

~~2/12/07~~  
3/12/07 (3)  
(5)

**TOWN OF ACTON**  
472 Main Street  
Acton, Massachusetts, 01720  
Telephone (978) 264-9612  
Fax (978) 264-9630

**Don P. Johnson**  
**Town Manager**

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January 22, 2007

Acton Beacon  
BY FAX

Atten: LEGAL AD DIVISION

Please place the following ad in the Thursday February 1, 2007 legal Section of the Acton Beacon. Please bill the applicant at the address listed below:

Leo Bertolami  
6 Proctor Street  
Acton, MA 01720  
978-430-4000 (cell)

Christine M. Joyce  
Town Manager's Office

**LEGALS:**  
**PLEASE CONFIRM TO ME @ 978-264-9612**

CC: Applicant  
Filed: *Class/bin cmj*

**TOWN OF ACTON**  
**NOTICE OF HEARING**

Notice is hereby given that the Board of Selectmen will hold a public hearing in the Acton Memorial Library, on Monday, February 12, 2007 at 8:00 p.m. on the application of Acton Suzuki Annex, Inc., for a Class I Dealer's License at 50 Powder Mill Road, Acton, MA.

**Acton Board of Selectmen**



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**Don P. Johnson**  
Town Manager

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January 22, 2007

Mr. Leo Bertolami  
6 Procter Street  
Acton, MA 01720

Dear Mr. Bertolami:

Enclosed please find copy of the advertisement that has been placed, at your expense, in the Acton Beacon on February 1, 2007. Your hearing is scheduled for February 12, 2007 at 7:45 P.M. in the Acton Memorial Library. If you have any questions prior to that date, please call the office.

Very truly yours,

Christine Joyce  
Town Manager's Office

Enc. Advertisement  
Cc: File

**Inter-Departmental  
TOWN MANAGER'S OFFICE**

**1/22/07**

**TO:** Building, Police, Fire, Board of Health

**FROM:** Christine Joyce, Town Manager's Office

**SUBJECT:** Class 1 Application- 50 Powder Mill Road

Please find attached the request for a Class 1 License at 50 Powder Mill Road.

The hearing is scheduled for February 12, 2006 at 7:40

2/12/07 @  
7:40

THE COMMONWEALTH OF MASSACHUSETTS

Town OF Acton

APPLICATION FOR A LICENSE TO BUY, SELL, EXCHANGE  
OR ASSEMBLE SECOND HAND MOTOR VEHICLES  
OR PARTS THEREOF

I, the undersigned, duly authorized by the concern herein mentioned, hereby apply for a Class. I. class license, to Buy, Sell, Exchange or Assemble second hand motor vehicles or parts thereof, in accordance with the provisions of Chapter 140 of the General Laws.

1. What is the name of the concern? Acton Suzuki Annex, Inc.

Business address of concern. No. 50 Powder Mill Road St.,  
Acton, MA. 01720 City — Town.

2. Is the above concern an individual, co-partnership, an association or a corporation?  
Corporation

3. If an individual, state full name and residential address.  
n/a

4. If a co-partnership, state full names and residential addresses of the persons composing it.  
n/a

5. If an association or a corporation, state full names and residential addresses of the principal officers.  
President Leo Bertolami 6 Proctor Street, Acton, MA. 01720  
Secretary Jane A. Bertolami 6 Proctor Street, Acton, MA. 01720  
Treasurer Leo Bertolami, Jr. 105 Concord Road, Acton, MA. 01720

6. Are you engaged principally in the business of buying, selling or exchanging motor vehicles? yes  
If so, is your principal business the sale of new motor vehicles? yes  
Is your principal business the buying and selling of second hand motor vehicles? no  
Is your principal business that of a motor vehicle junk dealer? no

7. Give a complete description of all the premises to be used for the purpose of carrying on the business.  
An area of Acton known as the Powder Mill District and the Prescott Building at 50 Powder Mill Road in which this location has been associated with automobile dealer parking since 1949. (See enclosed parking plan)

8. Are you a recognized agent of a motor vehicle manufacturer? yes  
(Yes or No)  
If so, state name of manufacturer American Suzuki Motor Corporation

9. Have you a signed contract as required by Section 58, Class 1? yes  
(Yes or No)

10. Have you ever applied for a license to deal in second hand motor vehicles or parts thereof? yes  
(Yes or No)  
If so, in what city — town Acton, Concord, Maynard, Hudson and many many more.  
Did you receive a license? yes For what year? 1970 thru 2006  
(Yes or No)

11. Has any license issued to you in Massachusetts or any other state to deal in motor vehicles or parts thereof ever been suspended or revoked? no  
(Yes or No)

Sign your name in full. Lester Bertoni  
(Duly authorized to represent the concern herein mentioned)

6 Proctor Street, Acton, MA.  
Residence

**IMPORTANT**

EVERY QUESTION MUST BE ANSWERED WITH FULL INFORMATION, AND FALSE STATEMENTS HEREIN MAY RESULT IN THE REJECTION OF YOUR APPLICATION OR THE SUBSEQUENT REVOCATION OF YOUR LICENSE IF ISSUED.

NOTE: If the applicant has not held a license in the year prior to this application, he must file a duplicate of the application with the registrar. (See Sec. 59)

APPLICANT WILL NOT FILL THE FOLLOWING BLANKS

Application after investigation .....  
(Approved or Disapproved)

License No. .... granted ..... 19.... Fee \$.....

Signed.....  
.....  
.....  
.....  
.....  
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CHAPTER 140 OF THE GENERAL LAWS, TER. ED., WITH AMENDMENTS THERETO (EXTRACT)

SECTION 57. No person, except one whose principal business is the manufacture and sale of new motor vehicles but who incidentally acquires and sells second hand vehicles, or a person whose principal business is financing the purchase of or insuring motor vehicles but who incidentally acquires and sells second hand vehicles, shall engage in the business of buying, selling, exchanging or assembling second hand motor vehicles or parts thereof without securing a license as provided in section fifty-nine. This section shall apply to any person engaged in the business of conducting auctions for the sale of motor vehicles.

SECTION 58. Licenses granted under the following section shall be classified as follows:

Class 1. Any person who is a recognized agent of a motor vehicle manufacturer or a seller of motor vehicles made by such manufacturer whose authority to sell the same is created by a written contract with such manufacturer or with some person authorized in writing by such manufacturer to enter into such contract, and whose principal business is the sale of new motor vehicles, the purchase and sale of second hand motor vehicles being incidental or secondary thereto, may be granted an agent's or a seller's license; provided, that with respect to second hand motor vehicles purchased for the purpose of sale or exchange and not taken in trade for new motor vehicles, such dealer shall be subject to all provisions of this chapter and of rules and regulations made in accordance therewith applicable to holders of licenses of class 2.

Class 2. Any person whose principal business is the buying or selling of second hand motor vehicles may be granted a used car dealer's license.

Class 3. Any person whose principal business is the buying of second hand motor vehicles for the purpose of remodeling, taking apart or rebuilding the same, or the buying or selling of parts of second hand motor vehicles or tires, or the assembling of second hand motor vehicle parts, may be granted a motor vehicle junk license.

SECTION 59. The police commissioner in Boston and the licensing authorities in other cities and towns may grant licenses under this section which shall expire on January first following the date of issue unless sooner revoked. The fees for the licenses shall be fixed by the licensing board or officer, but in no case shall exceed \$100. dollars. Application for license shall be made in such form as shall be approved by the registrar of motor vehicles, in sections fifty-nine to sixty-six, inclusive, called the registrar, and if the applicant has not held a license in the year prior to such application, such application shall be made in duplicate, which duplicate shall be filed with the registrar. No such license shall be granted unless the licensing board or officer is satisfied from an investigation of the facts stated in the application and any other information which they may require of the applicant, that he is a proper person to engage in the business specified in section fifty-eight in the classifications for which he has applied, that said business is or will be his principal business, and that he has available a place of business suitable for the purpose. The license shall specify all the premises to be occupied by the licensee for the purpose of carrying on the licensed business. Permits for a change of situation of the licensed premises or for addition thereto may be granted at any time by the licensing board or officer in writing, a copy of which shall be attached to the license. Cities and towns by ordinance or by-law may regulate the situation of the premises of licensees within class 3 as defined in section fifty-eight, and all licenses and permits issued hereunder to persons within said class 3 shall be subject to the provisions of ordinances and by-laws which are hereby authorized to be made. No license or permit shall be issued hereunder to a person within said class 3 until after a hearing, of which seven days' notice shall have been given to the owners of property abutting on the premises where such license or permit is proposed to be exercised. All licenses granted under this section shall be revoked by the licensing board or officer if it appears, after hearing, that the licensee is not complying with sections fifty-seven to sixty-nine, inclusive, or the rules and regulations made thereunder; and no new license shall be granted to such person thereafter, nor to any person for use on the same premises, without the approval of the registrar. The hearing may be dispensed with if the registrar notifies the licensing board or officer that a licensee is not so complying. Any person aggrieved by any action of the licensing board or officer refusing to grant, or revoking a license for any cause may, within ten days after such action, appeal therefrom to any justice of the superior court in the county in which the premises sought to be occupied under the license or permit applied for are located. The justice shall, after such notice to the parties as he deems reasonable, give a summary hearing on such appeal, and shall have jurisdiction in equity to review all questions of fact or law and may affirm or reverse the decision of the board or officer and may make an appropriate decree. The decision of the justice shall be final.

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

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**To:** Board of Selectmen **Date:** March 8, 2007

**From:** Garry A. Rhodes, Building Commissioner



**Subject:** Class I license Application, 50 Powder Mill Road

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I would like to apologize for any confusion concerning the numbering system for the property in question. I have revised my comments to be consistent with the Town Atlas which I have attached.

I have reviewed the Application and I have concerns about the request. Mr. Bertolami is requesting a Class I license for 50 Powder Mill Road. He proposes to use approximately 500 square feet within the existing building for an office and to display 17 vehicles on existing pavement at 48 Powder Mill Road. The use of the building for a Class II license would be allowed as "Vehicle Sales" under Acton Zoning Bylaw § 3.5.22. The use of the existing paved area south of the "foundation of old building" (foundation) would not be allowed except with a Variance from the Zoning Board of Appeals. As a result, I recommend that the Board of Selectmen only consider a non-display Class I license for 50 Powder Mill Road at this time.

The building that was located on the foundation was demolished by Mr. Bertolami in February of 2004. The paving located south of the foundation served as parking for the building which was used as retail. A plan (enclosed) prepared by Acton Survey and Engineering dated September 2002 and titled "As Built Notice of Intent Plan" showed three parking spaces south of the foundation. With the exception of occasional use of the paved area south of the foundation as parking for the remaining building and the apparently illegal storage of new vehicles in connection with the Acton Subaru facility noted over the winter, no other parking has occurred since February 2004.

As stated above, I generally consider customer parking as an Accessory Use to the Principal Use. In the case of vehicle sales however, the vehicles for sale are the Principal Use. Parking vehicles as proposed would be a new Principal Use where the previous use of the paved area was an Accessory Use. The paved area south of the foundation is all within 30 feet of the front lot line. If Mr. Bertolami parks vehicles for sale, as shown on the plan submitted with his application, he would in my opinion be in violation of Acton Zoning Bylaw § 6.7.2.

Acton Zoning Bylaw § 6.7.2 provides (emphasis added)

*Except as may be required elsewhere in this Bylaw, no parking space or other paved surface, other than ACCESS driveways, common driveways or walkways, shall be located within 30 feet of the front LOT line and within 10 feet of the side and rear LOT lines, and notwithstanding the foregoing, no parking space or other paved surface, other than ACCESS driveways, common driveways or walkways, shall be located within the limits of a landscaped buffer area required under Section 10.4.3.5. and Section 10.4.3.6.*

In conclusion, I find any nonconforming parking spaces located south of the foundation used in support of the building demolished in February of 2004 has been abandoned from non use for a period of more than 2 years. Any display vehicles within the required setback of 30 feet would be in violation of Acton Zoning Bylaw § 6.7.2 and would require a Variance from the Zoning Board of Appeals. If the Board of Selectmen so chooses, it may issue a non-display Class I license for 50 Powdermill Road. If Mr. Bertolami later obtains a Variance or has my earlier zoning determination overturned by the Board of Appeals, the Board of Selectmen may consider whether a display license should be granted.

2/12/07 (5)

TOWN OF ACTON

Building Department

INTERDEPARTMENTAL COMMUNICATION

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**To:** Board of Selectmen **Date:** January 29, 2007  
**Cc:** Mr. Leo Bertolami (Certified Mail – 7003 0500 0000 8144 4879)  
**From:** Garry A. Rhodes, Building Commissioner *Garry Rhodes*  
**Subject:** Class I license Application –Zoning Determination and Recommendation  
50 Powder Mill Road

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I have reviewed the Application and I have concerns about the request. Mr. Bertolami is requesting a Class I license for 50 Powder Mill Road. He proposes to use approximately 500 square feet within the existing building (54 Powder Mill Road) for an office and to display 17 vehicles on existing pavement (50 Powder Mill Road). The use of the building for a Class II license would be allowed as "Vehicle Sales" under Acton Zoning Bylaw § 3.5.22. The use of the existing paved area south of the "foundation of old building" (foundation) would not be allowed except with a Variance from the Zoning Board of Appeals. As a result, I recommend that the Board of Selectmen consider a non-display Class I license for 54 Powder Mill Road at this time.

The building that was located on the foundation was demolished by Mr. Bertolami in February of 2004. The paving located south of the foundation served as parking for the building which was used as retail. A plan (enclosed) prepared by Acton Survey and Engineering dated September 2002 and titled "As Built Notice of Intent Plan" showed three parking spaces south of the foundation. With the exception of occasional use of the paved area south of the foundation as parking for the remaining building and the apparently illegal storage of new vehicles in connection with the Acton Subaru facility noted over the winter, no other parking has occurred since February 2004.

As stated above, I generally consider customer parking as an Accessory Use to the Principal Use. In the case of vehicle sales however, the vehicles for sale are the Principal Use. Parking vehicles as proposed would be a new Principal Use where the previous use of the paved area was an Accessory Use. The paved area south of the foundation is all within 30 feet of the front lot line. If Mr. Bertolami parks vehicles for sale, as shown on the plan submitted with his application, he would in my opinion be in violation of Acton Zoning Bylaw § 6.7.2.

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I am providing a copy of this IDC to Mr. Bertolami as a zoning determination on the use of the property in question. Any appeal to the Zoning Board of Appeals of this determination must be filed within thirty days of the date of this IDC.

**Christine Joyce**

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**From:** Robert Craig  
**Sent:** Friday, February 09, 2007 4:26 PM  
**To:** Christine Joyce  
**Subject:** Class 1 Application-50 Powder Mill Road  
**Importance:** High

Please be advised that I have no objection to this license.

Chief Craig

**Christine Joyce**

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**From:** Frank Widmayer  
**Sent:** Friday, February 02, 2007 2:05 PM  
**To:** Christine Joyce  
**Subject:** Class 1 Application - 50 Powder Mill Road

I have reviewed the application submitted on behalf of Acton Suzuki Annex, Inc. for a Class 1 Dealer's License.

I have no objection to the issuance of this license.

Frank J. Widmayer III  
Chief of Police  
(978) 263-2911