





The Commonwealth of Massachusetts
Town of Avon

TOWN OF AVON

2021 SEP -9 P 2:13

TOWN CLERK

(This form to be filed with Town Clerk with the required fee)

TO THE BOARD OF APPEALS:

The undersigned hereby petitions the Avon Board of Appeals for a hearing to vary the terms of the Zoning by-laws of the Town of Avon, Acts of 1977 as amended or for a Special Permit at premises know as: AVON MILL LLC.

Street Address: 491 West Main St.
Map/Block/Lot: 04/3/2

In the following respect:

Approval for "wholesale to wholesale" car sales with NO additional parking spots required, per the existing special permit zoning.

Or any limitation, extension, change, alteration or modification of use, or method of use as may at hearing appear as necessary or proper in the premises.

State briefly reasons for Variance / Special Permit:

The ZBA previously unanimously approved a Special permit under section 255-5.3 F.3 allowing the sale or rental on an open lot at the property. We went in front of the ZBA as an approved U-Haul dealer, and did receive it for rentals. per Joseph Lalli ESQ letter dated 6/9/21. We will need the additional Variance.

Petitioner Roger Gordon Adj. LLC d/b/a/B&C Motors
By BEN PINKOWITZ
Address 491 West Main St Avon
Telephone Number 781-771-2680

THE LAW OFFICES OF
JOSEPH
S.
LALLI

Joseph S. Lalli, Esquire
josephstephenlalli@yahoo.com

185 Main Street
Suite 31
Avon, MA 02322
Phone (508) 588-6991 Fax (508) 857-1635

To: Charles Comeau
Avon Zoning Board of Appeals

From: Joseph S.Lalli, Esquire
Town of Avon Town Counsel

Date: June 9,2021

Re: Class II License Application for Roger Gordon Adjusters;d/b/a B&C Motors
Property Address: 491 West Main Street, Avon MA 02322
Zoning Board of Appeals, Case No.20-3

FORMAL OPINION TO BE FILED WITH THE TOWN CLERK

Greetings:

On or about May 19,2021 at 4:21 PM, I was asked by Mr. Charles Comeau of the Avon Zoning Board of Appeals, acting in his capacity as a member of the Avon Zoning Board of Appeals, to issue an opinion regarding the need for either a modification to an existing Special Permit or the issuance of a new Special Permit. The situs of and for this request is 491 West Main Street, Avon MA 02322. The controversy arises due to the Petitioner in the above captioned case, believing that a said Special Permit that was issued on or about June 2,2020, is sufficient for said Petitioner to sell cars, since they were already approved for a Special Permit. The Zoning Board for the Town of Avon and the Building Commissioner do not agree and believe said Special Permit issued should be modified or an additional Special Permit should be sought.

Issue in controversy: does the Special Permit granted on June 2,2020 in Case No.20-3 pursuant to the Town of Avon By-law 255-5.3F-3, sale or rental of motor vehicles on an open lot in the Avon Industrial Zoning District, additionally allow the Petitioner in said case to additionally, "wholesale to wholesale car sales?"

Ruling of Town Counsel: The Special Permit issued in case No.20-3; is only sufficient for the stated purposes of record which will later be enumerated within this opinion. **If the party seeking to, " wholesale to wholesale car sales," they are required to file for a new Special Permit.**

Reasoning: On March 2, 2020 at 7:05PM a Public Hearing commenced, known and numbered as 20-3. The Petitioner was Ben Pinkowitz, Avon Mill LLC., 491 West Main Street. The Petitioner was requesting relief in the form of a Special Permit under Town of Avon By-law Section 255-5.3 F-3, sale or rental vehicles on an open lot in the Avon Industrial Zoning District at the property located and known as 491 West Main Street, Avon MA 02322. Said Hearing was in front of the Town of Avon Zoning Board of Appeals. The Public Hearing was conducted in the following manner:

1. Petitioner's Presentation
2. Comments, Open Discussion, Questions and Answers
3. Decision and Vote of the Board of Appeals

The Petitioner presented to the Board that he had the opportunity to rent U-Haul vans/trucks to their customers and to Avon Citizens. The Petitioner had met with the area manager of U-Haul. Said manager saw how regularly the Petitioner was renting trucks, along with how often Avon residents rented from the Brockton and Stoughton U-Haul Dealers. The Petitioner and the U-Haul area field manager discussed the opportunity to have what they call, "U-Haul Dealer Program".

This means the fleet is based on the needs of the community. There are currently no U-Haul Dealers in Avon.

The above paragraph was the crux of the Petitioner's presentation. (Emphasis added) At no time during the Petitioner's presentation, was the subject of "wholesale to wholesale car sales" mentioned. The record is empty of such a concept.

The Public Hearing then moved on to, "2. Comments, Open Discussion, Question and Answers. "During this juncture of said Hearing the Board reviewed the plans and requested clarification regarding the number of vans/trucks U-Haul was requiring the Petitioner to rent. It is to be noted at this point that the number being sought was strictly for U-Haul vans/trucks and nothing else regarding vehicles. The Petitioner stated "There shouldn't be more than 4-6 vans/trucks. One would safely make an inference here, that if six (6) were the number of spaces being sought, which is reflective in said minutes, then the U-Haul trucks/vans, completely occupied the requested number of spots. Never was it mentioned that the U-Haul spaces would be divided up with U-Hauls in some spaces and vehicles related to, "wholesale to wholesale car sales" taking the rest.

Reasonable assertions could be made if the Petitioner had made mention of the sale of additional vehicles other than the U-Haul, vans/trucks, perhaps the legal findings in this opinion would be different. However, that is not the case.

If you carefully read Section two (2), it makes mention that the advertisement for publication was misleading as it made the application sound like the intent was for a used car lot. The Petitioner, never spoke up as one would expect, if this was intended for other vehicle sales besides the U-Haul and state, the lot would be for other vehicles not just U-Haul. However, he never did. Why? It is my educated assumption the Petitioner at this time was only seeking the Permit for the U-Haul vans/trucks.

The discussion with the Board now centered around the Board's concerns about there being no designated Fire-Lanes. The Petitioner solved this by stating he would have all employees park in their lot across the street. Next the Board had questions where the vans/trucks would be parked. The Board asked the Petitioner to designate himself or someone else to walk the lot with the Board and demonstrate where the line striping for handicapped spots, parking, U-Haul spots, loading and fire lanes. Nothing in that enumeration of requests by the Board speaks to "wholesale to wholesale car sales." If this were to be the case the minutes would be reflective of such an important component. (Emphasis added) The Board had asked the Petitioner if he would be opposed to a max number of vans/truck rentals. The Petitioner was not opposed. Again, I reiterate the max was for vans/trucks only.

The Board then continued the Hearing for thirty (30) days for the Petitioner to obtain all the information the Board was seeking.

On June 2, 2020, the Public Hearing once again was opened up. The decision was as follows:

"Mr. Carl Walker made a motion, seconded by Ed Mekjian to grant a Special Permit under Section 255-5.3 F-3, sale or rental of motor vehicles on an open lot in the Avon Industrial Zoning District at the property located and known as 491 West Main Street Avon, MA. The vote was unanimous."

The vote was to grant the Special Permit as stipulated.

Said stipulations were those stipulations highlighted in the minutes of said March 2, 2020 Public Hearing and the June 2, 2020 continuance of the Public Hearing.

**THE CERTIFICATE OF GRANTING OF VARIANCE(S) AND/OR A SPECIAL PERMIT(S)
(GENERAL LAWS CHAPTER 40A, SECTION 11)also specifically states.**

**"Affecting the rights of the owner with respect to land or buildings at 491 West Main Street
(As specified in 20-3 Public Hearing Minutes, dated:06/20/2020.)"**

It is unequivocal that the Special Permit granted on June 2, 2020 was granted only with the stipulations of the Public Hearings. Further nowhere in the minutes of those meetings is there any mention of, "wholesale to wholesale car sales". The only stated purpose was for U-Haul vans/trucks.

For the foregoing reasons as stated above, it is my belief that the Petitioner had full knowledge of the reasoning for case 20-3, and that was for U-Haul vans/trucks. Nowhere, in my legal opinion, did the Petitioner receive a blanket approval to rent U-Haul vans/trucks and to participate and use the Special Permit for, "wholesale to wholesale car sales". Nor does the Petitioner have the right to extend this Special Permit to any activity, but, the rental of U-Haul vans/trucks.

CURRENT OWNER
 AVON MILL LLC
 491 WEST MAIN ST
 AVON, MA 02322
 Additional Owners:

TOPO.
 UTILITIES
 STRT./ROAD
 LOCATION

ASSOCIATION DATA
 Other ID: 0D4003002
 Subdivision
 Photo
 Ward
 Precinct

ASSOC PID#
 GIS ID: F_780503_2870142

RECORD OF OWNERSHIP

BK-VOL/PAGE	SALE DATE	q/tu	w/i	SALE PRICE	V.C.
C192892	03/21/2016	Q	I	635,000	
625/ 3	10/21/1986	U	I		

EXEMPTIONS

Year	Type	Description	Code	Description	Number	Amount	Comm. Int.
TOTAL:							

OTHER ASSESSMENTS

Yr.	Code	Assessed Value	Yr.	Code	Assessed Value
2020	4000	599,700	2019	4000	499,700
2020	4000	111,100	2018	4000	111,100
2020	4000	6,000	2018	4000	6,000
TOTAL:					

ASSESSING NEIGHBORHOOD

NBHD/SUB	NBHD Name	Street Index Name	Tracing	Batch
H/A				

NOTES
 16X62 CONC RAMP
 LOOKS VACANT 3/07
 FOR SALE (617)594-9055
 THOMASS@SYN.COM

3RD: SHAOLIN TAI CHI
PRAYING MANTIS INSTITUTE
 5000 SF

BUILDING PERMIT RECORD

Permit ID	Issue Date	Type	Description	Amount	Insp. Date	% Comp.	Date Comp.	Comments
213-18	11/29/2018	CM	Commercial	5,000		0		Gutters, facia, reblid 3rd
179-16	09/27/2016	CM	Commercial	1,000		0		3 SIGNS
M4-16	09/02/2016	CM	Commercial	0		0		HEAT & HVAC
68-16	04/20/2016	RE	Remodel	20,000		0		retrofit retail and office
7-16	01/14/2016	CM	Commercial	6,500		0		REPLACE OH DOOR, \$07/24/2013
11-09	03/12/2009	CM	Commercial	15,900	03/16/2010	100		REBUILD FIRE ESCAP
82-06	06/22/2006	CM	Commercial	100,000	03/21/2007	100		ANTENNAS

LAND LINE VALUATION SECTION

B Use Code	Use Description	Zone	D	Front Depth	Units	Unit Price	I. Factor	S.A. Disc	Acre	C. Factor	C. Disc	Notes- Adj
I 4000	INDUSTRIAL	IND			43,560	SF	3.53	1.0000	C 1.0000	0.85		ROW EAS

NET TOTAL APPRAISED PARCEL VALUE

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2020	4000	599,700	2019	4000	499,700
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APPRaised VALUE SUMMARY

Appraised Bldg. Value (Card)	Appraised XF (B) Value (Bldg)	Appraised OB (L) Value (Bldg)	Appraised Land Value (Bldg)	Special Land Value	Total
530,200	69,500	6,000	111,100	0	716,800

VISIT/CHANGE HISTORY

Permit ID	Issue Date	Type	Date	IS	ID	Ca.	Purpose/Result
213-18	11/29/2018	CM	05/04/2017	PS	00	00	Measur+Listed
179-16	09/27/2016	CM	05/17/2016	PS	20	20	Field Review
M4-16	09/02/2016	CM	04/21/2016	JLH	20	20	Field Review
68-16	04/20/2016	RE	07/01/2015	DW	17	17	Letter Sent Requesting In
7-16	01/14/2016	CM	07/24/2013	DW	14	14	Review
11-09	03/12/2009	CM					
82-06	06/22/2006	CM					

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PREVIOUS ASSESSMENTS (HISTORY)

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Mortgage Loan Inspection
 LAND SURVEYS INCORPORATED
 REGISTERED LAND SURVEYORS
 P. O. BOX 3644
 BROCKTON, MA 02304

date February 22 2016

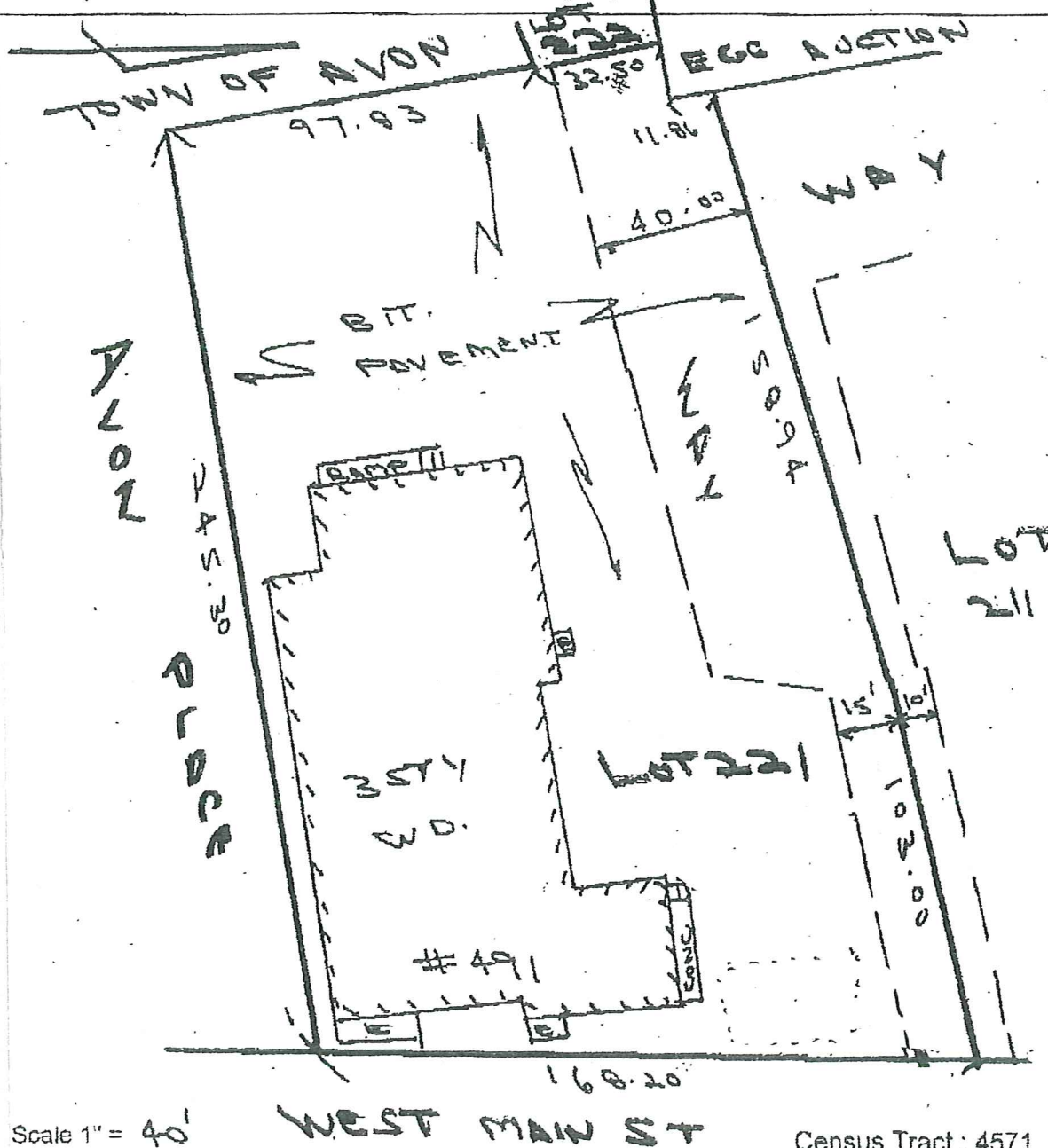
Job No. 33885

and in: Avon

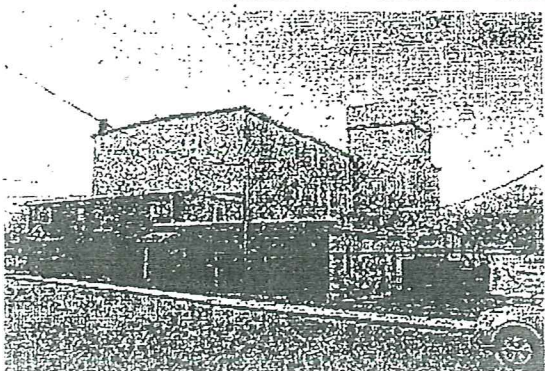
Owners: Trustees: William J Selby, Ronald A Selby

Title Reference: Certificate: 124803

Registry District: Norfolk



FOR MORTGAGE PURPOSES ONLY - NOT TO BE USED TO DETERMINE PROPERTY LINES OR TO CONSTRUCT FENCES, OR LANDSCAPING, ETC



I CERTIFY THAT THE BUILDINGS ARE LOCATED AS SHOWN, AND CONFORMS TO THE ZONING IN EFFECT WHEN CONSTRUCTED EXCEPT AS NOTED

THE PROPERTY LIES IN ZONE "X" AS SHOWN ON THE NATIONAL FLOOD INSURANCE MAP



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