



**Town of Stow**  
**BOARD OF APPEALS**  
380 Great Road  
Stow, Massachusetts 01775-2127  
978-897-2784

**May 2, 2022**

**NOTICE and DECISION**  
**102 Great Road**

**Applicant:** Mark D. Forgues

**Owner:** Presti Family Limited Partnership

**Owners Address:** Presti Family Limited Partnership  
585 Massachusetts Ave.  
Acton, MA 01754

**Premises Affected:**

**84 and 92 Great Road**, Stow, MA. shown on Stow Property Map Sheet R-29 as Parcel No. 83 containing 1.6 acres and Parcel No. 85A containing 2.98 acres.

**Property Deed:** Middlesex Registry of Deeds Book 44389, Page 43

Pursuant to G.L. c. 40A, ss. 8 and 15 and Section 9.1 of the Zoning Bylaw, a duly posted public hearing was held at the Stow Town Building and online via Zoom Web Conferencing Service on March 7, 2022. The Public Hearing was continued to April 4, 2022 and closed at the conclusion of the April 4, 2022 session. Zoning Board of Appeals Members Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Andrew DeMore were present throughout the proceedings. *Member William Byron was a full member of the Zoning Board during the public hearing proceedings and has since resigned and designated as a Voting Associate Member for purposes of deliberating on this decision.*

The following documents were submitted for the Board's consideration:

1. Application comprising of the following documents:

- Application form – Appeal of Decision of Building Inspector/Zoning Enforcement Officer
- Certified List of Abutters for 84-102 Great Road, Parcels Map R29, Parcels 83 and 85A
- Application Fee
- Letter, dated January 6, 2021 from Mark D. Forgues
- Plan entitled "Plan of Land in Stow, Massachusetts", prepared for Wayne E. Erkinen, dated September 24, 1988 by Bruce A. Kankanpaa, R.L.S.

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- Property Deed (Lot A) recorded at Registry of Deeds in Book 8651, Page 407
- Property Deed (Lot B) recorded at Registry of Deeds in Book 11838, Page 671
- Property Deed (Lot A-1) recorded at Registry of Deeds Book 20942, Page 298

2. Additional Documents provided by the Applicant

- Email, dated October 4, 2021 from Mark Forgues to Building Commissioner (request for Cease-and-Desist Order)
- Letter, dated January 6, 2022 from Mark Forgues to Building Commissioner (Evidence re: property ownership)
- Public Hearing Presentation received February 28, 2022
- Letter dated March 3, 2022 re: February 28, 2022 letter from Gilman, McLaughlin & Hanrahan LLP
- Email dated October 4, 2021 to Building Inspector/Zoning Enforcement Officer
- Additional Correspondence dated April 3, 2022 (1988 Site Plan, The Stow Paper Advertisement, Correspondence from Donald B. Rising)
- Extension of Time Period within which the Board has to file a decision to May 6, 2022

3. Documents submitted by others:

- Letter dated December 13, 2021 from Nashoba Associated Boards of Health.
- Letter dated December 21, 2021 from Francis Ramsbottom, Stow Building Commissioner to Mark D. Forgues
- Letter, dated October 30, 1992 from Building Inspector to Stow Collision, 92 Great Road (submitted by Select Board Office)
- Letter dated February 28, 2022 from Gilman, McLaughlin & Hanrahan LLP on behalf of property owner
- Email dated March 1, 2022 from Dorothy Flood-Granat
- Letter dated March 3, 2022 from Gilman, McLaughlin & Hanrahan LLP on behalf of property owner (Motion to Strike Presentation submitted by Applicant)
- List of Licenses issued by the Select Board, received March 7, 2022
- Email dated March 7, 2022 from Dorothy Flood-Granat -MGL related to used car licensing
- Email dated March 7, 2022 from Kathleen Fisher – changes to the property since 2021
- Email dated April 1, 2022 from Dorothy Flood-Granat to Town Administrator and Select Board – Class used Car License not renewed

**Findings of the Board:**

1. The Applicant seeks to appeal the Zoning Enforcement Officer's response dated December 21, 2021 Re: Request for Cease & Desist of Auto sales at 84-102 Great Road to a request, dated October 4, 2021, for a Cease and Desist of any Auto Sales or Repair Shops at 92-102 Great Road until a Special Permit is applied for and approved by the Town of Stow.
2. In addition to the Application filed on January 6, 2022, the Applicant and abutters submitted additional correspondence (listed above) noting several issues (including, but not limited to,

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changes made to the property since the November 16, 2017 Decision currently under appeal in Land Court and site plan, parking, water runoff and environmental concerns) not addressed in the October 4, 2021 request to the Building Commissioner or the December 21, 2021 response from the Building Commissioner. During the Public Hearing the Board advised the Applicant that matters outside the scope of the appeal should be addressed as a separate matter with the Building Commissioner/Zoning Enforcement Officer.

The Board finds that the scope of this decision is limited to the specific request as outlined in the October 4, 2021 request to the Building Commissioner and the Building Commissioner's response, dated December 21, 2021.

3. The Applicant requested a Cease-and-Desist Order for the following reasons:

- Class II Licenses - The issuance of 3 Class II Auto Dealership Licenses by the Select Board which requires a Special Permit for an increase in use from one dealership to three.
- Discontinuance or abandonment of the use – there were no dealerships on the property between 2007-2011.

4. **Class II Licenses** - In a letter, dated December 21, 2021, the Building Commissioner responded:

"The issuing of multiple Class II Auto Dealership Licenses by the Select Board does not itself translate to an increase in use which would therefore require a Special Permit."

The Board finds that the opening of a new dealership does not constitute a new use. The Board further finds that the current use is not a substantial extension of the existing pre-existing non-conforming use.

**The Board concurs with the Building Commissioner's response and therefore upholds the Building Commissioner's refusal to issue a Cease-and-Desist Order on any auto sales or repair shops on the property until a Special Permit is applied for and approved by the Town of Stow.**

5. **Discontinuance or Abandonment** – In a letter, dated December 21, 2021, the Building Commissioner responded:

"You are correct that an abandoned use would require a special permit granted by the Zoning Board of Appeals, however the ZBA in its decision of November 16, 2017 reads in part "The Board finds no abandonment of the automobile sales use..." and "the Board finds that the current outside display and storage of automobiles is not a "change or substantial extension of the preexisting non-conforming use" therefore, no special permit is required for the continuation of this use."

The Board confirms the November 16, 2017 decision, currently under appeal in Land Court. Certain relevant sections are noted below:

- Finding 3 – "The above uses – automotive and other vehicle (boat) sales and service; related retail; outside storage and display – were ongoing in 1968, when the Town adopted a Zoning Bylaw,, placing the westerly portion of the front of locus in a Business District and the easterly and rear portions in a Residential District. To the extent any of the above uses were not permitted in the Business or Residential Districts, or allowed

only by special permit, such uses were lawful preexisting nonconforming uses. In 2004, the portion of the locus zoned Residential was rezoned Business.”

- Finding 4 – “The above uses continued through a change in ownership of locus from the Erkkinen family to Presti in 2004. Since 2004, documented use of locus has included used car sales; car repairs, boat sales and service; towing; auto body; bus storage; contractor, landscaping and tree businesses, including outside storage of materials and equipment; hobby shop; car wrapping; container storage; tile sales; a school<sup>3</sup>; and residential use (the dwelling on the rear parcel). (Presti grids). *Tenants* have changed over the years, but *uses* continuing without interruption consist of automotive and other vehicle (boat) sales and service; related retail; and outside storage and display.”
- Finding 5 – “There has been no abandonment of the automobile sales use, notwithstanding the waxing and waning of automobile sales since 2004. Although not dispositive on its own licenses to conduct vehicle sales (Class II) have been issued by the Town continuously during this time, to the present day, to a number of businesses operating on locus. Neither the intent to abandon the automobile sales use, nor voluntary conduct carrying the implication of abandonment was demonstrated. See Town of Orange v. Shay, 68 Mass.App.Ct. 358, 363 (2007)”
- Conclusion – “Based on the above examinations, the Board concludes that *automobile sales* are permitted under Section 3.3.2.3; to the extent the *outside display and storage of automobiles* are not allowed under that section of the Bylaw, such outside display and storage of automobiles were lawfully in existence in 1968 and for decades prior. The Board finds no abandonment of the automobile sales use, where neither an intent to abandon the use nor voluntary conduct carrying the implication of abandonment was demonstrated. Applying the Powers test to the current automobile sales use, including outside display and storage, the Board finds that the current outside display and storage of automobiles is not a “change or substantial extension” of the preexisting nonconforming use.....”
- Conclusion – “The Board further concludes certain *automobile service use* is permitted under Section 3.3.3.3, subject to certain limitation and requirements. The Board finds that to the extent *automobile service use* on the property exceeds the limitation of this Bylaw section, such automobile services were lawfully in existence in 1968 and for decades prior. Applying the Powers test to the current automobile service use, the Board finds that the current use is not a “change or substantial extension” of the preexisting nonconforming use. The current automobile service use has not enlarged or expanded the area of locus occupied, and has not increased the noise level or visual impact of this use.”

**The Board concurs with the Building Commissioner’s response and therefore upholds the Building Commissioner’s refusal to issue a Cease-and-Desist Order on any auto sales or repair shops on the property until a Special Permit is applied for and approved by the Town of Stow.**

### **Conclusion and Vote**

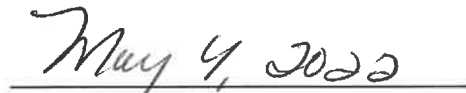
Based on the record and for the reasons state above, the Board by a vote of five members present (Mark Jones, Ernest Dodd, David Hartnagel, Andrew DeMore and Associate Member William Byron) upholds the Building Commissioner's denial of the request for a Cease-and-Desist Order on any auto sales or repair shops on the property until a Special Permit is applied for and approved by the Town of Stow.

Any Appeal from this decision shall be made pursuant to Massachusetts General Laws Chapter 40A, Section 17 and must be filed within twenty (20) days after the decision has been filed with the Town Clerk.

Signed on behalf of and with the permission of the Zoning Board of Appeals.



Ernest E. Dodd  
Zoning Board of Appeals Clerk



Date Received and Filed  
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Linda E. Hathaway  
Stow Town Clerk