



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

December 16, 2021

NOTICE and DECISION
84-102 Great Road

Applicant: Mark D. Forgues

Owner: Presti Family Limited Partnership

Address: 84-102 Great Road
Stow, MA 01775

Premises Affected:

92-102 Great Road, Stow, shown on Stow Property Map Sheet R-29 as Parcel No. 73 and 85A containing 199,508.8+/- sq. ft.

Property Deed: Middlesex Registry of Deeds Book 443891, 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 380 Great Road and online via Zoom Web Conferencing Service on December 6, 2021. Zoning Board of Appeals Members Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder were present throughout the proceedings.

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
 - Application Fee
 - Letter, dated November 2, 2021 from Mark D. Forgues
2. Letter, dated December 1, 2021 from Gilman, Mclaughlin & Hanrahan LLP
3. Letter, dated December 6, 2021 from Kathleen Fisher, 1 White Pond Road
4. Letter, dated December 6, 2021 from Mark Forgues

Findings of the Board:

1. The Applicant seeks to appeal the Zoning Enforcement Officer's response to a request for a Cease and Desist for an increase/change in use for property at 92-102 Great Road. Specifically, the Applicant requested 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.
2. In an email dated October 4, 2021, the Applicant requested that the Town of Stow Zoning Enforcement Officer 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.
3. In an email dated October 5, 2021, the Town of Stow Zoning Enforcement Officer responded to the Applicant stating that "Currently the matter you are referring to is in litigation. It is not appropriate for me to take action on a matter until the courts have given us their decision."
4. In an email dated October 6, 2021 to the Zoning Enforcement Officer, the Applicant argued that any litigation in process is not regarding the recent change/increase of the use as of August 10 of this year.
5. In an email dated October 28, 2021 to the Stow Zoning Enforcement Officer, the Applicant requested an update on the request for a cease and desist.
6. The Applicant further states that the auto sales use of the property was abandoned between 2007 and 2011 and therefore in accordance with MGL C. 40A, Section 6 and the Stow Zoning Bylaw, section 3.9.3 states that if a non-conforming use is discontinued or abandoned for a period of two (2) years or more, it shall not be re-established except upon a special permit granted by the Board of Appeals.

In its decision, dated December 20, 2017, the Board concluded the following as it relates to auto sales and service:

1. 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.....
2. 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 outside display and storage of automobiles is not a "change or substantial extension" of the preexisting nonconforming use.....

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3. 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).
7. The Applicant states that the Select Board approved a 3rd Class II Auto Dealership License for the property, thereby increasing the use from one dealership to 3.

The Board finds that the increase in the number of Class II Auto Dealership Licenses issued by the Select Board limited the number of automobiles for each of the Class II Auto Dealerships Licenses:
 - Car Lot Express – 10 cars inside and 60 cars outside
 - YOLO MOTO – 8 cars inside and 4 cars outside
 - Chapel Partners – no limit – License is not being used.
8. During the Public Hearing, the Applicant stated that the Zoning Enforcement Officer has not acted upon the request for a Cease-and-Desist Order and requested that the Board order the Zoning Enforcement Officer to make a determination on the request.
9. The Board finds that the Zoning Enforcement Officer's response was to defer making a determination on the Applicant's request for a cease-and-desist order and therefore, no formal response was issued.

Conclusion/VOTE

The Board, by unanimous vote of the five members present (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder), voted to remand the request back to the Building Commissioner to make a formal determination on the Applicant's request for a Cease-and-Desist Order.

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.

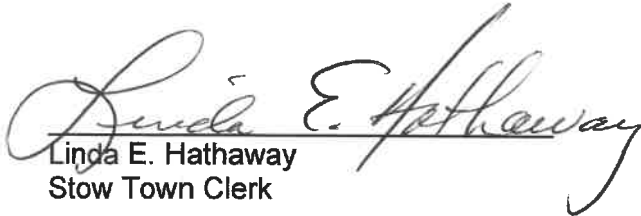
Signed on behalf of and with the permission of the Zoning Board of Appeals.



Ernest E. Dodd
Zoning Board of Appeals Clerk

December 20, 2021

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Linda E. Hathaway
Stow Town Clerk