

CITY OF FRAMINGHAM  
ZONING BOARD OF APPEALS

150 Concord Street B2  
Framingham, MA 01702

CITY OF FRAMINGHAM  
CITY CLERK'S OFFICE

BOARD OF APPEALS CASE NO. 18-04

2018 APR 24 P 4: 52

PETITION OF BUDAK ENTERPRISES, INC.

DATE OF DECISION: APRIL 10, 2018

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of BUDAK ENTERPRISES, INC. (hereinafter the Applicant), for property located at 298 WORCESTER ROAD. This Decision is in response to a Petition for a Special Permit for an automobile dealer and Variance for establishment within 1,000 feet of another dealer, as required by the Zoning By-Law (hereinafter the Application).

**2. Property Owner and Applicant**

Budak Enterprises, Inc.  
298 Worcester Road  
Framingham, MA 01702

**3. Location**

Property is located at 298 Worcester Road and identified by Assessors' Parcel ID 103-13-3655-000 (hereinafter the Site).

**4. Board Action**

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on April 10, 2018 the Board voted to GRANT the requested VARIANCE and SPECIAL PERMIT by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

**5. Proceedings**

The Application was received by the Board on March 1, 2018 pursuant to MGL, Ch. 40A, §9 and §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on April 10, 2018 at 7:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Philip Ottaviani, Susan S. Craighead, Stephen Meltzer, and Alternate Joseph Norton were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

Attorney Paul Galvani introduced himself and the property owner, Mr. Robert Budak. He explained the property is located on Route 9 eastbound and contains a two-story building with

*Dedicated to excellence in public service.*

a gross floor area of 1,440 sq. ft. and lot area of 5,170 sq. ft. He explained that the site had historically been rented and used by Enterprise Rent-A-Car. Mr. Budak proposes to operate an online business, requiring clients to come in by appointment and requests permission to display a maximum of two cars on the premises. He explained a Variance is requested from the provisions of Section IV.E.10 which provides that a used car dealership may not be located within 1,000 feet of an existing used car dealership. A small portion of the easterly side of the land containing Herb Connolly Chevrolet, at 350 Worcester Road, is within 1,000 feet of the land at 298 Worcester Road. Mr. Galvani proceeded to address Police and Planning Board concerns and clarified that there was no encroachment to the sidewalk.

Ms. Craighead voiced concern regarding the necessity of the two cars parked in the front if the business is primarily online. Mr. Galvani responded that it was preferred from a safety standpoint. Two cars displayed in the front would prevent people navigating and backing out on to Route 9.

Mr. Deangelis (300 Worcester Road) voiced concern regarding sale functions, if the applicant proposes to have car hoods with sign advertisements, music and loud speakers, car washing, and requested the Board consider adding similar conditions as the Enterprise Special Permit #14-49. He asked that the parking plan be incorporated in the decision, rental and leasing not be allowed, cars not be dropped off by trailers, and that cars be delivered to the site only during normal operating hours. Mr. Galvani responded that hoods will not display any signage, there would be no repair facility or maintenance on site, and that cars would be driven to the site and not dropped off by trailer.

The Board felt comfortable allowing two cars on display in the front of the property so long as the spots are lined and marked to indicate the spots are reserved for display vehicles only.

## **6. Exhibits**

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official to operate a used car dealership, dated March 1, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on March 2, 2018.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Conservation Commission comments, dated March 5, 2018.
- 6.5. Planning Board comments, dated April 6, 2018.
- 6.6. Police Department comments, dated March 6, 2018.
- 6.7. Memorandum in support prepared by Attorney Paul Galvani, dated March 1, 2018.
- 6.8. Site plan entitled "Plan Showing Parking", prepared by Jarvis Land Survey, Inc., 29 Grafton Circle, Shrewsbury, MA 01545, and dated February 28, 2018.

Exhibit 6.8 shall be hereinafter referred to as the "Plan".

## 7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Business (B) zoning district and Regional Center (RC) Highway Overlay district.
- 7.2. On March 1, 2018, the Building Official denied the Application for a permit to operate a used car dealership pursuant to §II.B.5.V and §IV.E.10 of the Zoning By-Law.
- 7.3. On March 2, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Special Permit and Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on March 26 and April 2, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The Applicant is seeking a Special Permit for a used car dealership on the site of a former rental car business, on a small lot of approximately 5,000 sq. ft. The layout of the site is to remain substantially similar. Only two cars are proposed to be displayed for sale at a time, in front of the building.
- 7.6. Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
  - 7.6.1. The specific site is an appropriate one for such a use or structure. *The property is located in the Business zoning district which allows used auto dealerships through a Special Permit.*
  - 7.6.2. Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Sufficient parking will be provided, totaling seven spaces. Two front parking spaces will be restricted to display vehicles only, and five spaces in the rear will be designated for employee and customer use.*
  - 7.6.3. The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *The proposed use will use less parking and generate less traffic as compared to prior uses.*
  - 7.6.4. The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *The property is located in the Business zoning district along Route 9, one of the few, remaining areas within the City where automotive uses are permitted.*
  - 7.6.5. All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient. *All services necessary to meet the needs of the proposed use are adequate and sufficient.*
- 7.7. The Board grants this Special Permit subject to the following conditions:
  - 7.7.1. The proposed auto dealership shall be developed as shown on the Plans.

- 7.7.2. The hours of operation shall be: Monday-Friday 9:00 AM – 8:00 PM, Saturday 9:00 AM-5:00 PM, and Sunday 12:00 PM-4:00 PM.
- 7.7.3. Two front parking spaces shall be lined and marked to indicate spots are reserved for display vehicles only. Five parking spaces to the rear of the property shall only have registered vehicles.
- 7.7.4. Only cars for sale and employee/customer cars may be stored on site. No trailers, vans, and/or trucks may be stored, rented from, or washed on site. There shall be no auto repair.
- 7.7.5. There shall be no outside music played on the premises.
- 7.7.6. All parking, traffic circulation, and other features on site shall be in conformance with the plan. No other than the seven (7) on-site parking spaces as shown on the plan shall be permitted.
- 7.8. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.
- 7.9. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variances are being sought. *The Board finds that this parcel is unique, in that only a small portion of the easterly portion of the land at 350 Worcester Road is within 1,000 feet of this site.* Such circumstances especially affect such land or structures but do not affect generally the zoning district in which the land or structures are located.
- 7.10. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner.
- 7.11. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The use of the property remains consistent with the intent of the zoning district, which is business, one of the few remaining areas where automotive uses are permitted. The site has a long history of automotive related uses operated for many years. Therefore, the requested relief would not substantially derogate from the intent and purpose of the Bylaw.*
- 7.12. The Board grants the Variance for establishment within 1,000 feet of another dealer with the following condition:
- 7.12.1. The used dealership shall display a maximum of two vehicles for sale.

- 7.13. This Decision applies only to the requested Special Permit and Variance. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.14. If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights. A request for extension shall require a new public hearing pursuant to MGL, Ch. 40A, §9. A request to extend said time limits shall be made in writing to the Board at least 30 days prior to said expiration date. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval.
- 7.15. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one year period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.
- 7.16. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official
- 7.17. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the City of Framingham.

**8. Appeals**

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By: \_\_\_\_\_  
Philip Ottaviani, Chairman