 663 Main Street, Bolton, MA at 7:00 p.m.
5. Members of the ZBA attending sessions of the public hearing, deliberating and voting on the Petition were Chairman Gerard Ahearn, Bradley Reed, Kay Stoner, Andy Kischitz, and Bryan Holmes.
6. On September 17, 2018, pursuant to M.G.L. c.39, Section 23.D, Bryan Holmes certified in writing that he examined all of the evidence received by the Board including meeting minutes of the public hearing held on August 28, 2018 which he failed to attend.
7. The Petitioner and their Representative were in attendance at the public hearing. The Petitioner's Representative was Atty. Christopher P. Yates, Esq. of Fletcher Tilton PC on July 18, 2018, August 28, 2018, and September 17, 2018. The Petitioner was represented by Atty. Peter Barbieri, Esq. of Fletcher Tilton PC on August 2, 2018.
8. The Building Inspector, Michael Sauvageau, was in attendance at the public hearing on July 18, 2018 and August 28, 2018.
9. Throughout its deliberations, the ZBA was mindful of the statements of the Petitioners, the Owners, representatives, and the comments of the general public, all as made or received at the public hearing.

### **RECORD DOCUMENTS**

True copies of the Petition and all materials submitted to the ZBA relevant to the Petition by the Petitioner and others, and the notices of the public hearing, are made a part of the record of this decision and listed in Appendix A. These materials are on file with the Office of the Town Planner.

### **BACKGROUND**

1. On April 9, 2018, a Cease and Desist Order was issued by the Building Inspector to the Petitioner regarding the Home Occupation being conducted on the Premises without the

submission and approval of a Form of Intent Application.

2. On April 13, 2018, the Petitioner filed a Home Occupation Form of Intent with the Town Clerk to conduct resale of aftermarket car parts.
3. On April 26, 2018, the Building Inspector issued a Cease and Desist Order to the Petitioner after his review of the Petitioner's Home Occupation Form of Intent.
4. On June 12, 2018, the Petition was filed with the ZBA entitled "Petition for Relief from the Building Inspector's Decision" dated June 12, 2018.

### **DISCUSSION AND FINDINGS**

1. Over the course of the hearing, the ZBA heard testimony as summarized in the discussion and findings set forth below.
2. The Petitioner's Representative stated during the course of the hearing and through written submission that the Petitioner sought to use his property to operate a Home Occupation pursuant to Bolton Zoning Bylaw Section 250-21A. The Petitioner (1) resides on the Premises; (2) the use of the barn for the receipt and redistribution of automobile parts is incidental to the use of the residence as the Petitioner conducts receipt and distribution of these automobile parts not from his home, but from the barn, and he uses the home as his primary residence with his family, (3) the Petitioner employs one part time employee; and (4) there is no noise, vibration, dust, heat, odor, glare, traffic congestion, unsightliness or other nuisance resulting from the Premises. The Petitioner's Representative also concluded that the Petitioner's barn should not be deemed a commercial building under Section 250-11 Mixed Uses of the Bolton Zoning Bylaw. The Petitioner sought to use his barn to receive, sort, package and re-distribute automobile parts on a short-term basis, no different than someone re-selling traditional goods. There is no outdoor storage of the automobile parts and the parts are ordered and re-distributed based on customer demand without overflow. The Petitioner's Representative stated that the fire protection systems recommended by the Bolton Fire Department were put in place with exception of the protected cage around the outside propane tank. The Petitioner submitted a Home Occupation Form of Intent on April 13, 2018.
3. In the Home occupation Form of Intent, the Petitioner provides a description of the Home Occupation as follows "Resale of aftermarket car parts. Strictly warehouse. No clients on site. No services. One part time employee. No equipment outside."
4. The Building Inspector stated during the public hearing that he conducted a site visit at the Premises where he observed stacked cardboard boxes in the Petitioner's barn. The Building Inspector observed a forklift within the barn that appeared to be part of the warehouse operation. In addition, the Building Inspector witnessed the outside storage of crates and delivery of boxes to the Premises from a tractor trailer. In the opinion of the Building Inspector, the delivery and storage of automobile parts is a commercial activity,

not a “customary” or “professional office” home occupation, and therefore not allowed in the Residential District in accordance with Section 250-21A and Section 250-12 of the Bolton Zoning Bylaw.

5. Section 250-12 Schedule of Permitted Uses of the Bolton Zoning Bylaw provides that “Other retail, wholesale or service: wholly within a building or wholly or partially outside a building” is a use not allowed in the Residential District. “Warehouse” is not specifically defined as a use for purposes of Bolton Zoning Bylaw, and does not fall within any of the use categories allowed in the Residential District under Section 250-12 of the Bolton Zoning Bylaw.
6. Section 250-21A Accessory Uses of the Bolton Zoning Bylaw provides that “[i]n all districts, professional office or customary home occupation uses are permitted, provided that:
  - (1) The profession or home occupation is conducted by a resident of the premises.
  - (2) The use is clearly incidental to and secondary to the use of the premises for residential purposes and the external character of the premises is that of a one-family residence.
  - (3) Not more than two persons other than the residents of the dwelling and not more than a total of four are employed at any one time on the premise in the home occupation.
  - (4) No noise, vibration, dust, heat, odors, glare, traffic congestion, unsightliness or other nuisance results which is discernible from other properties, or which is detrimental to the environment.”
7. Section 250-11 Mixed Uses of the Bolton Zoning Bylaw provides that “[n]o business, commercial, or industrial building or outdoor storage (except for agriculture, horticulture, or floriculture) shall be established on a lot on which a dwelling exists.”
8. The ZBA and a member of the Bolton Fire Department conducted a site visit of the Premises on Thursday, August 2, 2018, prior to the continuation of the public hearing. No deliberations occurred during the site visit.
9. Through written submission, the Fire Department stated that if the barn structure is used as an auxiliary/home business or S1 storage class 1 building, the Department would like to see the following fire protection systems be in place: heat detectors placed in the storage area, smoke detectors in office or finished area of the building, adequate fire extinguishers, and propane storage outside of the building in a protected cage.
10. Based upon the comments and evidence received, the ZBA members deliberated among themselves before the Chair called for a motion.

## DECISION

Following the public hearing on September 17, 2018, Bradley Reed made a motion, seconded by Bryan Holmes, that the Zoning Board uphold the Building Inspector's decision to issue a Cease and Desist Order dated April 26, 2018 of the Home Occupation at 423 Harvard Road. The motion, as seconded, proposed the following reasons for the decision:

1. The storage of automobile parts in a warehouse is not a customary profession for a home occupation in accordance with Section 250-21A of the Bolton Zoning Bylaw.
2. The Home Occupation Form of Intent indicates a warehouse use which is not allowed in the Residential District in accordance with Section 250-12 of the Bolton Zoning Bylaw.
3. Section 250-12 Schedule of Permitted Uses of the Bolton Zoning Bylaw provides that "Other retail, wholesale or service: wholly within a building or wholly or partially outside a building" is a use not allowed in the Residential District. "Warehouse" is not specifically defined as a use for purposes of Bolton Zoning Bylaw, and does not fall within any of the use categories allowed in the Residential District under Section 250-12 of the Bolton Zoning Bylaw.
4. The storage of automobile parts on the Premises is not incidental in nature to the residence and is considered unsightly to the neighborhood in accordance with Section 250-21A of the Bolton Zoning Bylaw. Board members observed the following actions that support their decision to uphold the Building Inspector's decision to issue a Cease & Desist of the home occupation:
  1. Storage of automobile parts in the barn similar to a warehouse (can be seen from the neighborhood when the barn door is open);
  2. Stacks of commercial pallets in the driveway;
  3. Shipments placed outside the barn; and
  4. Tractor trailer deliveries frequenting the Premises.

### RECORD OF VOTE

The following members of the Zoning Board unanimously voted in favor: Gerard Ahearn, Bradley Reed, Kay Stoner, Andy Kischitz, and Bryan Holmes. The Building Inspector's decision to issue a Cease and Desist Order dated April 26, 2018 of the Home Occupation at 423 Harvard Road is upheld with a vote of five (5) in favor.

**Gerard Ahearn – yes**


**Bradley Reed – yes**

**Kay Stoner – yes**

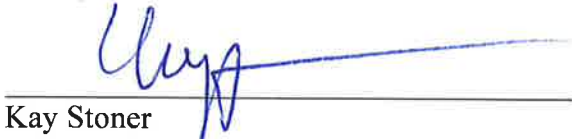
**Andy Kischitz – yes**

**Bryan Holmes - yes**

Date: 9/17/2018

  
Gerard Ahearn, Chairman

  
Bradley Reed

  
Kay Stoner

  
Andy Kischitz

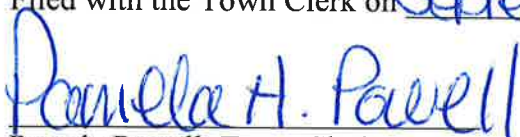
  
Bryan Holmes

Appeals, if any, to this decision must be made pursuant to M.G.L. c.40A, Section 17 and must be filed within twenty (20) days after the date of filing of this decision in the office of the Bolton Town Clerk.

This decision shall not take effect until a copy of this decision bearing the certification of the Town Clerk that twenty (20) days have elapsed after this decision has been filed in the office of the Town Clerk, and that no appeal has been filed within said twenty (20) days; or that, if such appeal has been filed, that it has been dismissed or denied.

### FILED WITH THE TOWN CLERK

Filed with the Town Clerk on September 26 2018.

  
Pamela Powell, Town Clerk

2018 SEP 26 PM 12:13

### **CERTIFICATE OF NO APPEAL**

The undersigned, being the Town Clerk of the Town of Bolton, certifies that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

Date: October 17, 2018.

Pamela H. Powell

Pamela Powell, Town Clerk

Copy of Variance Findings and Decision mailed to:

Abutters

Surrounding Towns

Bolton Boards and Committees

Petitioners

Owners

### **APPENDIX A: RECORD DOCUMENTS**

1. Cease and Desist Order dated April 9, 2018 issued by Michael Sauvageau, Building Inspector, to Mr. Tiago S. Vieira of 423 Harvard Road, Bolton, MA 01740.
2. Home Occupation Form of Intent prepared by Tiago Vieira for business entitled "VRSF" at 423 Harvard Road, Bolton, MA 01740 dated April 13, 2018.
2. Cease and Desist Order dated April 26, 2018 issued by Michael Sauvageau, Building Inspector, to Mr. Tiago S. Vieira of 423 Harvard Road, Bolton, MA 01740.
3. Petition for Relief from the Building Inspector's Decision dated June 12, 2018 prepared by Fletcher Tilton PC.
4. Three black and white photographs of the Premises submitted by Atty. Christopher P. Yates, Esq. of Fletcher Tilton PC on July 18, 2018.
5. Two colored photographs of the Premises submitted by Michael Sauvageau, Building Inspector, on July 18, 2018.
6. Letter to the Board of Appeals from Concerned Citizen referencing the July 18, 2018 ZBA meeting.

7. Email from the Fire Department to Erica Uriarte (Town Planner), Subject: RE: Site Walk at 423 Harvard Road, dated August 3, 2018.
8. Email from David Yesue (Resident at 44 Golden Run Road) to Erica Uriarte (Town Planner), Erik Neyland (Planning Board Chair) and Michael Sauvageau (Building Inspector), Subject: RE: Harvard at Warner, dated August 5, 2018.
9. Telephone Log. Phone Call to Erica Uriarte, Town Planner for Zoning Board of Appeals, from Barbara & Paul Weatherbee of 374 Harvard Road, RE: Home Occupation at 423 Harvard Road, dated August 27, 2018.