

TOWN OF NORWELL
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TOWN OF NORWELL

OFFICE OF
BOARD OF APPEALS

345 MAIN STREET, P.O. BOX 295
NORWELL, MASSACHUSETTS 02061
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Philip Y. Brown, Vice Chair
David Lee Turner, Clerk
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Thomas P. Harrison
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FINDINGS AND DECISION of The Norwell Board Of Appeals *File No. 17-09*

A Public Hearing by the Norwell Zoning Board of Appeals was held, a Decision voted, and then closed on June 7, 2017, under M.G.L. c. 40A, Section 10, at the Norwell Town offices, 345 Main Street, Norwell, MA on the Application of:

Dan DeSantis
BMD. LLC d/b/a McLaren Boston
22 Pond Street
Norwell, MA 02061, Applicant

For Variances, under G.L.c.40A, Sections 6 and 10, and from the requirements in the following sections of the Norwell Zoning By-Law: Section 2471(Building Coverage), Section 2442 (Side Yard), Section 3140 (Minimum Requirements for Parking) and 3152 (Setback) for a 12,790 square foot building, on the Site generally known and numbered as 22 Pond Street (the Property), consisting of two areas sometimes referred to as Lot 10 and Lot 22 Pond Street, which are in common ownership, have merged for zoning purposes [See *Timperio, Trustee v. ZBA of Weston*, 84 Mass.App.Ct. 151, (2013)], and are determined to be one parcel, which is hereinafter referred to as the Property. The Property is described in the Lease Agreement executed by Herb Chambers {Pond Street, LLC "Landlord" and the Applicant, as "Tenant," marked as Exhibit 2. The Property is located in a Business District, as shown on Assessor's Map Sheets 5B-D, Block 16, Lots 003 and 005, and is described in the instruments recorded at the Plymouth County Registry of Deeds in Book 41003 Page 298 and Book 3413 Page 330.

The Public Hearing for the Application was duly noticed by mail, by publication in *The Norwell Mariner* on May 18, 2017, and May 25, 2017, and by posting by the Town Clerk in accordance with the Open Meeting Law.

The Applicant was represented by his engineer and others at the Public Hearing. Plans for a proposed building were presented and marked as Exhibits. Members of the public were present at the hearing and responded to questions by members of the Board.

The Board received the following documents, marked as Exhibits, as noted, and the information they contain, all of which are made a part hereof:

1. The Variance Request, received by the Board and the Town Clerk on May 5, 2017, including the Application, Narrative, Notice Authorization, Hingham Abutters List and Variance Plan.
2. Lease - Herb Chambers Pond Street. LLC as Landlord & BMD, LLC as Tenant
3. Proposed Storage Building – Floor Plan & Elevations
4. Posted Agenda of the Board

FINDINGS AND RULINGS OF THE BOARD:

The Board Finds and Rules as follows:

1. The Property is a legally established nonconforming lot. It is in a Business Zoning District that now requires lots to contain a minimum of one acre. The Property, that contains a building, is presently used for an automotive dealership by the Applicant.
2. The Applicant desires to add an additional building (See Exhibit 3) that would have one exterior Wall located ONE (1') Foot from a property boundary sideline. The Zoning By-Law requires that Wall to be at least TEN (10') feet from that property boundary line. A variance from that requirement has been requested.
3. The additional building proposed in this Application would require a variance that changes the building coverage requirement from 18% to a maximum 30%.
4. The Applicant requests a variance that would change vehicular parking requirements from a total of 28 to a total of 18 parking spaces.
5. The Applicant requests a variance that would change vehicular parking in the front yard setback area from a total of five (5) to a total of seven (7) parking spaces.
6. The Lease of the Property by the Applicant was executed by the parties on November 13, 2015, and is for a term of two (2) years and two (2) months, with an expiration date of January 2, 2018. There is no extension period. See Exhibit 2, Sections 2.1(a) and (b).
7. The setback requirements in the Norwell Zoning By-Law are reasonably required to preserve and protect regular and emergence access at all seasons of the year

and under normal and extreme conditions.

8. Building coverage requirements in the Business Districts are reasonably required to insure adequate area for access, parking, screening, public safety and area for adjustments as the changing demands for both business and public needs and requirements evolve and improve.
9. Minimal parking availability is not realistic because vehicle use and access is not static and must be modified from time to time as property uses change, and so basic requirements must contain some flexibility.
10. The Zoning By-Law is a coordinated plan to preserve and protect the public good, welfare and safety. "Variances are not allowed as a matter of right and should be 'sparingly granted.'" *Lussier v. Zoning Bd. of Appeals of Peabody*, 447 Mass. 531, 534 (2006).
11. There are two main requirements that must be satisfied before a variance can be considered. The first is that there must be circumstances relating to the soil conditions, shape or topography of such land or structures and especially affecting such land or structures but not generally the area in which it is located, a literal enforcement would involve substantial hardship and second that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the by-law,
12. The Board finds and rules that the Applicant failed to suggest any literal enforcement of the by-law that would involve substantial hardship for the stated reasons. The Lease, Exhibit 2, on its face, suggests there is none. In addition, any relief granted on the evidence set forth above, would cause substantial detriment to the public good and nullify the intent and purpose of the by-law. See G.L.c.40A, Section 10, and cases cited. Many of the parcels and lots in the Business Districts have distinctive boundary line and topography characteristics. Unlike other areas, New England is noted for its diverse environmental characteristics and irregular boundary lines.

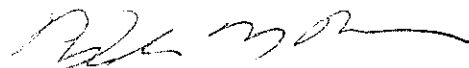
DECISION OF THE BOARD

Based upon the evidence submitted, including the Exhibits, for the reasons stated, and the Findings and Rulings set forth herein, the Board Members, Barbour, Brown and Turner, upon motion duly made and seconded, UNANIMOUSLY VOTED TO DENY THE REQUESTED ZONING RELIEF FOR THE PROPERTY, INCLUDING ALL OF THE REQUESTS FOR VARIANCES SUBMITTED BY THE APPLICANT.

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CLERK OF BOARD
TOWN OF PEABODY
MASSACHUSETTS



Lois S. Barbour



Philip Y. Brown



David Lee Turner

Date Filed with Office of the Town Clerk

*This space is for Date Stamp of
Town Clerk*

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OFFICE OF TOWN CLERK

NOTICE OF APPELLATE RIGHTS: Any decision of the Board of Appeals may be appealed to Superior Court within twenty (20) days after filing of the written decision with the Town Clerk. Any construction or pre-construction activity is undertaken at the applicant's risk during the appeal period.