

STURBRIDGE ZONING BOARD OF APPEALS

MINUTES OF

Wednesday, October 12, 2011

Present: Elizabeth Banks, Chair
Joel Casaubon
Marge Cooney
Thomas Creeden, Vice-Chair/Clerk
Chris Mattioli
Maryann Thorpe
Michael Young

Also Present: Diane Trapasso, Administrative Assistant
Jean M. Bubon, Town Planner
Mr. Lindberg, Building Commission/ Zoning Enforcement Officer
Attorney Eichman, Kopelman & Paige, Town Counsel
Attorney Neal, Neal Law Office, Counsel for the Plaintiff

Ms. Banks opened the meeting at 6:30 PM.

Ms. Banks read the agenda.

Mr. Casaubon recused himself from the Public Hearing for Remand of Administrative Appeal of the Estate of Sylvio Proulx for personal reasons.

Motion: Made by Mr. Creeden to enter into Executive Session to discuss litigation strategy because conducting this discussion in open session will have a detrimental effect on the Board's strategic negotiating position. The Board will return to open session after the executive session.

2nd: Mr. Mattioli

Vote: Ms. Banks – yes
Ms. Cooney – yes
Mr. Creeden – yes
Mr. Mattioli – yes
Ms. Thorpe – yes
Mr. Young – yes

Motion: Made by Mr. Creeden to reconvene the meeting in open session at 7:00 PM

2nd: Ms. Thorpe

**PUBLIC HEARING FOR REMAND OF ADMINISTRATIVE APPEAL – TO
RECONSIDER THE APPEAL OF THE ESTATE OF SYLVIO PROULX FROM
OCTOBER 12, 2007 ORDER OF THE STUBIRIDGE BUILDING INSPECTOR
TO THE EFFECT THAT THAT PROPERTY AT 109 MAIN STREET MAY**

ONLY BE USED FOR USED AUTO SALES AND OTHER USES EXPRESSLY ALLOWED UNDER THE ZONING BYLAWS.

Materials Presented:

Email from Ms. Bubon, Town Planner dated 9/15/2011

Email from Attorney Neal dated 9/14/2011

Emails from Attorney Eichman, Kopelman & Paige, dated 3/11/2011, 2/8/2011, 2/7/2011, 2/20/2008, & 1/10/2008

Letter from Kopelman & Paige – Re: Proulx v. Peabody, et al. (Town of Sturbridge Zoning Board of Appeals) Housing Court, Worcester Division Docket No. 11 CV 559 – dated July 28, 2011

Letter from Theresa Johnson, Trustee Nash Realty Trust, - dated 2/26/2011

Packet used at the meeting in 2008

Two black and white photos 1960 & 1961

Mr. Creeden read the legal notice.

Attorney Eichman stated that this is a public hearing of the appeal filed by the late Sylvio Proulx from the October 12, 2007 cease and desist order by the Building Inspector for the property containing Syl's Auto Sales at 109 Main Street. The Building Inspector found that there were several independent uses of the property ongoing at the time, including auto sales, auto repair, auto body repair, limousine service and storage for a towing company. He determined that each of the uses of the property were prohibited under the Zoning Bylaws, and prohibited continuance of those uses with the exception of auto sales, which he determined was grandfathered.

The ZBA first heard this appeal in 2007 and found in favor of the Building Inspector. Mr. Proulx appealed the Board's decision to Superior Court, and since that time his attorney has gathered new evidence to support his contention that in addition to auto sales, two other uses of the property, auto repair and auto body repair, are grandfathered and can continue. Based on this evidence he asked the ZBA if it would agree to suspend the litigation on order to rehear the appeal. The ZBA agreed and the ZBA and the property owners together filed a motion asking the Court to allow the ZBA to reconsider the appeal. The Court granted the motion and remanded the case to the ZBA for a new hearing. The ZBA is opening that hearing tonight.

Ms. Banks began the Public Hearing by asking Attorney Neal to state for the record what uses he claims are authorized on the site.

Attorney Neal stated that the uses grandfathered are the auto repair and auto body repair that have continued their use from 1983 to the present and he has testimony to prove that the businesses has continued.

Attorney Neal submitted to the Board deed for the purchase of the land, assessors records, income tax returns, business certificate and copies from the Secretary of Commonwealth, Corporations Division as being incorporated. Attorney Neal stated that the business had been auto repair and auto body repair.

Ms. Rose of 64 Beech Road, Charlton, Syl's daughter, stated she always remembers auto sales, auto repairs and auto body repairs shop. In the 60's had independent users renting the space and checks were made out to Syl's.

Mr. Johnson of 10 Histin Road, Holland stated that in 1972 he worked for Syl's. He sold and cleaned cars and was second in charge of the body shop and auto sales. In 1983 he retired, dropped the franchise, sold used cars and rented the building to others; Danny Vincent did the auto body repair and Calvin did auto repair.

Mr. Johnson stated that in 1983 – 1984 an addition was put on and then starting renting to Steve's Auto Body.

Mr. Young stated that from personal knowledge Calvin was a friend and Mr. Young had repair work done in the 1980's.

Mr. Hutchinson of 17 Robert Blvd, Charlton stated that he worked for Sandy Felch – New England Auto Body.

Mr. Rose of 64 Beech Road, Charlton stated that he was Syl's son-in-law and he created the chart showing the chain of ownership. He contacted the people in the businesses and asked for the history with letters.

Ms. Johnson of 10 Histin Road, Holland, daughter of Syl stated that she always remembered the business as auto sales, auto repair and auto body repair.

Attorney Neal stated that at 109 Main Street was used for auto repair and auto body work from 1982 to the present:

- 1982 – 1987 – Calvin's Auto Repair (affidavit of Kelly Carrington) auto repair
- 1983 – 1996 – Vincent Automotive (affidavit of Daniel Vincent) auto body and general repair
- 1985 – 1994 – Steve's Collision (affidavit of Steve Brunelle) auto body work and general auto repair
- 1994 – 1996 – NE Auto Body (affidavit of Douglas Hutchinson & David Petrillo) auto body
- 1995 – present – R & R Auto Center (affidavit of Raymond Condrate) auto body and general repair work
- 1995 – 2001 – Sunshine Auto Repair (affidavit of Michael Condrate & John Waterson) auto body and repair work (replaced Vincent Automotive)

1997 – 1999 – Insurance Auto Body (affidavit of Donald Joyce) (replaced by Done Rite) auto body
2000 – 2003 – DoneRite Auto Body (affidavit of David Reilly) auto body
2003 – 2006 – C & C Collision (affidavit of Chris Plouffe, Michael Condrate & Robert Gosselin) (replaced DoneRite)
2006 – present – Sturbridge Automotive (affidavit of Gabriel Burney) auto body and general repair

The Board had the following questions:

- These others businesses worked for themselves and for Syl's – answer is yes
- All these businesses there same time and different times – answer rented different spaces in the addition

Motion: Made by Mr. Mattioli to close the Public Hearing.

2nd: Ms. Cooney

Discussion: None

Vote: 6 – 0

Motion: Made by Mr. Young to grant the appeal of Sylvio Proulx to the effect that the present use of the property for auto repair is a lawful, nonconforming use of the property

2nd: Mr. Mattioli

Discussion: The Board asked the Building Inspector for a comment. Mr. Lindberg stated that he went to the site on 10/12/2011 and toured the site with Mr. Burney. The old showroom space is currently emptied and not in use. The middle portion of the building was last used by the limousine company and is presently used only as storage space for car parts. The garage bays at the right side of the building house an active automotive repair business, operated by Mr. Burney. There continues to be an auto repair business in the lower rear bays operated by R & R Auto Center. Generally the overall site appears cleaner and less cluttered than it had been. Additionally, there are numerous signs on the building and property that will need to be removed and new signs added, to achieve compliance with the Zoning Bylaws.

Vote: 6 – 0

Motion: Made by Mr. Mattioli to grant the appeal of Sylvio Proulx to the effect that the present use of the property for auto body repair is a lawful, nonconforming use of the property.

2nd: Ms. Cooney

Discussion: None

Vote: 6 – 0

Motion: Made by Mr. Mattioli to deny the appeal as to the other nonconforming uses on the property including limousine service, machine shop, storage of vehicles and truck rental.

2nd: Ms. Cooney

Discussion: None

Vote: 6 – 0

Mr. Casaubon returned to his seat on the Board at 8:50 PM.

APPROVAL OF MINUTES

Motion: Made by Ms. Cooney to approve the minutes of August 3, 2011.
2nd: Mr. Mattioli
Discussion: None
Vote: 7 – 0

CORRESPONDENCE

Sturbridge Recreation - New York City Holiday Tour

Fall Workshop - CPTC

OLD/NEW BUSINESS

None

NEXT MEETING

November 9, 2011 at 6:30 PM at the Center Office Building

On a motion made by Mr. Mattioli, seconded by Mr. Young and voted unanimously, the meeting adjourned at 8:56 PM.