

MINUTES

Zoning Board of Appeals Meeting – June 16, 2020
115 Pleasant Street, Via Zoom.
Gardner, MA 01440

Sitting in on Hearing:

Raymond LaFond
David Antaya
Michael Gerry

In Attendance:

Roland Jean
Rachel Taylor
Steve Rockwood
David Antaya
Ed Derrick-Applicant
George Kiritsy- Att
Randy Heglin

GETV
Chiruta - Applicant
Tom Rubble

Meeting Called To Order by Chairman Raymond LaFond at 6:00 p.m. Mr. LaFond went over the ground rules for Zoom meeting and how the proceeding where to take place, stating “In pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner Zoning Board of Appeals will be conducted via remote participation and on the City’s YouTube Channel. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City’s website as soon as possible after the meeting. Since this meeting is being conducted via Zoom, all votes taken will be by roll call and all participants to raise their hands to be recognized”. Mr. LaFond explained and the requirements that must be addressed for a variance or special permit. He then noted that the meeting was being streamed live to YouTube, and requested if anyone objected. There were no objections.

<u>Case No.</u>	<u>Case Type</u>	<u>Case Description</u>
2020-03-01	Special Permit	102 Vernon St / Add apartment Unit
2020-03-02	Admin Appeal	497-505 Chestnut St / Open Smoke Bar

Case # 2020-03-01 application to add 2 units to an existing 6-unit at 102 Vernon St., Gardner, MA Parcel ID #M27-25-45, located in the General Residential 3 zoning district (GR3) is denied as it does not comply with Chapter 675 Attachment 1:1 #5 of City Code of Gardner. The “Table of Uses” states that your use requested, requires a “Special Permit” (SP) issued by the Gardner Zoning Board of Appeals.

Mr. Lafond opened the floor to Mr. Derrick to address the board on this case.

Mr. George Kiritsy – Mr. Derrick legal representation makes the opening statement on Mr. Derrick’s behalf. Mr. Kiritsy states that the property at 102 Vernon St. currently houses 6 unit in the zoning district GR3, and in order to add additional units, a special permit must be granted through the zoning board. Mr. Derrick has added 2 additional units in the basement area, one being studio apartment the other being a one bedroom apartment. Mr. Derrick has done extensive renovation work to keep the building both up to code and looking attractive, Mr. Derrick has recently replaced all windows and fixtures, including doors, plumbing and heating systems, kitchens and bathrooms. A Sprinkler systems has been added and

approved by the fire department. Photographs and plans were submitted to the board. Mr. Derrick intends to occupy one of the new units himself in the future.

Mr. LaFond asked if the applicant could answer the 9 questions required for the special permit application. Mr. Kiritsy obliged 1) this is an addition to existing units so there will be no impact or major change to neighborhood. 2) There will be no change to parking or travel pattern. 3) This is a residential area so loading and customer traffic does not apply, they residents have onsite parking. 4) The units are already serviced by the municipality for utilities so no additional services would be required. 5) These units will cause no nuisance to the area via noise or air pollution. There will be no extra outdoor lighting and all improvements have been internal to the building. 6) There will be no alternation to the outside of the building in fact any work that has been done has improved the look of the building, including landscaping and new features. No abutter are against the plan of addition units and have commented on how beautiful the building looks. 7) Zoning bylaws is a realistic use and the addition of 2 units is consistent with the general purpose of this chapter. 8) There will be no detrimental impact to the area, and would actually increase the tax base with new tenants. There will be no significant impact on schools systems or employment opportunities. 9) This proposal is consistent with the developmental plan for district GR3.

Mr. LaFond Thanks Mr. Kiritsy for answering question clearly and opened for questions from the board members.

Mr. David Antaya stated that he reviewed 2 different parking plans and asked which of them Mr. Derrick planned to implement.

Some technical issues occurred and Mr. Derrick cannot be heard through audio.

Mr. Kiritsy held up a parking plan he had but was unaware that there was another plan option.

Mr. Antaya asked if the plan being used was for all the cars to be parked at the rear of the building off Osgood St. Mr. Kiritsy stated yes it was to the rear.

Mr. Antaya wished to clarify that the plan held up by Mr. Kiritsy was the plan they would be using and to call it option 1. The board can only go off information they have and cannot advice on which would be better options.

Mr. Gerry further asked to clarify by requesting the number of parking space available of either 15 or 17 in the rear of the building, and if that was acceptable with the Building Commissioner Mr. Roland Jean.

Mr. Roland Jean confirmed that 17 spaces was sufficient but questioned what the situation would be for snow removal?

Mr. Antaya questioned if 15 parking spaces was adequate, Mr. Jean confirmed with the additional units 16 spaces would be needed.

Mr. LaFond put forward a request for a site visit and asked if Mr. Derrick could mark out the parking plan so the board could have a more informed visual. Mr. Kiritsy agreed that a site visit would be more practical.

Mr. Antaya asked the question of snow removal, the plan shows that the snow would be ploughed to an area which would in fact block two parking spaces. The parking lot also only has one way in and out?

Mr. Kiritsy believes there would be no need to change anything for the snow removal as Mr. Derrick already has this in place for the units already there. There is no change to layout or process of which the snow will be dealt with.

Mr. LaFond requests that Mr. Derrick calls into the meeting via a phone line as there are problems with his audio.

Mr. Gerry asked about city services and if the trash was collected up curbside or was a dumpster present. Mr. Jean confirmed a dumpster was onsite.

Mr. Antaya asked Mr. Jean if with the work being had made this property conforming, to which Mr. Jean responded that Multifamily was not allowed in that zone so would never be conforming.

Mr. LaFond supplied Mr. Derrick with the phone in information.

Mr. Lafond confirmed with Mr. Jean that a site inspection of the units had been done and everything was up to code and all permits had being issued and passed to city code. Mr. Jean confirmed everything was good and the property was well designed and maintained.

Mr. Kiritsy requested again that the board should do a site visit in order to appreciate the work done to the property.

Mr. Derrick joined the meeting via the phone line.

Mr. Lafond asked Mr. Derick to answer the questions which we asked earlier about the parking and snow removal.

Mr. Derrick states that he has 2 parking plans he can use and was looking for the board to suggest which would be the better to use. Snow is being removed completely by ARG landscaping company based out of Princeton, so the snow will not cause any issue as it is being taken off site. There is frontage available for parking on Osgood St and Vernon St, this is on street parking but still usable. He can also create 2/3 more spaces on the front right side of building on Osgood St. Mr. Derrick would build a retaining wall to accommodate those parking spaces. There are many parking options available in both front and rear of the building as well as a one car garage 12' x 27'. Mr. Derrick proposed a site visit to show option for the board.

Mr. Antaya questioned that if the frontage was changed to accommodate the 2/3 more spaces to park would it change the water flow from the surface and would Mr. Derrick be changing it to black top?

Mr. Derrick stated that should the change be needed there would be no change to the drainage of water as it would follow the existing flow as the land pitches back. He would rather not use this plan as he would have to remove the landscaping which would affect the overall look of the property.

Mr. Antaya asked if there was any impact from the road and frontage from these spaces to which Mr. Gerry suggested looking at other parking plans. Rachel Taylor confirmed that all the plans submitted for parking was emailed out to all board members last week and they should be able to review them from the email attachments.

Mr. LaFond and Mr. Gerry confirmed that had said plans for review.

Mr. LaFond asked Mr. Derrick if he could comment on the lighting aspect which was touched upon earlier in the meeting. Mr. Derrick stated that the lighting around the building and Parking lot was on a timer so as not to cause problem form residents and some were actually motion sensing for public safety.

Mr. Gerry requested a site visit to which Mr. Antaya requested that a preferred plot plan be choose by Mr. Derrick and Mr. LaFond further requested the parking spaces be marked out with paint or chalk so they could be clearly seen by the board. Mr. Derrick confirmed this would be arranged.

Mr. LaFond asked for any other questions.

Mr. Derrick more than happy to show the board members around.

Mr. Antaya stated he would like to see the units if possible.

Mr. LaFond asked if there were any questions form city official. No questions were asked but Mr. Jean requested to be present at the site visit. Mr. LaFond agreed.

Any questions from Abutters? No abutter present.

Any questions from opposition? No one present in opposition.

Any further questions from the members of the board? No further questions.

Mr. LaFond asked to schedule a site visit to which all members. Mr. Kiristy and Mr. Derrick both agreed.

Mr. LaFond requested Rachel Taylor to schedule site visit for next week at a convenient time for Mr. Derrick. Social distancing will be applied by all and masks will be worn by all.

Motion to move to next case. Seconded Mr. Gerry.

Mr. Derrick and Mr. Kiritsy are free to leave the meeting.

Case # 2020-03-02 - application to operate a “Smoke Bar” at 497-505 Chestnut St., Gardner, MA Parcel ID # R22-23- 13,located in the Commercial Two zoning district (C2) is denied as it does not comply with Chapter 675-410 A. of City Code of Gardner. This use is not listed in our table of uses, as such there is no guidance to protect the interest of the city or yourself. § 675-410Schedule of permitted uses. A. No building or structure shall be erected or used and no premises shall be used except as set forth in the Table of Use Regulations included at the end of this chapter.

Mr. LaFond asks that all question be stated by raising your hand and that person introduce themselves by name and address before speaking.

Mr. Pranavkumar Patel of 208 Lawrence St, Gardner. Property owner of 497-505 Chestnut St.

Opening statement for the case.

Mr. Patel state that this would be the first of its kind of business for the city of Gardner. The building is currently empty of any business and there is space to open a smoke bar on the premises. There is plenty of space for parking and Mr. Patel states the change of use was denied as the City of Gardner has no regulations in place for a Smoke Bar, and this is why he has brought before the Zoning Board. Mr. Patel asks the board what question they have for him and what he will need to do to move forward with this project.

Mr. LaFond asks if Mr. Patel would like to add anything more to his short statement as the previous case had to address 9 questions and had bought forward many useful topics for question. Mr. Patel had nothing else to add.

Mr. LaFond open the case to the board members for questions. No hands were raised or questions brought forward.

Mr. LaFond brought to attention to the fact that the city code 647-4-10 has no guideline to follow in regards to protecting citizens or owner in this case. The case is being heard as an Administrative Appeal for the reason that we have no ordinance to follow and there is no information in the table of uses. The board cannot advice or decide what to do with this case as we have not indication of impact to the city. This will need to be seen and approved by many departments including Police, Fire and Board of health.

Tom Rubble of Keller William's North Central realtor - Present as guidance for Mr. Patel but not legal representation.

Mr. Rubble in his opinion states that reason they are before the board is that this case is new territory for the City of Gardner. They are questioning what category this would fall under such as adult use? The building is in a non-residential area so no abutters would be impacted and there is plenty of parking. The property is surrounded by other restaurants and backs onto the railway lines. This would be a ground breaking business should this be allowed. Mr. Rubble asked for advice from the board as to what would be need to have Variance on this property or to have ordinance changed in order to have this use allowed.

Mr. LaFond stated that in the application there was question of a grandfather use? Mr. LaFond made it clear that for it to be a grandfather use it must comply with other uses of the building. These listed as Tanning salon, office space and restaurants. None of which would comply with similar use to a smoke bar.

The Zoning board does not have the jurisdiction to make a decision on a new use group the applicant would need to work with legal counsel and lay this out to all city departments, boards and council. This process takes time and effort to bring forward changes to ordinance and city code. The Zoning board does not set standards because of interactions of so many other boards and committees. Change to code has to go through a lengthy process to get to publication of code before it can be used.

Mr. Rubble touched back on the parking issues, stating that there would be no problem with this as the rail way has a right of way use and the parking lot has been used for a social club and restaurant before this.

Mr. Patel Informed the board he had been in touch with Joanne Helmet from the board health and she had told he was all set with her department, she is the topical controller for the board of Health.

Mr. Lafond was unaware of any correspondence with the board of health and further stated that the issue with parking cannot be address as the ordinance has no code guidelines in regards to parking for a smoke bar, or what would be required for the board of health with concerns to a smoke bar. Mr. Patel needs to look into getting ordinance for a smoke add to the city code before trying to move forward in opening one.

Mr. LaFond suggested that Mr. Patel look to other communities that have already have a smoke bar and ask for advice and guidance in regards to city limitations and code violation. Mr. Rubble agreed to this and further questioned as to when they would need to return to the zoning board with this case.

Mr. Patel informed the board that he had visited other smoke bars in the Worcester area and would go back with questions. He asked what he would need to no to which Mr. LaFond stated the board cannot state what they will need to know until the code directs them with questions. Mr. Patel may need address questions to many departments including fire and police.

Mr. LaFond suggests to Mr. Patel that he withdraw his application from the zoning board of appeals with no complaint or prejudice so he may bring this case before the board in the future. Should the board move to deny this case Mr. Patel would have to wait two years before being eligible to re-apply for the same case.

Mr. Patel agreed to withdraw without prejudice and will send a written letter of request to the Administrative Clerk tomorrow.

Any other questions from the members of the board. No further questions.

Any further questions from City officials? No further questions.

No further questions on this case.

Any further Business.

Mr. Antaya request to schedule a site visit for 102 Vernon St was noted. Will be scheduled next week.

Motion made to accept minutes from the June 16th meeting. No comments and motion made by Mr. Gerry and seconded by Mr. Heglin.

Any further business.

Mr. LaFond requested to ask for advice on continuing case 2020-03-01 Vernon St on the July 21st meeting? Since this meeting has already been advertised can we add the continuation without publication of continuances. Rachel to contact John flick.

No further business or comments.

Mr. Antaya made a motion to adjourn the meeting. Seconded by Mr. Gerry

Meeting adjourned at 7.12pm.



Raymond LaFond, Chair



Michael Gerry, Clerk



David Antaya, Member