

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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CITY CLERKS OFFICE
GARDNER, MA

NAME: John L. Fletcher James L. Fletcher Trustees of the Fletcher Trust I
ADDRESS: 91 Walnut Street 225 Chapel Street
Baldwinville, MA 01436 Gardner, MA 01440

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

Off Riverside Road

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

BOOK 17659 PAGE 45 - 51

ON APPLICATION DATED October 28, 2010 FOR A **Special Permit**

Store precast masonry products at the front of the property. (Denied a building permit by the Building Commissioner because it does not comply with Section 4, 415 Table of Uses, Sub-Section #62 Storage Facility, in Rural Residential II Area, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its June 2, 2011 meeting voted unanimously to DENY a Special Permit to John L. Fletcher and James L. Fletcher, Trustees of Fletcher Trust I, to store precast concrete products on property on Riverside Road, Gardner, MA.

The application for Special Permit was filed with the office of the City Clerk on October 28, 2010.

Public Hearing held on February 15, 2011 and continued to March 15, 2011. Public Hearing closed on March 15, 2011.

A site visit was not held as the Board last visited the site on October 9, 2010 and was advised that the site was essentially unchanged.

The Applicant proposed the storage of precast concrete products on property located off Riverside Road. The proposed location of the precast storage is the front portion of a larger parcel of land owned by the Trust. The rear portion of the property is occasionally mined for gravel. The gravel removal process is a grandfathered activity on the parcel. In an October 9, 2010 decision, the Board concurred with the Applicant that the Building Commissioner erred in his determination that the gravel removal activities were not a continuing activity. The basis of that decision was the presentation of gravel removal records indicating activity within the statutory limitations of the Ordinance.

Attorney Mizhir, the Applicant's Representative, referencing the October 9, 2010 decision presented to the Board an argument that storage of the precast products, under Section 422, Nonconforming Uses (below), of the Gardner Zoning Ordinance is an extension of a nonconforming use and a Special Permit should be granted.

422 Nonconforming Uses

The Zoning Board of Appeals may award a Special Permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the

neighborhood. The following types of changes to nonconforming uses may be considered by the Zoning Board of Appeals:

- a. Change or substantial extension of the use;
- b. Change from one nonconforming use to another, less detrimental, nonconforming use.

422.1 Reversion to Nonconformity.

No nonconforming use shall, if changed to a conforming use, revert to a nonconforming use.

At the Public Hearing, the Applicant and representative presented arguments to the Board defending both Sections 442 (a) and (b). The Applicants represented that the storage of the precast products is a less detrimental nonconforming use than the gravel removal operations, due primarily to the nature of the use. The Applicant indicated that gravel removal could involve the movement of trucks, front end loaders, etc. and would see truck traffic entering and exiting the site all resulting in noise, dust and pollution. The storage of the precast units would see truck traffic perhaps a couple of days per week for the moving in and out of product. When inquired by the Board if the gravel removal activities would continue should a Special Permit be granted, the Applicant/Representative responded in the affirmative. The storage of precast was presented to the Board as a substantial extension of the use. The Board recognizes that gravel/sand is a constituent used in the manufacture of the precast, but the manufacturing process is not undertaken on-site.

At the Public Hearing the Applicant addressed the nine (9) conditions requisite for the granting of a Special Permit as outlined in Section 1182 of the Ordinance and are summarized below:

1182 Criteria

Special Permits shall be granted by the SPGA, unless otherwise specified herein, only upon its written determination that the adverse effects of the proposed use will not outweigh its beneficial impacts to the city or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site.

1. The proposal shall be compatible with the use in the neighborhood. This area is zoned Rural Residential but there exists a mixture of residential and commercial uses. There are greater than 6 residential properties on Riverside Road. There also exists the gravel operation of the Applicant and an auto salvage yard. Across the Otter River to the south and located in the Town of Templeton is a small engine repair business.
2. The proposal shall provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements. The Applicant represented that the storage of the precast products would generate less traffic at the site than gravel removal operations. The issue of the bridge over the Otter River was raised at the public hearing, specifically the condition of the bridge. Riverside Road is an unaccepted roadway. The Otter River Road bridge is also a private bridge. At a previous application to the Board, an abutter presented an engineering analysis report on the bridge. This report was referenced by the same abutter at the Public Hearing for this application. This report, prepared by GV Engineering LLC and dated November 3, 2009, indicated that the bridge is in poor condition and is not structurally adequate to support a HS20 vehicle load. The Applicant indicated that the vehicle used to transport the concrete units is a 72,000 lb tri-axle boom truck. The Board in its deliberation believed that movements within the site were adequate, but the status of the private bridge remains unknown.
3. The proposal shall provide adequate off street parking, loading and unloading, at the site for the proposed use. Applicant asserts that there is adequate space at the site.
4. The proposal will contain adequate facilities for sewerage, refuse and waste products and surface drainage is not applicable to this application.
5. The proposal shall not constitute a nuisance. The Applicant indicated that the proposal will not constitute a nuisance due to air or water pollution, erosion, flood, noise, odor, dust, vibrations, lights, or visually offensive structures or site features as the storage of precast is less detrimental than the gravel operation. The Board during its deliberation questioned whether the concrete products were visually offensive, and expressed concern over the potential for stagnant water and a breeding area for insects in the septic tanks stored on site. The issue of

whether the precast products were visibly offensive could be subject to definition, however, the storage of septic tanks, covers, excavation tiles, retaining wall units, etc. are not common to residential areas.

6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. Again, the Applicant represented that the storage of concrete product activity is less detrimental than gravel operations. Concern was raised at the Public Hearing about trespassers to the site, the unprotected/unsecured storage of the precast products and the potential of injury in and around the tanks, etc.

7. The proposal shall be in harmony with the general purpose and intent of this ordinance. The storage of concrete products was represented by the Applicant/Representative to be in harmony with the general purpose and intent of the ordinance as the storage of the units is a less detrimental use. The Board determined that while the gravel operation may be a grandfathered use, the zoning use for the area, as determined by the current Zoning Ordinance is Rural Residential and that the intent of the ordinance is residential. The storage of precast concrete products would not be in harmony with the general purpose and intent of the ordinance and the proposed use would be more detrimental.

8. The proposal shall not have a significant detrimental impact on city services, tax base, and employment opportunities. The storage of the concrete products would not have a detrimental impact on city services, tax base, and employment opportunities.

9. The proposal is consistent with the City's Community Development Plan or Master plan. Whether the storage of the concrete products is consistent with the City's Community Development Plan or Master plan is not applicable.

During its deliberations, the Board had difficulty reconciling the storage of the concrete products being an extension of a nonconforming use or a less detrimental use especially as it was represented that the existing nonconforming use of gravel removal would continue. Concerns about traffic over the private bridge exist whether the Special Permit is granted or not. A failure of the bridge would adversely impact the Applicant as well as the abutters and residents of the private roadway. The Board determined that the adverse effects of the proposed use outweighs its beneficial impacts to the city or the neighborhood under Section 1182.

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 10th DAY OF June, 2011

Raymond F. LaFond (dk)
Raymond F. LaFond, Chairman

Randall Heglin (dk)
Randall Heglin, Clerk

Michael Gerry (dk)
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 June 10, 2011 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.

July 1, 2011
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk

