

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
DECISION

**RECEIVED**  
2010 NOV 15 P 1:41  
CITY CLERKS OFFICE  
GARDNER, MA

NAME: Scott B. McPherson  
ADDRESS: 33 Gardner Road, East Templeton, MA 01438

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

**504 Chestnut Street**

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

**BOOK 28169 PAGE 98**

ON APPLICATION DATED September 28, 2010 FOR A **Variance** TO:  
Move a Class II Auto Sales Business to 504 Chestnut Street, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 6, #620 Table of Lot, Area, Frontage, Yard and Height Requirements or Section 4, #425 Abandonment or Non-Use in Commercial II Area of the Gardner Zoning Ordinance. )

The Gardner Zoning Board of Appeals at its November 10, 2010 meeting voted unanimously to deny a Variance to Mark J. Russell to move a Class II Auto Sales Business to 504 Chestnut Street.

The Public Hearing was held on October 19, 2010. At the hearing, the Applicant presented his plan to operate a used car business at 504 Chestnut Street. This lot consists of approximately 5,504 square feet and is located on the easterly side of Chestnut Street at Union Square. The Applicant desires to sell automobiles at this location. Plan schematic was presented to the Board delineating 11 parking spaces for vehicles for sale. Customers interested in the display of vehicles would park on Chestnut Street. No on-site lighting was proposed. No automotive repairs were to be conducted at the site. The hours of operation were proposed to be 9AM to 6PM Monday through Friday and 10AM to 2PM on Saturdays.

The Board inspected the site on October 30, 2010, viewing the proposed sales and parking areas. At the site visit, the Board noted the sight distances on Chestnut Street.

The granting of a Variance would, in the opinion of the Board, create or aggravate a safety hazard. The Board, in its deliberations expressed concern over the lack of sight distance from the property looking to the east/south. An abutting building restricts visibility in this direction. According to published guidance from American Association of State Highway and Transportation Officials (AASHTO), the minimum sight distance is 200 feet with a desirable sight distance of 325 feet. With the restricted view of the abutting building and the geometry of the roadway, the Board does not believe sight distance is adequate for safety.

The granting of a Variance would derogate from the intent of the Zoning Ordinance in that the lot is significantly substandard in area. The Applicant proposed parking for 11 vehicles on the lot.

No demonstrated hardship related to shape, topography or soil conditions of the property was indicated by the applicant. The Board does realize that the lot is small and odd shaped.

The safety concerns outlined above were of the greatest concern of the Board. The Board voted unanimously to deny the granting of a Variance.

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 15th DAY OF November, 2010

<u>Raymond F. LaFond</u> dK	<u>Randall Heglin</u> dK	<u>Michael Gerry</u> dK
Raymond F. LaFond, Chairman	Randall Heglin, Clerk	Michael Gerry, 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 November 15, 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.

December 6, 2010  
Dated

Alan L. Agnelli  
Alan L. Agnelli, City Clerk