

Dear Zoning Board of Appeals,

I have just been notified that a letter from Mr. Presti's attorney has been posted on the web site. I believe that all correspondence to the Board needs to have 48 hours before it gets posted online according to the open meeting laws.

The objective of my appeal to the Zoning Board is to reverse his decision of the Zoning Enforcement Officer and allow him to review the information and make a non-bias decision on facts.

The court case involving Ms. Fisher is under review in land court and no decision has been made. If Mr. Presti's attorneys are saying this has been approved by Mr. Presti and is the final decision, then according to the Board's decision a Special Permit is required and the Board should take action accordingly to implement that decision. Including fines for non-compliance since the December 2018 decision less the 60 days Mr. Presti had to comply. Mr. Presti denied the decision back in 2018 and that is why it is in court.

My complaint is directed to the Zoning Enforcement Officer to make a determination on the fact there has never been **2 Class II Auto Dealerships** on the property even though there may or may not have had more than one class II license issued. Both dealerships have asked for an increase in the number of cars allowed at their renewal expecting to grow larger. Attached are the last 2 pages of the case from Fisher with a small section underlined to show that other abutters can also require enforcement on new issues which this is.

I would also like to point out that changes are being implemented to the property with no town approval or permits. A car port with extremely bright lighting has been added and blacktopped added under it. A small temporary shed was installed in 1995, and a permit was required and issued on February 1, 1995 when Erkinen owned the property. Why is this different and also violates the lighting by-laws as well? Blacktop in some areas has been removed and replaced with what appears to be ground asphalt which is porous enough to allow gas or an oil spill to flow through and contaminating the ground below. The area being filled is also larger than the original black topped area which adds more area to park cars (Increase in size). Original licenses issued to the property stated that parking was only allowed on paved

surfaces only. This is no longer true or being followed. Allowing cars to be parked on unpaved surfaces creates a hazard to the abutter's wells.

A simple example is back in 2015 a special permit was issued to 271 Great Road in Stow for a restaurant/store with limited outdoor seating. When Nan's decided to lease the property and some changes were needed a new Special Permit was required. Changes mean New Special Permits.

My request for the Board is to ask you to overturn the Zoning Enforcement Officers decision and allow him to make a decision on the zoning regulations. It should not have to wait until another court case on different issues is resolved.

If this is not overturned to allow him to do his job this basically tells any property owner if they are in litigation with anyone, they can do whatever they want on the property. This is not the way the town should operate.

I appreciate your time and efforts in helping resolve the ongoing issues at this property.

Thank You



Mark D Forgues

placed "no express statutory limitation on when [an] enforcement request need be filed." Barkan v. Zoning Bd. of Appeals of Truro, 95 Mass. App. Ct. 378, 385 (2019). This makes sense because uses of real property may evolve or change over time, an aggrieved person may not know of the precise contours, extent, or even existence of all uses of property at the same point in time, and because towns have an ongoing interest in the use of property within their boundaries. See Connors, supra at 798 & n.9. In addition, we have found nothing either in our case law or in c. 40A that forecloses multiple or successive requests for zoning bylaw enforcement by different aggrieved persons (such as other abutters).<sup>16</sup> Moreover, a property owner should not acquire

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<sup>16</sup> Indeed, G. L. c. 40A, § 8, appears to provide a right to appeal a zoning officer's enforcement denial only to persons who initially sought such relief from the officer: "any person aggrieved by reason of his inability to obtain a permit or enforcement action from any administrative officer" may appeal (emphasis added). Other equally aggrieved persons (such as other abutters) do not appear to have a right to appeal an enforcement officer's decision denying zoning enforcement if they did not join in the original enforcement request. The statutory language appears to contemplate, therefore, that each abutter must make his or her own enforcement request in order to seek zoning board review. The language of § 8 stands in contrast to that contained in §§ 13 and 17, neither of which contains the limiting pronoun "his," but instead speak only of "any aggrieved person." We merely here note the difference in language between § 8 and §§ 13 and 17, without intending to offer any view on the question left open in Green v. Zoning Bd. of Appeals of Southborough, 96 Mass. App. Ct. 126, 129 (2019) (open question whether aggrieved person who did not join in another's appeal to zoning board could nonetheless appeal board's decision under § 17).

a permanent right to engage in ongoing uses that violate zoning bylaws simply because one aggrieved person failed to timely appeal the zoning enforcement officer's denial of zoning enforcement. Accordingly, apart from the statute of repose contained in G. L. c. 40A, § 7, and the preclusive effect of a decision by a zoning board or of a court (none of which are at issue here), nothing prevented Fisher from renewing her requests for zoning enforcement as to ongoing use of Presti's property, and she was entitled to appeal within thirty days from Martin's denials of those subsequent enforcement requests.<sup>17</sup>

Conclusion. Accordingly, we vacate the judgments and remand the matters for further proceedings consistent with this opinion.

So ordered.

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<sup>17</sup> There is no suggestion in this case that Fisher's multiple letters to Martin, or her failure to timely appeal Martin's initial response, were anything other than the imperfect actions of an unrepresented person attempting to navigate the system to obtain review of her concerns. This is not a case of an abutter making successive filings with an improper motivation or purpose. Nor should our opinion be read to sanction such situations.