

PETITION FOR RELIEF FROM THE BUILDING INSPECTOR'S DECISION

June 12, 2018

VIA HAND DELIVERY

Pamela Powell
Town Clerk of Bolton
663 Main Street
Bolton, MA 01740

Gerard Ahearn, Chairman
Bolton Zoning Board of Appeals
663 Main Street
Bolton, MA 01740

RE: Petition for Relief of the Building Inspector's Decision

Dear Members of the Board:

Tiago Vieira (the "Petitioner") is the owner of real property located at 423 Harvard Road, Bolton, Massachusetts (the "Property"). The Petitioner seeks to utilize his Property to operate a "Home Occupation" pursuant to the Town of Bolton's Zoning Bylaw (the "Bylaw") Section 250-21A. Pursuant to the Bylaw, the Petitioner submitted a Home Occupation Form of Intent on April 13, 2018. In the Home Occupation Form of Intent, the Petitioner requested permission from the Town of Bolton to utilize his Property for the receipt, sorting, packaging and/or distribution of goods, products and materials – namely, automobile parts.

Under the Bylaw, home occupation is defined as "[a]n occupation or profession engaged in within a dwelling, or accessory building, by a resident thereof as a use accessory thereto." Pursuant to Section 250-21A of the Bylaw, home occupation is permitted as an accessory use if the following requirements are satisfied:

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 premises 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.

Here, the Petitioner is using the barn as a home occupation in precisely the manner as envisioned in Section 250-21A. The Petitioner (1) resides at the Property; (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 does not employ staff in relation to his home occupation, but for one part time employee; and (4) there is no noise, vibration, dust, heat, odor, glare, traffic congestion, unsightliness or other nuisance resulting from the Property.

Fletcher Tilton ^{PC}

Attorneys at law

The Petitioner's business is to receive, sort, package, and redistribute automobile parts on a short-term basis. The automobile parts are not being stored for an extended or unlimited timeframe. The automobile parts are also not found littered throughout the Petitioner's Property but are kept inside away from plain site. Instead, the automobile parts are only temporarily located inside the barn. Besides occasional Fed Ex deliveries and pick-ups, there are no customers that frequent the Property, no manufacturing of any sort takes place in the barn, and there are no repairs done to the automobile parts or use of hazardous materials in any shape or form on the Property.

In the Building Inspector's decision, the Building Inspector states that the Petitioner's desired home occupation is in violation of Section 250-11 of the Bylaw "Mixed Uses" because the storage of automobile parts is a commercial activity through a commercial building in the residential district. Pursuant to Section 250-11, "[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." The Petitioner is seeking to conduct a home occupation in an accessory building on his Property. The Petitioner's barn should not be deemed a commercial building under the Bylaw. The Petitioner is simply seeking to utilize 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. Respectfully, if the Building Inspector's interpretation of mixed uses were to stand, it would prohibit most if not all requests for home occupation as home occupation is by definition a commercial activity on a lot on which a dwelling exists.

For the reasons stated herein, the Petitioner respectfully requests that the Zoning Board of Appeals allow the Petitioner's Home Occupation Form of Intent.

Please feel free to contact me with any questions.

Respectfully submitted,

Nelson L. Santos, Attorney for Petitioner

Nelson L. Santos, Esq.

FLETCHER TILTON PC

THE GUARANTY BLDG.

370 MAIN STREET, 11TH FLOOR

WORCESTER, MA 01608

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FAX: 508-532-3125

EMAIL: NSANTOS@FLETCHERTILTON.COM

cc: Michael Sauvageau, Building Inspector



Michael Sauvageau
Inspector of Buildings

BUILDING DEPARTMENT

663 Main Street
Bolton, MA 01740

Tel. (978) 779-3312

April 26, 2018

Mr. Tiago S. Vieira
423 Harvard Road
Bolton, MA 01740

70001670000776433391

RE: CEASE AND DESIST ORDER

Dear Mr. Vieira,

Please be advised that after reviewing the "Home Occupation Form of Intent" dated April 13th, 2018, for the use of your barn as "storage for auto parts", I have determined that the "storage of auto parts" is not a "customary home occupation" under section §250-21, accessory uses of the Bolton Zoning Code.

Additionally, section §250-11, "mixed uses", does not allow the use of a commercial building in the residential district. The storage of auto parts is in my opinion a commercial activity and therefore not allowed in the residential district.

Please be aware that the "Cease and Desist Order" that you received dated April 9th, 2018 remains in full force and effect.

You have the right to appeal my determination to the Town of Bolton Zoning Board of Appeals.

Please contact me if you have any questions in regards to this correspondence.

Regards,

Michael Sauvageau
Building Inspector

Cc:

Don Lowe, Town Administrator
Zoning Board of Appeals



Town of Bolton Building Department
Michael J. Sauvageau
Building Inspector
663 Main Street, Bolton, MA 01740
Phone: 978-779-3312 Fax: 978-779-5461

Town Hall Hours:
Mon, Wed, Sat - 8 am-9am
Tuesday Night 7 - 8 pm

HOME OCCUPATION FORM OF INTENT

Date: 4/13/18

Owner Name: TIAGO VILHA Email: SALVADUR-SPRLED.COM

Name of Business: VRSF

Location of Business: 423 HARVARD RD BOLTON MA 01740

Mailing Address: " "

Phone Number: 978-906-1547 Cell Number: " "

Description of Business (include type of use, no. of employees, no. of customers visiting premises, parking, location of equipment on premises, etc.):

RESALE OF AFTER MARKET CAR PARTS. STRICTLY WAREHOUSE,
NO CLIENTS ON SITE, NO SERVICE, ONE PART TIME
EMPLOYEE. NO EQUIPMENT OUTSIDE.

Please verify your home occupation meets the requirements set forth in Section 250-21.A of the Code of the Town of Bolton (check boxes that apply):

- ☒ The profession or home occupation is conducted by a resident of the premises.
- ☒ 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.
- ☒ 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 premises in the home occupation.
- ☒ 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.

• You must file a Business Certificate in the Office of the Town Clerk •
(Business Certificate Application available at www.townofbolton.com)

• Home occupation signs require approval from Board of Selectmen and a building permit.
(Please contact Linda Day at 978 779 2297 or secretary@townofbolton.com)

Owner Signature [Signature]

Date 4/13/18

bylaw, is hereby incorporated in and made a part of this bylaw, including the map referred to in the "lot frontage" definition.¹

§ 250-10. Types of districts and permitted uses.

- A. No building or structure shall be erected or used except as set forth in this section or as exempted by § 250-3D, or by statute. The uses set forth in the following districts are to be considered exclusive to the district and are not to be considered mutual to any other district than that in which the allowed use appears. The use of land within the Town for disposal of solid waste derived from premises other than those of the owner or occupant is prohibited except for such operations as may be conducted by the Town of Bolton.
- B. In all districts, uses which are municipal, rural, agricultural, conservation and/or open space are specifically permitted in addition to the uses set forth below:
- (1) Floodplain: as defined in § 250-22 of the bylaws of the Town of Bolton.
 - (2) Residential: for single-family residential uses.
 - (3) Business: for retail and service establishments where business is conducted wholly within the closed building or wholly or partially outside a building by special permit. [Amended 5-6-2013 ATM by Art. 13]
 - (4) Limited Business: for retail and service establishments subject to special permit as required.
 - (5) (Reserved)²
 - (6) Industrial: for storage areas, office buildings, research and development laboratories, light manufacturing industries and compatible allied uses.
 - (7) (Reserved)³
 - (8) Limited Recreation Business District: as defined in § 250-16 of the bylaws of the Town of Bolton. [Added 12-15-1997 STM by Art. 7]

§ 250-11. Mixed uses.

No 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.

1. Editor's Note: See § 250-28 for the definition of "lot frontage." The Base Town Map and Zoning Map is included at the end of this chapter.
2. Editor's Note: Former Subsection B(5), regarding commercial uses, was repealed 5-6-2013 ATM by Art. 15.
3. Editor's Note: Former Subsection (g) was repealed 5-1-2006 ATM by Art. 14.

- source of water... the one-thousand-foot distance... the distance from the source of water to the farthest point of the farthest building on the subject property, along a route that fire apparatus would be expected to travel as the same is determined by the Fire Department.
- ned by the Fire Department. Determination of the distance from the source of water to the farthest point of the farthest building on the subject property, along a route that fire apparatus would be expected to travel as the same is determined by the Fire Department.
- B. The design and capacity of any new firefighting water supply shall be subject to the approval of the Planning Board with consultation from the Fire Department.
- C. The Planning Board may adopt rules and regulations relating to firefighting water supply and shall be informed by then-current requirements set forth by the National Fire Protection Association.

ARTICLE V Special Regulations

§ 250-20. Trailers and mobile homes.

- A. Bylaw applicability. All trailer coaches or mobile homes, used for dwelling, commercial, business or industrial purposes, parked in any area of the Town for more than 90 days shall conform to all bylaws and regulations applying to permanent dwellings or buildings except in emergencies as provided by the seventh paragraph of MGL c. 40A, § 3.
- B. Time restriction. The use of trailers or mobile homes for dwelling, commercial, business or industrial purposes in the Town for more than a period of one year is prohibited.

§ 250-21. Accessory uses.

- A. Home occupations. In 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 premises 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.
- B. Swimming pools. No person shall erect or construct a permanent swimming pool in the Town of Bolton without a building permit. Outdoor swimming pools shall be protected by an enclosure consistent with the requirements of the State Building Code.