



OFFICE OF THE  
**BOARD OF APPEALS**  
BROOKFIELD, MASSACHUSETTS

**ADMINISTRATIVE APPEAL  
MINUTES**  
Wednesday, July 20, 2011

**Present:** Nicholas Thomo, Chairman  
David Olson  
William Neault  
Kenneth Cleveland  
Carrie Worthington, Clerk  
David Holm (late)

**Absent:** Charles Wilson

**Guests:** James O'Brien, Attorney  
Donna & Robert Latino

Mr. Thomo opened the Public Hearing at 6:11 p.m.

The purpose for this Public Hearing is to address an Administrative Appeal regarding a Cease & Desist Order issued to Donna & Robert Latino on June 10, 2011, from Gary Simeone, Zoning Enforcement Officer, for the opening of a retail auto parts store at 68 South Maple Street, Brookfield, without obtaining a Special Permit from the Planning Board.

Mr. Thomo went through the paperwork pertaining to this Public Hearing which included the following:

- Copy of Administrative Appeal
- Meloche & Meloche Attorney letter
- Application for Special Permit
- Business Certificate
- Planning Board mishap letter
- Copy of legal ad from Worcester Telegram & Gazette
- Cease & Desist Order letter to Mr. & Mrs. Latino from Gary Simeone, Zoning Enforcement Officer

Mr. Thomo stated since the Cease & Desist Order was initiated they (Mr. & Mrs. Latino) have not closed the business. Mr. Thomo asked why.

Mrs. Latino responded it would be a hardship for herself, Mr. Latino, and Mr. Laquerre (the business owner). Mrs. Latino also stated the Administrative Appeal was initiated to delay process.

Attorney James O'Brien questioned Use Regulation Table 2, G. Use Regulation Table 2 G specifically is for single unit containing multiple units. Only one unit is used for a dwelling (singular).

Attorney James O'Brien brought to the Zoning Board of Appeals attention the letter from Gary Simeone, Zoning Enforcement Officer, dated June 10, 2011. Mr. Gary Simeone sent the Cease & Desist Order letter in compliance for Section 12, Administration, Subsection Enforcement – begin daily fines as it allows. Attorney James O'Brien read aloud the 2<sup>nd</sup> paragraph of Chapter 40, Section 21D.

*Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initiating criminal proceedings shall, or if so provided in such ordinance or by-law, may, give to the offender a written-notice to appear before the clerk of the district court having jurisdiction thereof at any time during office hours, not later than twenty-one days after the date of such notice. Such notice shall be in triplicate and shall contain the name and address, if known, of the offender, the specific offense charged, and the time and place for his required appearance. Such notice shall be signed by the enforcing person, and shall be signed by the offender whenever practicable in acknowledgment that such notice has been received.*

Attorney James O'Brien stated Section 12. A2, non-criminal disposition. The attorney also added the Cease & Desist Order does not apply due to the date of June 10, 2011 didn't meet 21 days from order.

David Olson stated the Latino's have been in business since 1995. He doesn't want to create a hardship but the town has rules that have to be adhered to.

Mrs. Latino stated the distance between the business and residence is joined by a hallway. They are two (2) separate buildings. The business has a front, side, and back door.

Mrs. Latino presented a letter from the Brookfield Board of Selectmen welcoming the business and wishing the business big success, dated April 8, 2011.

Mr. Latino said the only thing he doesn't understand is why there's such opposition to them opening the business.

Mr. Thomo reiterated they did not obtain a Special Permit.

Mrs. Latino stated they obtained a Business Certificate.

Mr. Thomo said a Business Certificate does not give permission to open a business.

Mr. Thomo stated the Cease & Desist Order has been ignored. If you get a negative answer on your appeal will you ignore that also?

Attorney James O'Brien again voiced his opinion that the Cease & Desist Order is invalid. It was improperly issued by Laws of Massachusetts Section 12 A (2). Statute itself, Section 21D, chapter 40, paragraph 2. The Use & Regulations Table 2g is for

dwelling units. He continued with Section 4, D Use & Regulations Table 3k – retail sales or services which could be the reason for the mess up.

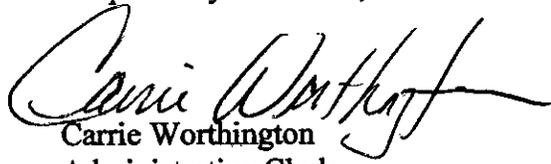
Mr. Thomo agrees with Mr. Simeone's decision for Cease & Desist Order and the Latino's pending Special Permit.

Mr. Neault mentioned handicap parking is missing and this is important to him.

Mr. Thomo wanted to stick with issues at hand and told Attorney James O'Brien the Zoning board of Appeals would forward a letter with their decision.

Mr. Thomo closed the Public Hearing at 6:51 p.m.

Respectfully submitted,

  
Carrie Worthington  
Administrative Clerk

**TOWN OF BROOKFIELD  
ZONING BOARD OF APPEALS  
6 Central Street  
Brookfield, MA 01506  
Wednesday, July 20, 2011**

July 25, 2011

An application for a Special Permit was received by the Planning Board on May 4, 2011. This Public Hearing was scheduled for June 1, 2011. This was required due to a retail establishment being in the same building with a single family. The Special Permit was required per Section 4 District and use regulations – subsection D – Use regulations Table 2 residential g – building containing dwelling units in combination with retail shops or other permitted business uses.

The June 1, 2011 Public Hearing then needed to be re-scheduled to July 6, 2011. It was later observed by Brookfield Zoning Enforcement Officer, Gary Simeone, that City Auto Parts was open for business prior to gaining approval by the Brookfield Planning Board. Since this was a violation of the Brookfield Zoning By-Laws, Mr. Simeone issued a Cease and Desist Order on June 10, 2011.

The Town Clerk received an Administrative Appeal on June 21, 2011, from the Latino's, regarding the Cease and Desist Order. City Auto Parts continued to be opened to the public as the Cease and Desist Order was ignored by Mr. & Mrs. Latino.

On Wednesday, July 20, 2011 a Public Hearing was held on the Administrative Appeal at the Brookfield Town Hall.

During the Administrative Appeal Public Hearing the applicant's Attorney James O'Brien referenced the issuance of the business certificate as justification for ignoring the Cease and Desist Order or even requiring the application for a Special Permit since the Business Certificate was issued. It should be noted that the issuance of the Business Certificate does not preclude acquiring the necessary zoning approval from the Planning Board.

What was also referenced by Attorney O'Brien was a Special Permit was granted when they had a retail agricultural store (sold flowers) prior to the auto pars store and already had the permit in place. According to Mr. Simeone, a new Special Permit is required because it is a new business. This information was confirmed by Town Counsel.

Mr. O'Brien brought to the Zoning Board of Appeals attention, Chapter 40, Section 21D, non-criminal disposition of ordinance, by-law, rule or regulation, which states in part "...Any such ordinance or by-law shall provide that any person taking cognizance of a violation of a specific ordinance, by-law, rule, or regulation which he is empowered to enforce, hereinafter referred to as the enforcing person, as an alternative to initial criminal proceedings shall or, if so provided in such ordinance or by-law, may, give to the offender a written notice to appear before the clerk of the district court having jurisdiction thereof at any time during the office hours, not later than twenty one days after the date of such notice..."

Mr. O'Brien stated the word shall (underlined and bold above) implies the enforcement officer failed to comply with Chapter 40 Section 21 D and that the issuance of the written notice. (May is underlined and bold above). This indicates to the Zoning Board of Appeals that it is not mandatory to issue a written notice.

Mr. O'Brien also stated he questions whether Mr. and Mrs. Latino actually needed to receive a Special Permit from the Town of Brookfield. He referenced Zoning By-Laws of the Town of Brookfield Section 4 – District and Use Regulations, D-Use Regulation Table 2g, which states, "Building containing dwelling units in combination with retail shops or other permitted business uses" are required a Special Permit. He continued saying this particular section is intended for more than one dwelling since it states dwelling units and Mr. and Mrs. Latino are in a singular unit. He also stated the dwelling portion is separated from the retail area by a hallway and this fact would preclude them from needing and acquiring a Special Permit.

Mr. and Mrs. Latino stated that complying with the Cease and Desist Order would create a hardship for them and Mr. Laquerre who is operating the auto parts store.

The Zoning Board of Appeals is extremely sympathetic to any hardship Mr. Laquerre and Mr. and Mrs. Latino are experiencing during this time. The Zoning Board of Appeals and the Town of Brookfield want to encourage businesses to flourish in our town. The Zoning Enforcement Officer was extremely explicit with what was required by Mr. and Mrs. Latino for this Special Permit. Although Mr. and Mrs. Latino are ignoring the Cease and Desist Order, and fines could have begun weeks ago, the Zoning Enforcement Officer is attempting to rectify the situation.

Intentionally, flagrantly, refusing to comply with the Town of Brookfield Zoning By-Laws is unacceptable. None of the reasons stated at the appeals hearing were justification for ignoring the Cease and Desist Order by the Zoning Enforcement Officer.

Consequently, as a result of the actions of Mr. and Mrs. Latino, The Town of Brookfield Zoning Board of Appeals has denied their Administrative Appeal by a vote of 4 – 0 and the Cease and Desist Order is still in effect.

David E. Olson

No David Olson

Nicholas M. Thomo

No Nicholas M Thomo

Kenneth Cleveland

No Kenneth Cleveland

William Neault

No William Neault

cc: Board of Selectmen  
Town Clerk  
Zoning Enforcement Officer  
Attorney Meloche & Meloche