

COMMONWEALTH OF MASSACHUSETTS
 CITY OF GARDNER
 ZONING BOARD OF APPEALS
DECISION

RECEIVED
 2010 MAR 24 P 3:06
 CITY CLERKS OFFICE
 GARDNER, MA

NAME: John Jalbert
 ADDRESS: 17 Patricia Road, Westminster, MA 01473

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED ON:

78 East Broadway

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:

BOOK 41187 PAGE 210

ON APPLICATION DATED January 20, 2010 FOR A **Variance** TO:
 Open a motor vehicle sales garage with repair services at 78 East Broadway, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 4, 415 Table of Uses, #41, in Commercial I Area, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its March 16, 2010 meeting voted unanimously to grant, with conditions, a Variance to John Jalbert to open a motor vehicle sales garage with repair services at 78 East Broadway.

The Public Hearing was held on February 16, 2010. At the hearing, the Applicant presented his plan to operate a motor vehicle sales garage with repair services at 78 East Broadway. The building historically has been used for used car sales and minor repairs. A Variance was issued to a previous operator on April 5, 1988. The present Applicant has requested the storage of up to 10 vehicles, including those that may be for sale, on the premises. The Applicant also represented to the Board that repairs to vehicle that to be undertaken are minor repairs. There was to be no auto body work, or rebuilding of vehicle engines. The Applicant indicated replacement of engines as opposed to major overhauls.

The Board inspected the site on February 20, 2010, viewing the proposed sales and parking areas.

At the site visit, the Board noted significant junk motor parts, tires, miscellaneous metals etc. at the rear of the property. This unsightly debris is to be removed as a condition of the granting of this Variance.

The granting of the Variance does not create or aggravate a safety hazard. The proposed use of the building is a beneficial use of a building that has historically been used for this purpose. The building's former owner is currently in bankruptcy which will ultimately leave the building vacant, through which the deteriorating building could present a hazard to nearby abutting properties. The property also historically was subject to hazardous materials disposal issues and there is a current use restriction on the property. The proposed use is consistent with allowed uses on the property.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that the use is not permitted in a Commercial I Area. The building was historically used for similar use. The building, as it

currently exists on the property lends itself to this type of business due to existing service bay. The property is located within the South Gardner center district and is located among residential, industrial and commercial properties, with the Prospect School across the street.

A hardship exists relative to shape, topography or soil conditions of the property. As indicated above, the property was the site of historical hazardous material issues with a deed restriction on the property. Any use of the property is restricted by this covenant and limits the marketability of the property.

The Variance is granted with the following conditions:

1. The Variance is granted to the personal and commercial use of the Applicant (John Jalbert), successors or assigns. Any subsequent use by other individual(s) will require an application to the Board for a new Variance.
2. The hours of operation for selling of vehicles will be 8 AM to 6 PM Monday through Friday and 8 AM to Noon on Saturday.
3. Repair of personal vehicles and vehicles for sale must be within the hours of operation as presented to the Board at the Public Hearing, those being: Monday-Friday 8 AM to 6 PM and Saturdays 8 AM to Noon.
4. The maximum number of vehicles on the lot is limited to ten (10) plus employees personal use vehicles, not exceeding twelve (12) vehicles or in full compliance with City of Gardner Ordinance Number 74 whichever is less.
5. No partial vehicles are allowed on site. Old mufflers, tire rims, miscellaneous parts etc. are not to be stored on the outside of the building unless stored in a suitable covered dumpster with ultimate removal from the premises.
6. Applicant must meet with a representative of the Gardner Fire Department and follow their recommendations with regard to the management of hazardous materials and other issues under the jurisdiction of the Fire Department. Best management practices shall be employed with the handling and disposal of hazardous materials.
7. Used tires and batteries are to be stored inside the building.
8. No auto bodywork or salvage of vehicles is to be performed on site.
9. No gas tank repairs.
10. All significant repairs to vehicles to be undertaken within the building. Minor repairs such as replacement of batteries, repairs of flat tires and the like may occur on the outside of the building. Cars shall not be in obvious disrepair (hood up, tires off, etc) on the outside of the building beyond the daily close of business.
11. All signage must comply with the Zoning Ordinance.
12. No streamers or banners and the like are to be used on site.

- 13. Exterior lighting to comply with the Zoning Ordinance. Outside lighting to be directed so that it does not shine on or disturb the abutters.
- 14. Dumpster must be covered and secured to prevent any blowing of refuse. Dumpster to be emptied on a regular schedule.
- 15. Within ninety (90) days of the recording of this Variance decision, all debris, miscellaneous junk, old vehicle parts, tires etc, must be removed from the premises. This includes all junk materials to the sides and rear of the property.

ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD OF APPEALS OR ANY SPECIAL PERMIT/VARIANCE GRANTING AUTHORITY, WHETHER OR NOT PREVIOUSLY A PARTY TO THE PROCEEDING, OR ANY MUNICIPAL OFFICER OR BOARD MAY APPEAL EITHER TO THE SUPERIOR COURT, DISTRICT COURT, OR LAND COURT DEPARTMENT OF THE TRIAL COURT FOR THE COUNTY IN WHICH THE LAND CONCERNED IS SITUATED BY BRINGING AN ACTION WITHIN TWENTY (20) DAYS AFTER THE DECISION HAS BEEN FILED IN THE OFFICE OF THE CITY OR TOWN CLERK. (M.G.L. SECTION 17, CHAPTER 40A)

A COPY OF THIS DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 24th DAY OF March, 2010

Randall Heglin (d) Michael Gerry (d) Anthony Asmar (d)
 Randall Heglin, Chairman Pro Tem Michael Gerry, Clerk Anthony Asmar, Third Member

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached decision by the Zoning Board of Appeals was filed with my office on March 24, 2010 and that twenty days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

April 15, 2010
 Dated

Alan L. Agnelli
 Alan L. Agnelli, City Clerk

