



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

2015 NOV 30 P 2: 22

BOARD OF APPEALS CASE NO. 15-46

PETITION OF TANIA BICALHO

TOWN CLERK
FRAMINGHAM

DATE OF DECISION: NOVEMBER 16, 2015

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an appeal filed by TANIA BICALHO (hereinafter the Appellant), for property located at 243 HOWARD STREET. Appellant filed a Petition to overturn the Building Commissioner's decision that the activities being conducted on-site are in violation of an existing Special Permit (hereinafter the Petition).

2. Appellant & Property Owner

Tania Bicalho
243 Howard Street
Framingham, MA 01702

3. Location

Property is located at 243 Howard Street and identified by Assessors' Parcel ID 128-96-6320-000 (hereinafter the Site).

4. Board Action

After due consideration of the Petition, the record of proceedings, and based upon the findings set forth below, on NOVEMBER 16, 2015 the Board voted to APPROVE the requested appeal, OVERTURN the decision of the Building Commissioner and AMEND the Special Permit by a unanimous vote of three members sitting on the application. The record of the vote is stated as follows:

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

5. Proceedings

The Petition was received by the Board on August 11, 2015 pursuant to M.G.L. Chapter 40A, §8, and the Framingham Zoning Bylaw. The Appellant presented the Petition to the Board at a duly noticed public hearing of the Board on October 13, 2015 at 7:15 PM in the Blumer Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan Craighead, Stephen Meltzer, and alternate Ted Cosgrove were present throughout the proceedings. The case was continued to the November 16, 2015 meeting. 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.

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6. Exhibits

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

- 6.1. Building Department Zoning Violation letter from the Building Commissioner and sent to the Appellant dated July 14, 2015.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on September 23, 2015.
- 6.3. Filing fee in the amount of \$300.00.
- 6.4. Petition prepared by the Appellant entitled "Petition for Special Permit for Auto Repair" stamped 'Received' by the Zoning Board Office August 11, 2015.
- 6.5. Two sets of photographs submitted by the Appellant at the meetings, stamped 'Received' by the Zoning Board on October 13, 2015 and November 16, 2015.
- 6.6. Additional materials submitted by the Appellant at the meetings such as a copy of the 2006 Land Court Judgement, a copy of the 2000/2001 ZBA Special Permit 00-74, and copies of other permits, insurance papers, and business certificates, stamped 'Received' by the Zoning Board on November 16, 2015.
- 6.7. Site plan prepared by P.E. Desimone Survey, 38 Coffee Street, Medway, MA 02053, and dated 11/8/2000.

7. Findings and Conclusions

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

- 7.1 The property is located within the Central Business (CB) district.
- 7.2 On September 23, 2015, the Appellant filed a Petition with the Town Clerk for the purpose of overturning the July 14, 2015 decision of the Building Commissioner that the business is in violation of existing Special Permit 00-74 (#3905).
- 7.3 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on September 28, 2015 and October 5, 2015 and mailed to all parties-in-interest, as defined by M.G.L. c. 40A, §11.
- 7.4 At the October 13, 2015 hearing, the Appellant, Tania Bicalho, and her son, Dan Bicalho, were present to explain the Special Permit issued in 2000 was for transmission repairs only. The Building Department has issued a violation stating that the business is operating outside of the original Special Permit scope of activities because of the presence of an inspection station. Mr. Bicalho stated he is not interested in the volume of inspections, but instead uses the equipment to troubleshoot transmission issues on vehicles that have failed inspection, and to pass vehicles that have been repaired on-site.
- 7.5 Michael Tusino, Building Commissioner, stated there are For Sale signs on cars parked on-site. The Special Permit does not allow auto sales or inspections.
- 7.6 The case was continued to November 16th as Ms. Craighead expressed interest in reviewing all past ZBA files for the site, including the Land Court appeal.

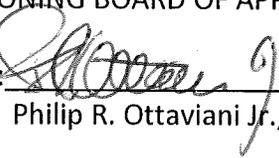
- 7.7 At the November 16th meeting, Mr. Ottaviani shared that he visited the site. He noted that the site has been cleaned up. Mr. Bicalho stated additional information including: fire permits have been secured; waste materials are stored and then hauled off-site; the Massachusetts Department of Environmental Protection came out and didn't see any problems with the site; noise levels will be down after 6 PM; touched on the businesses that were claimed to be operating on-site; the use is not detrimental and will not create a hazard; and the site abuts train tracks and no neighbors.
- 7.8 Various residents and Town Meeting members spoke in opposition and support of the Application. Concerns were related to multiple businesses operating on-site, storage of junk vehicles and a trailer, for-sale vehicles parked on-site, and overall maintenance of the property.
- 7.9 Discussion ensued regarding the level of auto repair to be allowed or not allowed on-site. Ms. Craighead stated she would consider repairs incidental to transmission repair only.
- 7.10 After the Board concluded its deliberations, Ms. Craighead made a motion to overturn the Building Commissioner's decision and amend the existing Special Permit 00-74 to allow for only 1 year for transmission repair with auto repair/inspections incidental to transmission repair with additional conditions, seconded by Mr. Meltzer. The decision of the Building Commissioner is OVERTURNED.
- 7.11 The Board grants an amended Special Permit subject to the following conditions:
- 7.11.1 The conditions outlined in Special Permit 00-74 shall continue to be valid as part of the Special Permit amendment.
 - 7.11.2 The Special Permit is only valid for transmission repair and auto repair/inspections incidental to transmission repair. No auto body work is allowed. No advertisement of non-transmission work is allowed. Work must be performed with garage doors closed.
 - 7.11.3 When vehicles are not undergoing repairs as permitted, they must be removed. No storage of junk or for sale vehicles allowed.
 - 7.11.4 No subletting of bays shall be allowed. The Special Permit is only valid for Dan and Tania Bicalho's transmission repair business.
 - 7.11.5 The Special Permit shall expire one year from the date of filing of this decision and Application for renewal shall be submitted to the Board 60 days prior to expiration of the Special Permit.
- 7.12 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.
- 7.13 The terms, conditions and provisions of this Decision shall apply only to the Appellant and shall be binding upon the Appellant, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to M.G.L. c. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: _____


Philip R. Ottaviani Jr., Chairman