

Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
USE VARIANCE APPLICATION
39 ALDER STREET
DENIED

Applicant(s): ETS Equipment Rental, Inc.
c/o Estevao Costa
11 Airport Road
Hopedale, MA 01747

Location of Property: 39 Alder Street (Assessors' Parcel ID: 63-004)

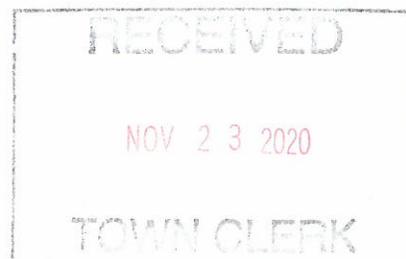
Approval Requested: The application is for the issuance of a **use variance** from Section 5.4, Table 1: Schedule of Uses of the Zoning Bylaw to allow an equipment rental and leasing business, including outdoor storage and preventative maintenance and repair of associated equipment on the property.

Members Participating: Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Christina Oster (Member)

Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Gibb Phenegar (Clerk), Tom Emero (Member), Christina Oster (Member)

Date of Decision: November 18, 2020

Decision: DENIED



*20 day appeal
December 14, 2020*

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I. PROCEDURAL HISTORY

1. On October 20, 2020, the Applicant filed an application for the issuance of a **use variance** from Section 5.4, Table 1: Schedule of Uses of the Zoning Bylaw to allow an equipment rental and leasing business, including outdoor storage and preventative maintenance and repair of associated equipment on the property.
2. Notice of the public hearing was published in the Milford Daily News on November 4, 2020 and November 11, 2020 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on November 18, 2020 and closed the same evening.
4. The property is located in the West Industrial (WI) Zoning District. The front setback requirement is 30 feet, side setback of 20 feet and rear setback requirements are 30 feet. The minimum lot area requirement is 40,000 sq. ft. and the minimum frontage requirement is 100 feet.
5. The Board notified Town departments, boards and committees of this application.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform and was also broadcast live on Medway Cable Access Facebook page. All persons participated remotely.

David Faist of CMG Environmental Services, the engineer of the project was present and gave an overview of the project that is proposed on an existing commercial property. The property is undeveloped between two developed properties; Lawrence Waste and another industrial property. They are proposing a building that will include offices along with garage area for maintenance of the equipment, as well as outdoor storage of the equipment. The proposed building and parking would be located at the front of the parcel and storage of equipment at the back. The area has been delineated for wetlands and the intent is to apply with the Conservation Commission for an Order of Conditions.

Mr. Costa, the applicant was present, and provided an overview of his business. They are currently renting an area in Hopedale and they own the fleet equipment that is leased out.

Mr. Phenegar inquired about how many employees; Mr. Costa stated 10. They are currently located about 5-7 miles from this proposed location.

Mr. Saint Andre stated that the Board has received many letters from different departments. She wanted to emphasize that the only proposal before the Board is the use variance. If approved, the applicant will need to go to the Planning and Economic Development Board for site plan review, the Conservation Commission

for an NOI application, and DPW for curb cuts, and possibly other permits. She stated the Board would need to make the findings for the same criteria as dimensional variances in this application for a use variance. Mr. Stumpf went over the four required criteria that will be discussed. Ms. Saint Andre stated that the applicant did not discuss the criteria tonight during the presentation, although information was included in the application.

Mr. Stumpf inquired about the use and storage of the equipment for the business. Mr. Costa stated the outdoor storage space would be for the equipment that they own which is waiting to be serviced or rented, not bulk material or any other kind of material. Mr. Stumpf inquired about variance criterion #1, Mr. Costa stated that the business is very similar to what is already being done at the abutting property (Lawrence Waste). Mr. Faist provided some information about criterion #1 including the shape of the land which restricts where the building and parking lot can go. He also discussed the fire hydrant that the town installed that would need to be moved in order to use the curb cut, as well as a lot of wetlands on the property limiting development to only about 2 acres. Mr. Emero inquired about how the items cited by the applicant regarding the property connect them to a use variance. Mr. Faist stated that equipment rental is not listed in the bylaw anywhere, therefore he is looking for a use variance. He stated the hardship relates to the development of the lot and the applicant is interested in developing the lot for the business and not having the variance is a hardship.

Mr. Stumpf referred to the Accessory Uses section (Table 1.E.) particularly in the West Industrial zoning district, outdoor storage is allowed as an accessory use. He inquired if the applicant is implying the outdoor storage is an accessory to the business? Further, Mr. Stumpf stated that he believes the equipment is not an accessory use and that it is the core of the business. Mr. Faist referred to the letter from Attorney Bill Sack, noting the business is an equipment rental company and the equipment is the accessory to the business. Mr. Phenegar stated that an accessory use does not really apply here. Mr. Stumpf stated the definition of accessory use and based off that; this is not allowed under the bylaw. Mr. White stated that in his view the accessory use space being proposed is quite large for this project, making it look like a storage yard that is housing equipment waiting to be leased. Mr. Stumpf stated that the bylaw was amended to specifically avoid this type of outdoor storage.

Glenn Trindade, 7 Stanley Road, stated that preventing this specific use being proposed is the reason the zoning bylaw was amended about a year ago regarding outdoor storage. Further, he stated the business is a great business, but the use is not what is wanted for that zoning district. Mr. Stumpf stated one of the reasons the bylaw changed is due to wanting the highest and best use of property for the Town. Mr. Trindade stated that Lawrence Waste is a great business but that is the last type of business the Town wanted in the industrial park, and therefore the bylaw was changed in order to plan accordingly for the future of the district and industrial park as a whole.

The Board then discussed the use variance criteria.

III. FINDINGS

In making its findings and reaching the decision described herein, the Board is guided by G.L. c. 40A, as amended, and by the Medway Zoning Bylaw. The Board also considered evidence and testimony presented at the public hearing and comments submitted by residents placed in the public record during the course of the hearings. The Board considered and voted on each variance criterion separately.

Section 5.4 Table 1 Schedule of Uses Use Variance Criteria

1. Whether owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

Mr. Phenegar stated that there are no factors to support this criterion. Mr. Stumpf and Mr. White agreed.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

Mr. Phenegar stated there was no evidence to support this criterion and the other members agreed. Mr. Stumpf further clarified that the hardship would have to be attached to the property, not a particular owner, and no such hardship was found.

3. Desirable relief may be granted without substantial detriment to the public good.

Mr. White stated that the proposed use does not meet criterion the Board is looking for but is not hazardous to the area. The other members agreed.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

Mr. White stated that this proposed use does not fall within the intent of the bylaw and would be against the bylaw in that district, particularly in light of the amendment that was passed by Town Meeting just last year to limit outdoor storage. The other members agreed.

The Board voted unanimously that the applicant had failed to demonstrate that the application met the criteria for the grant of a variance, specifically criteria 1, 2, and 4 as set forth above.

IV. INDEX OF DOCUMENTS

A. The application included the following plans and information that were provided to the Board at the time the application was filed:

1. "Preliminary Site Plan" ETS Equipment Rental, Inc. 39 Alder Street Medway, MA 02053 dated June 25, 2020 prepared for ETS Equipment Rental, Inc 11 Airport Road Hopedale, MA 01747

2. "ETS Equipment Rental Proposed Building – 39 Alder Street – Medway, MA" (herein the "Building Plans") dated August 10, 2020, prepared by Sovereign Design Associates, LLC 209 West Central Street Suite 107 Natick, MA 01760

Additional submittals were made by the applicant prior to the public hearing:

3. "Preliminary Site Plan" ETS Equipment Rental, Inc., 39 Alder Street, Medway, MA 02053 revised November 2, 2020, prepared for ETS Equipment Rental, Inc., 11 Airport Road, Hopedale, MA 01747

4. Water/Sewer Department Response Letter dated November 4, 2020 from David Faist of CMG Environmental, Inc.

5. Conservation Commission Agent Comment Response Letter dated November 6, 2020 from David Faist of CMG Environmental, Inc.

6. Letter from Attorney William D. Sack dated November 17, 2020

7. Email from Paul Yorkis dated November 18, 2020 re: Email from Barbara Saint Andre

8. Email from Paul Yorkis dated November 18, 2020 regarding 49 Alder Street, Lawrence Waste, with two Planning and Economic Development decisions attached

9. Planning and Economic Development Board Comment Response Letter dated November 18, 2020 from David Faist of CMG Environmental, Inc.

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Barry Smith, Medway Water Superintendent on October 28, 2020

2. Email from Bridget Graziano, Medway Conservation Agent on October 29, 2020

3. Email from Joanne Russo, Medway Treasurer on November 2, 2020

4. Email from Mike Fasolino, Medway Deputy Fire Chief on November 2, 2020

5. Letter from the Planning and Economic Development Board dated November 16, 2020

VI. VOTE OF THE BOARD

By a vote of 5 to 0, on a motion made by Brian White and seconded by Gibb Phenegar, the Zoning Board of Appeals hereby **DENIES** the Applicant, ETS Equipment Rental, Inc. c/o Estevao Costa, a **USE VARIANCE** from Section 5.4, Table 1: Schedule of Uses of the Zoning Bylaw to allow an equipment rental and leasing business, including outdoor storage and preventative maintenance and repair of associated equipment on the property.

Member:	Vote:	Signature:
Rori Stumpf	AYE	_____
Brian White	AYE	_____
Gibb Phenegar	AYE	_____
Tom Emero	AYE	_____
Christina Oster	AYE	_____

The Board and the Applicant have complied with all statutory requirements for the issuance of this special permit on the terms hereinafter set forth. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in Massachusetts General Laws chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

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