

COMMONWEALTH OF MASSACHUSETTS
 CITY OF GARDNER
 ZONING BOARD OF APPEALS
DECISION

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 CITY CLERKS OFFICE
 GARDNER, MA

NAME: David M. Pelletier, Richard A. Pelletier and Melissa A. Pelletier, Trustees of D & M Realty Trust
 ADDRESS 95 Pearson Boulevard, Gardner, MA 01440

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

95 Pearson Boulevard

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

BOOK 19042 PAGE 238

ON APPLICATION DATED March 9, 2010 FOR A **Variance** TO:
 Install one wall sign of approximately 238 square feet sign, two (2) wall signs at 48 square feet each, free standing sign of approximately 110 square feet, and sign of 25 square feet, for an approximate total of 334 square feet on the building and 135 square feet on the free standing sign at 95 Pearson Boulevard, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 9, #916 Signs permitted in the Commercial or Industrial Districts, subsections 1 and 5, in Commercial II area of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its May 18, 2010 meeting voted unanimously to grant with conditions, a Variance to Ken-Bon Display Service, Inc. for D&M Realty Trust to install signage at 95 Pearson Boulevard, Gardner, MA.

The property in question, a lumber and hardware retail store, recently underwent a name change necessitating the changing of previously approved (1997) signage. The Applicant, in addition to the previously approved signage seeks to install additional signage on the building (2 signs - 4'x8') and additional signage on the free standing sign (2.5' x 10') located along Pearson Boulevard.

A public hearing was held on April 20, 2010. At this meeting, the Applicant presented to the Board the proposal to add the additional signage delineated above to the application as presented and advertised. The original application sought a variance to install a wall sign of approximately 238 square feet on the building, and a free standing sign of approximately 110 square feet. As the additional signage sought was not substantially different than was on the application before the Board, the Board agreed to consider the request as long as the Applicant submitted a letter to the Board delineating the additional signage requested. This letter was received by the Board on May 6, 2010. No parties present at the hearing expressed opinion with regard to this application.

A site visit was held on May 11, 2010. For this viewing, the Applicant presented a scale mockup of the main sign proposed to be located on the building and of the free standing sign. The Building in question is located approximately 200 feet off of Pearson Boulevard. The proposed signage is sized to provide adequate visibility for the business. The larger sign (238 square feet) is sized and shaped with the current standard of the company. The two smaller secondary signs (4' x 12') are to be located to either side of the main sign and

advertise the services and products of the business. A three signs were presented to the Board as static, meaning not changeable. The signs are proposed to be illuminated by fluorescent lighting from above the sign. The size proposed for the main sign is advocated as necessary due to the distance from the roadway. The Board concurred that the lettering size that would comply with the Ordinance would appear too small and be ineffective as the building is located so far off the road.

The free standing sign provides visibility for the business, as the physical building is located a distance from the roadway and is partially shrouded by overgrowth of vegetation on either side a brook or drainage swale that exists on the property. The size of the new sign is approximately the same size of the sign that was existing and previously approved by the Board. The height of this free standing sign is 18.5 feet. This free standing sign is proposed to contain three (3) individual signs. The top sign being 80 square feet with two smaller signs below being 30 and 25 square feet. This sign is not proposed to be illuminated. This sign is smaller in scale than the free standing sign on the immediate abutter to the north.

The granting of the Variance does not create or aggravate a safety hazard. The absence of an appropriately sized sign may create or aggravate a hazard as vehicular traffic could not effectively and safely locate the site. By approving a sign of adequate size, the visibility of the building is increased thereby possibly reducing a potential safety issue.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that the proposed signs exceed the maximum square footage allowed by the Ordinance. The building is located approximately 200 feet from Pearson Boulevard, the route most traveled to access the address, and constructing a sign that would comply with the Ordinance would make it difficult for patrons to locate the building and possibly create a safety hazard due to difficulties locating the site.

There is a hardship related to shape, topography or soil condition of the property. The hardship is the depth of the lot as the building is located approximately 200 feet from the main road. Visibility of the building is also impacted by the vegetative overgrowth that exists adjacent to the brook/drainage swale.

A literal enforcement of this section of the Ordinance would impose hardship upon the Applicant in that to comply with the signage requirements visibility of the site would be reduced and potentially create a safety hazard for patron and others trying to locate the address.

The Variance is granted with the following conditions:

- No further permanent signs on the building.
- Sign(s) on the building not to be illuminated between 9 PM and 7 AM local time, unless establishment is open during those hours.
- Signs are not to be changeable letter or electronic

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 1st DAY OF June, 2010

Randall W. Heglin (d)
Randall W. Heglin, Chairman Pro Tem

Michael Gerry (d)
Michael D. Gerry, Clerk

Wayne D. Gallant (d)
Wayne D. Gallant, 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 June 1, 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.

June 21, 2010
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk

