

2018 DEC 21 A 9:44

BOARD OF APPEALS CASE NO. 18-30

PETITION OF TANIA AND DAN BICALHO

DATE OF DECISION: DECEMBER 11, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of TANIA AND DAN BICALHO (hereinafter the Applicant), for property located at 243 HOWARD ST. This Decision is in response to a Petition for a Special Permit #16-34 renewal for auto repair (hereinafter the Application).

2. Applicant

Tania and Dan Bicalho
243 Howard St
Framingham, MA 01702

Property Owner

Helbert Rezende Trust
243 Howard St
Framingham, MA 01702

3. Location

Property is located at 243 HOWARD ST and identified by Assessors' Parcel ID 128-96-6320-000 (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 December 11, 2018 the Board voted to DENY the requested SPECIAL PERMIT by a unanimous vote of three (3) members sitting on the Application. The record of the vote is stated as follows:

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

5. Proceedings

The Application was received by the Board on September 7, 2018 pursuant to MGL, Ch. 40A, §9, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on November 13, 2018 at 7:00 P.M. in the Ablondi Room of the Memorial Building. The case was subsequently continued to December 11 at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan S. Craighead, and Alternates Joe Norton and Rick McKenna 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.

The Applicant is before the Board to renew a Special Permit (case no. 16-34), which the Board had limited to a period of two years expiring November 7, 2018. At the November 13 hearing,

Attorney Drew Rogers appeared on behalf of the Applicant to update the Board on the status of the auto repair operation. Mr. Ottaviani read two letters from the Building Commissioner attesting to violations of the Special Permit, including work being performed in the public way, improperly parked vehicles, and possible unauthorized activities and subletting of bays. Mr. Rogers explained that the Bicalhos were working to remedy the problems. Members of the Board questioned why it was so difficult for workers to obey the rules and asked for documentation of who was working on the premises. The case was therefore continued to December 11.

At the December 11 hearing, the Building Commissioner, Michael Tusino, was present and provided photographs of improperly parked vehicles. The Applicant submitted employee documentation for three employees, testifying that up to six people were working at the property at any given time. The Applicant also included photos of proposed no-parking signage in front of the building. Discussion ensued about the continuing problems and violations at the property over the past few years. The Board voted to deny the request for renewal.

6. Exhibits

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

- 6.1. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 14, 2018.
- 6.2. Filing fee in the amount of \$500.00.
- 6.3. Copy of Special Permit #16-34 filed with the City Clerk on 11/7/2016.
- 6.4. Two comment letters from the Building Commissioner regarding concerns at the site, dated October 16 and November 2, 2018.
- 6.5. Planning Board comments dated October 9, 2018.
- 6.6. Email correspondence from the Applicant dated November 20, 2018 containing W2 Forms issued to three employees of the auto repair business.
- 6.7. Slide presentation from the Building Commissioner containing photographs of a site visit, dated December 6, 2018.
- 6.8. Photographs of movable "no parking" signage installed by the Applicant in front of the 243 Howard Street premises, stamped "Received" by ZBA staff on December 11, 2018.
- 6.9. "Site Plan" prepared by Paul J. Desimone, Professional Land Surveyor, 38 Coffee Street, Medway, MA.

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:

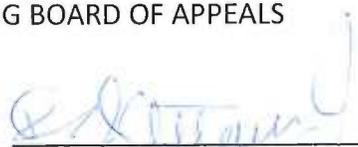
- 7.1. The property is located within the Central Business (CB) zoning district.
- 7.2. On September 14, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of renewing Special Permit #16-34 for auto repair.

- 7.3. Notice of the public hearing was duly published in “THE METROWEST DAILY NEWS” on October 29 and November 5, 2018 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.4. The Board’s Decision in case no. 16-34 had limited the duration of the Special Permit to two years because of prior problems at the property. The permit was originally for “transmission repair” only, originally granted under an earlier version of the Zoning By-law. The most recent Special Permit relaxed the conditions to allow work with the garage bay doors open, and to allow other auto repair work incidental to transmission repair.
- 7.5. The Board has made efforts to impose conditions on the operation of the property, due in part to the congested nature of the property. The auto repair garage sits directly on the street and has only eight parking spaces according to the site plan, while there are six garage bays. The result has been a situation where many more than eight cars are typically parked tandem-style in the lot, with others parked on the street, and cars with hoods open for inspection and service in the public way, contributing to general congestion and an unsightly appearance along Howard Street.
- 7.6. There has been evidence of violations of the conditions of the Special Permit, including work being performed outside; cars without plates being parked in the lot, indicating they were not being worked on; and other potentially unauthorized workers and businesses operating on site. The parking lot is not used in accordance with the approved site plan showing only eight spaces. Additionally, the Applicant has previously installed unauthorized signage advertising other businesses, in violation of the Special Permit.
- 7.7. Auto repair is no longer an allowed use in the Central Business district since 2015. While the business was pre-existing at the time the Zoning Bylaw was changed, the City has clearly indicated its intent to discourage automobile-related uses in the Central Business zone, in order to make the Downtown more attractive to residents, visitors, and appropriate businesses.
- 7.8. The Board expressed regret at the prospect of shuttering a business. However, it found that the conditions necessary for granting a Special Permit had not been met. The property and the neighborhood are not appropriate for such use. The property is congested and does not contain adequate space for the proper storage and circulation of vehicles. The petition is therefore DENIED.

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 R. Ottaviani, Jr., Chairman