

TOWN OF STURBRIDGE

Zoning Board of Appeals

SPECIAL PERMIT DECISION/DETAILED RECORD THE COMMONWEALTH OF MASSACHUSETTS TOWN OF STURBRIDGE

July 20, 2022

File # ZB-2022-000010

The members of the Permit Granting Authority hereby certify that the following is a detailed record of all the Board's proceedings regarding the petition of Cruise Control Transportation, Inc. (Joshua Roy) regarding property located at 110 Brookfield Road which is the property affected by this Special Permit request.

The application to the Board is dated June 15, 2022 and was received by the Board and the Town Clerk on June 21, 2022. The applicant proposes a change in a pre-existing non-conforming use with the addition of a towing operation and storage of vehicles to the existing non-conforming use of a trucking and construction operation on the premise of 110 Brookfield Road.

The application requests a Special Permit from Article XV §300-15.2A and Article XVIII §300-18.2(2) of the Zoning Bylaw.

A notice of the public hearing on this Finding and Special Permit was:

1. Published in the Southbridge Evening News, a newspaper of general circulation in the Town of Sturbridge on June 30, 2022 and July 7, 2022;
2. Posted in a conspicuous place in the town hall at least fourteen days before the hearing was held on July 20, 2022, and;
3. Mailed, (certificate of mailing), at least fourteen days before the hearing to the petitioner, abutters to the property in question, owners of land directly opposite from the property in question on any private or public street or way, abutters to abutters whose property is located within three hundred feet of the property line of the property in question, the Planning Board of the Town of Sturbridge and the Planning Board of abutting cities and towns including the Towns of Brimfield, Brookfield, Charlton, East Brookfield, Holland, Southbridge, and Union. The notice was mailed to the names of persons and at the addresses as provided by the most recent tax list kept by the Town Assessors, with the Assessors certifying such names and addresses.

The applicant submitted the following documents:

1. Application for Special Permit;
2. A Certified List of Abutters;
3. A plan entitled "Plot Plan of Map 1936, Lot 110 Prepared for Cruise Control Transportation – 110 Brookfield Road; Town of Sturbridge, Worcester County, Commonwealth of Massachusetts." The plan was prepared by Levesque Geomatics, Inc – 43 Glendale Road, Sturbridge, MA 01518. Plan date June 22, 2022;
4. Site photographs.

After receipt of the application on June 21, 2022, the plan and application was forwarded to the following Departments for review and comment:

- Mark Augello, DPW Operations Manager
- Earl Dessert, Chief of Police
- Lt. Jennifer Ashe, Fire Inspector
- Rebecca Gendreau, Conservation Agent
- Ken Lacey, Board of Health Agent
- Nelson Burlingame, Building Inspector/Zoning Enforcement Officer
- Jean Bubon, Town Planner

The following comments were received by the aforementioned Departments:

- Ken Lacey, Board of Health Agent, received June 27, 2022 – “Health Department has no issue with this change of use, unless there is a long term storage of junk vehicles.”
- Earl Dessert, Chief of Police, received June 29, 2022 – “No concerns with that site.”
- Nelson Burlingame, Building Inspector/Zoning Enforcement Officer, received July 5, 2022 – “No opinion must be decided by ZBA to issue special permit.”
- Mark Augello, DPW Operations Manager, received July 6, 2022 – “No comments on the request.”
- Lt. Jennifer Ashe, Fire Inspector, received July 6, 2022 – “With the additional use that is suggested for this property, I just want to remind the applicant of the following Fire Safety Code concerns: Regarding 22.9.2.1: Motor Vehicle fluids shall be drained from salvage vehicles when such vehicles are leaking; 22.9.22 Storage and handling of motor vehicle fluids shall be done so in a approved manner; 22.9.2.3 Flammable and Combustible liquids shall be stored and handled in accordance with Chapter 66. Storage of additional flammable liquids such as fuel oil and such may require permitting based on volume and quantity kept on hand per MGL 148 10A.”
- Rebecca Gendreau, Conservation Agent, received July 7, 2022 – “Thank you for the opportunity to comment on this project. The project includes alteration of the property for use as a towing facility. This is a land use with a high pollutant load. The property abuts 67 Clarke Road which is town owned Conservation Land in the care and custody of the Conservation Commission. This land was conveyed to the Town in 2002. It does not appear that the property was demarcated at that time. It would be advisable that the common property line be demarcated prior to any future work. This could probably be easily accomplished, as the corner pins have been located per review of the site plan. From a review of available information and aerial photographs, there are wetlands located on or just at the edge of the property, which appear to include a stream and associated bordering vegetated wetlands. Staff could not locate records for this property or adjacent properties; therefore, the extent of wetlands is unknown. The project requires review pursuant to the MA Wetland Protection Act (WPA) and the Sturbridge Wetland Bylaw (SWB). The extent of wetlands would need to be delineated and an application submitted for review pursuant to the WPA and the SWB.”
- Jean Bubon, Town Planner, received July 14, 2022 – “As the Board is aware, there are protections for continually operating lawfully existing pre- existing non-conforming

uses. This is the case with the Kaitbenski property. In general, changes to the original nonconforming use that either: a) do not reflect the nature or purpose of the original nonconforming use; b) are different in quality or character as well as degree from the original use; or c) result in an effect on the neighborhood that is different in kind than the original use, require approval of the ZBA under Section 20.05 of the Zoning Bylaws.

On the other hand, changes ordinarily and reasonably adapted to the original use would be allowed without the need for approval. For instance, a modest increase in the volume of business, or changes to equipment to modernize the business would not likely constitute a change or substantial extension requiring approval of the ZBA in order to be lawful. Changes in ownership are not considered a change or substantial extension requiring approval.

The property in question has been used for commercial purposes for many years. In fact, the earliest documented use was the operation of a Pontiac Dealership in the 1950's. The Kaitbenski family purchased the property in 1964 and has run a commercial trucking and construction operation on the property since time. The use has been expanded over the years with additions being added and new equipment and employees being added as the business expanded.

Part of the operations that have taken place over the years in addition to the regular construction and trucking business has been a snow plowing business meaning vehicles have entered and exited this property at all different times of the day; basically, this has been a 24/7 operation. Outside of the winter months construction vehicles would also leave the site at various times of the day or night as needed to supply various road construction and other construction projects.

While business has slowed for the Kaitbenski family over the past several years. They have continued operation on the site with the same business. In 2020, the Kaitbenski family entered into an agreement with Joshua Roy to take over the trucking operations. This winter, they will also take over the plowing operations.

The applicant is proposing to add his towing operation to this location. The site plan prepared shows that they would have adequate room within the existing parking lot to park the flatbeds and tow trucks. The cars towed in would generally stay for no longer than 30 days with 5-6 cars stored at any one time on average. These vehicles that are towed would be stored in the existing salt shed. The average additional employees to operate the towing business would be four during the first shift and three on the second shift.

I believe that the proposal by the applicant to add an additional service to this location would be no more detrimental to the neighborhood than the existing non-conforming use.”

The Public Hearing on this application was held on July 20, 2022 at 6:55 PM.

The following regular members of the Board present were: Diane Trapasso, Michael Young, David Zonia, Fidelis Onwubueke and Tom Welch. Several abutters were also present and spoke in opposition to the change.

At the close of the Public Hearing on July 20, 2022, a motion was made by Ms. Trapasso, seconded by Mr. Welch and voted 5-0 to find that the proposal by the applicant Cruise Control Transportation, Inc. Pursuant to Article XV §300-15.2A of the Zoning Bylaw, to allow the expansion and alteration of a pre-existing non-conforming use on the property located at 110

Brookfield Road will not be more detrimental to the neighborhood than the existing non-conforming use. The Board Finds that the property has continually housed a commercial or industrial operation since the early 1950's with many aspects of the construction business including snow-plowing and construction work operating 24 hours a day, seven days per week. The proposal to continue this operation and add towing on this site is not a significant change given the current use and the fact that there are no changes proposed to the building or the parking lot.

Second, a motion was made by Mr. Onwubueke and seconded by Mr. Young and voted 5-0, to grant the Special Permit requested pursuant to Article XVIII §300-18.2(2) of the Zoning Bylaw, to allow the change in pre-existing non-conforming use as proposed by Cruise Control Transportation, Inc. as described in the application and narrative and as shown on the plans entitled: "Plot Plan of Map 1936, Lot 110 Prepared for Cruise Control Transportation 110 Brookfield Road Town of Sturbridge Worcester County Commonwealth of Massachusetts" Prepared by Levesque Geomatics, Inc. – 43 Glendale Road Sturbridge, MA 01518; Dated: June 22, 2022; Project #: JR05-002. The proposal as shown on the plan, application and supporting documents meet the requirements set forth in §300-18.2(2)(a)(1)-(6) of the bylaw.

Approval is subject to the following conditions:

- All operations shall be in conformance with the plans submitted and approved by the Zoning Board of Appeals;
- All State and Local Zoning Bylaws, Building Codes and Regulations must be adhered to;
- All other necessary permits must be obtained prior to the start of construction;
- An as-built must be provided to the Planning Department.

The following members were present and voting as follows with respect to the requested Special Permit:

Member Diane Trapasso voting to grant the special permit requested.

Member Fidelis Onwubueke voting to grant the special permit requested.

Member David Zonia voting to grant the special permit requested.

Member Michael Young voting to grant the special permit requested.

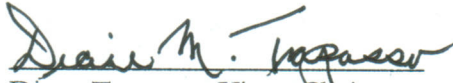
Member Tom Welch voting to grant the special permit requested.

Copies of this decision have been filed with the Zoning Board of Appeals Office, the Town Clerk's Office and the Office of the Planning Board as required by M.G.L. Ch. 40A, § 11.

Any appeal of this decision of the Zoning Board of Appeals must be made to a court of competent jurisdiction within twenty days from the date this decision was filed with the Sturbridge Town Clerk, pursuant to Section 17, Chapter 40A of the general laws of the Commonwealth of Massachusetts as amended.

If the rights authorized by this Special Permit are not exercised within one (1) year of the date of grant, such Special Permit shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed one year; and provided further that

the application for such extension is filed with such permit granting authority prior to the expiration of the one year period. Otherwise such rights may only be re-established after a new notice and public hearing in accordance with the provisions of Section 9, Chapter 40A of the general laws of the Commonwealth of Massachusetts as amended.


Diane Trapasso, Vice - Chair
Zoning Board of Appeals

Copy to:
Applicant
Town Clerk
Building Inspector