

2018 DEC 21 A 9 44

**BOARD OF APPEALS CASE NO. 18-33**

**PETITION OF FRANK SCIACCA**

**DATE OF DECISION: DECEMBER 11, 2018**

**1. Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on an appeal filed by FRANK SCIACCA (hereinafter the Appellants), for property located at 234 HOLLIS ST. The Appellant filed a Petition to Overturn the Building Commissioner's determination that auto sales would not be allowed on the site due to contradicting sections in Special Permit #10-03; and to amend that Special Permit (hereinafter the Petition).

**2. Appellant and Property Owner**

Frank Sciacca  
230 Eliot Street  
Ashland, MA 01721

**3. Location**

Property is located at 234 Hollis St and identified by Assessors' Parcel ID 135-84-2489-000 (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 December 11, 2018 the Board voted in favor of the requested appeal to OVERTURN the decision of the Building Commissioner and to GRANT the proposed amendment to the contradicting sections in Special Permit #10-03 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
STEPHEN MELTZER	YES
SUSAN S. CRAIGHEAD	YES

**5. Proceedings**

The Petition was received by the Board on October 5, 2018 pursuant to M.G.L. Chapter 40A, §8 and §9 and the Framingham Zoning Bylaw. The Appellants presented the Petition to the Board at a duly noticed public hearing of the Board on November 13, 2018 at 7:30 PM in the Ablondi Room of the Memorial Building. The hearing was subsequently continued to December 11 at which point a decision was made. Board Members Philip R. Ottaviani, Jr., Stephen Meltzer, Susan Craighead, and Alternates Joseph Norton and Rick McKenna were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is

*Dedicated to excellence in public service.*

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.

At the November 13 hearing, Mr. Ed Burke appeared before the Board representing the Applicant, Mr. Frank Sciacca, also present. Mr. Burke explained the request to modify the Special Permit to clarify an apparent contradiction in conditions of the pre-existing Special Permit for used auto sales. Ms. Craighead asked if there would be any change in operations; Mr. Burke responded no, except the different tenant.

Mr. Meltzer noted that the intent of the Board was for the permit not to transfer to new tenants; the boilerplate stated that the permit ran with the land. No abutters appeared in opposition. Mr. Ottaviani asked that the proposed tenant should come in before the Board. The case was therefore continued to December 11.

At the December 11 hearing, Mr. Burke presented the proposed tenants, MGM Auto Sales Group. The Board moved to approve a one-year permit.

## **6. Exhibits**

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

- 6.1. Application filed with the Building Department for a building permit for auto sales dated September 27, 2018.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on October 9, 2018.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Conservation Administrator comments dated November 14, 2018.
- 6.5. Planning Board comments dated October 9, 2018.
- 6.6. Copy of ZBA decision #99-77 filed with the City Clerk on February 11, 2000 and copy of ZBA decision #10-03 filed with the City Clerk on February 9, 2010.
- 6.7. Site plan and proposed parking arrangement submitted with the application.

Exhibit 6.7 shall be hereinafter referred to as the "Plan".

## **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) zoning district.
- 7.2 On September 27, 2018, the Building Commissioner denied the application to operate a used auto dealership at the site under §II.B.5.v of the Zoning By-Law and due to contradicting sections of the ZBA Special Permit #10-03.

*Dedicated to excellence in public service.*

- 7.3 On October 9, 2018, the Appellant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of overturning the decision of the Building Commissioner and amending Special Permit #10-03.
- 7.4 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 M.G.L. c. 40A, §11.
- 7.5 The Board determined that while the prior Special Permit had been limited to the applicant only, it was still a pre-existing nonconforming use. They moved to allow a change in operator. The owner of the property remains the same. Mr. Burke introduced the new operator, Marcio Pimental of MGM Auto Sales Group, who was currently operating at 138 Waverly Street. The Board determined that a one-year permit would be appropriate to start, and that the Special Permit would continue to be limited to the applicant.
- 7.6 The Board voted in favor of a motion to approve as presented. The decision of the Building Commissioner is hereby OVERTURNED and a Special Permit is AMENDED and GRANTED.
- 7.7 Subject to the conditions stated in this Decision, the Board finds that the following conditions of approval of a Special Permit have been met:
- 7.7.1 The specific site is an appropriate one for such a use or structure. *The location is on a high traffic volume roadway in a commercial area. The site has been used for auto sales in the past and has been issued Special Permits for such uses.*
  - 7.7.2 Adequate and appropriate facilities will be provided for the proper operation of the proposed use, including adequate off-street parking. *Adequate parking is available on the premises.*
  - 7.7.3 The use or structure as developed will not create a hazard to abutters, vehicles, or pedestrians. *No new curb cuts are proposed and the existing width of driveways will be maintained.*
  - 7.7.4 The use or structure is consistent with the Intent of the district in which the use is proposed, and with the Purpose and Intent of this By-Law. *The site is in a commercial area and the use has not caused problems in the past.*
  - 7.7.5 All municipal services necessary to meet the needs of the proposed use must be adequate and sufficient.
- 7.8 The Board grants this Special Permit subject to the following conditions:
- 7.8.1 The permit is granted to MGM Auto Sales for a period of one year. The permit shall not be transferred to any other operator.
  - 7.8.2 Parking and location of the cars shall be in conformity with the submitted Plan.
  - 7.8.3 There shall be no storage of junk vehicles outside of the building pursuant to this Special Permit.


- 7.8.4 Any lights which are constructed for this use shall be directed downward and inward in such a way that they will not wash over onto other properties and will be extinguished by 11:00 p.m.
  - 7.8.5 There shall be no outside public address system.
  - 7.8.6 All repair work shall be done indoors.
  - 7.8.7 No auto body work shall be done pursuant to this Special Permit.
  - 7.8.8 No parking by the Applicant is permitted in any right-of-way or in any private way. All parking must be within the lot as set out above.
  - 7.8.9 There shall be no auto painting on the premises.
  - 7.8.10 This Special Permit is personal to the petitioner and will not run with the land nor is it granted to the landlord.
  - 7.8.11 There shall be no more than one full-time employee and one part-time employee.
  - 7.8.12 The hours of operation shall be 8:00 a.m. to 8:00 p.m., Monday through Friday; 8:00 a.m. to 6:00 p.m. on Saturday; and 10:00 a.m. to 5:00 p.m. on Sunday.
  - 7.8.13 No storage or display of vehicles shall be placed in front of the three garage bays.
  - 7.8.14 All displays shall be in the designated parking spots on the Plan as presented.
  - 7.8.15 The parking lot shall be striped as soon as weather permits.
  - 7.8.16 Used oil shall be stored and disposed of according to state and local regulations.
- 7.9 This Decision applies only to the requested Special Permit. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.
- 7.10 If the rights authorized by this Special Permit are not exercised within three years of the date of filing of the Decision with the City Clerk, said Special Permit shall lapse; provided, however, that the Board in its discretion and upon written application by the Applicant may extend the time for exercise of such rights. A request for extension shall require a new public hearing pursuant to MGL, Ch. 40A, §9. The Board herewith reserves its rights and powers to grant or deny such extension, and to require any appropriate changes to this approval.
- 7.11 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.
- 7.12 The terms, conditions and provisions of this Decision shall be enforceable by the City of Framingham.

*Dedicated to excellence in public service.*

**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

*Dedicated to excellence in public service.*