



IN CITY COUNCIL

JOINT PUBLIC HEARING OF AUGUST 6, 2018

Joint Public Hearing of the City Council and Planning Board held in the City Council Chamber, Room 219, City Hall on Monday evening, August 6, 2018.

CALL TO ORDER

Council President Scott Joseph Graves called the Public Hearing to order at 6:00 o'clock p.m.

CALL OF THE ROLL

City Clerk Alan Agnelli called the Roll of City Councillors. Eight (8) Councillors were present including President Scott Joseph Graves and Councillors James Boone, Nathan Boudreau, Craig Cormier, Ronald Cormier, Edward Gravel, Karen Hardern, and Christine Johnson. Councillors James Johnson, Elizabeth Kazinskas, and James Walsh arrived following the Call of the Roll.

The City Clerk called the Roll of Planning Board Members. Four (4) members were present including Chairman Allen Gross and Laura Casker, Mark Schafron, and Robert Swartz. Robert Bettez, Sr., was absent.

President Graves read aloud the Public Hearing Notice, as follows:

CITY OF GARDNER
NOTICE OF SECOND JOINT PUBLIC HEARING
COMPREHENSIVE ZONING CODE UPDATE

Pursuant to G.L. c. 40A, § 5, notice is hereby given that the City Council and Planning Board will conduct a second Joint Public Hearing on **Monday, August 6, 2018 at 6:00 P.M.** in the City Council Chamber, Room 219, 95 Pleasant Street, to consider amending the Code of the City of Gardner, by Deleting and Repealing Chapter 675, Zoning, and Replacing it With a New Chapter 675, Zoning. The complete amendment is available for viewing in the City Clerk's Office; the Department of Community Development & Planning; or on the City's website at www.gardner-ma.gov. All persons interested in this matter and desire to offer testimony are invited to attend the hearing.

ALAN L. AGNELLI
CITY CLERK

President Graves asked if any person in attendance wished to speak in favor of the proposed Ordinance amendment.

Alan Rousseau, 211 Betty Spring Road, provided prepared remarks, as follows:

"The following is my input on the proposed Comprehensive Zoning Code Update. I realize that the current Zoning update was intended to address minor edits and structural issues. However, with the recent Large Solar Overlay Expansion proposals and related discussion of problems with the Cedar Hills Subdivision, I believe that we must address two sections that pertain to Large Scale Solar Arrays and Residential Subdivisions.



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We should place a hold on approving any Large Scale Overlay Expansions until we have had a full review of the applicable zoning ordinance as well as Gardner's overall solar strategy.

My input is reflected in the following three bullet points. However, bullet point #3 was previously provided to the April 9th Public Hearing and I will not read it this evening.

1. **675-580 Large-Scale Ground-Mounted Solar Photovoltaic Overlay District-** Large Scale Solar Developments are very different from Residential developments. Among the differences are that Solar Arrays: (1) are owned by private businesses, (2) have a very different appearance & function, (3) are enclosed in a fenced-in area, and (4) require massive tree cutting. This section must be revised in the following two areas.
 - a. Prohibit Large-Scale Ground Mounted Solar Arrays from all residential districts. Thereby, these arrays would only be permitted in commercial and industrial districts. We must keep our "Residential Districts" as "Residential".
 - b. For the Solar Arrays in commercial or industrial districts, increase Setbacks on lots and add Buffer Strips surrounding structures and installations that abut the residential districts. For residential districts, Gardner's lot setbacks are only 50 feet. In Lancaster MA, the setbacks are 200 feet. Particularly with Gardner's hilly terrain, having a setback of 200 feet with residential neighborhoods is prudent.
2. **675-810 Open Space residential development-** OSRD provides an environmental friendly alternative to the standard grid-style subdivision plan. However, the standard grid-style plan is permitted "By Right" while OSRD is only available under "Special Permit". For example, with Cedar Hills, OSRD would have: (1) compressed the layout of the construction area, (2) reduced the amount of infrastructure for the city to maintain, and (3) provided additional outdoor recreation for residents. I recommend changing OSRD to be permitted "By Right" so that it would be on an equal permitting basis with the standard grid-style plan. This will encourage more environmentally friendly subdivision plans for Gardner in the future.
3. **675-840, Senior Residential Development-** I am opposed to the new provision for Senior Residential Development. My view is that the City should not approve this amendment to the Zoning Ordinance. Please note that this is the same input that I provided to you for the April 8th Public Hearing.
 - a. The Senior Residential Development is described as a commercial facility. It includes a retail business component, personal services, and a medical office or clinic. It should not be sited in General Residence 3 or Rural Residence 2 districts.
 - b. Gardner's current zoning ordinance has already provided for ample opportunities for senior housing. We already have senior housing throughout the city that had been built under the current zoning ordinance.



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- c. This amendment appears to have come about through one out-of-town developer's proposal for a facility on Betty Spring Road. This is a prime example of why this type of development should not be done in General Residence 3 or Rural Residence 2 districts. In this case, it would have a significant negative change to the character of this area. This would forever ruin one of Gardner's most notable scenic roads.

Thank you for your consideration of my input.

Joan Gould, 104 Princeton Street, expressed opposition to any waivers associated with overlay districts, adding that even with an overlay, developers are still required to seek permits from municipal boards. She also cited various provisions of Section 675-1060, Earth Removal, referencing its impact on neighborhoods.

Paul DeMeo, 9 Willis Road, cited the purpose of zoning as referenced in the current Code, "... to promote the general welfare of the City of Gardner, to protect the health and safety of its inhabitants, to encourage the most appropriate use of land throughout the City, to preserve the cultural, historical and agricultural heritage of the community, to increase the amenities of the City...". He noted that the proposed Code reduces the definition immensely.

Secondly, he cited the proposed Senior Residential Development provision that would allow such developments in Rural Residential areas, adding that it would destroy the character of rural residential neighborhoods. He cited a proposal to develop 300 housing units on a 55-acre parcel off Betty Spring Road and outlined a series of e-mail and other communications between him and the CD&P Director, as well as with a potential senior housing developer. He also cited comments from the Zoning Update Consultant where he noted that Gardner has a very good zoning Ordinance.

Continuing, Mr. DeMeo said that only provisions dealing with marijuana retail establishments should be addressed and that the City Council needs to exercise extreme caution. He added the Ordinance should not give the Planning Board more power through the Zoning rewrite. He also noted that the City's two trailer parks, once "built-out," will create 250 homes and generate no property taxes since they are situated on leased land. He added that the City potentially loses about \$1 Million per year in real estate taxes.

Keith Gray, 136 Princeton Street, testified that that as a result of the failed Cedar Hills subdivision, it has been costly for him to treat his filtration system as a result of sediment build-up. He mentioned that developers of solar arrays and mobile home parks are out to make a profit. He asked that the Council consider the long-term effects of its actions on the neighborhood and to protect their wells, the land, and the wildlife.



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Laura Casker, 36 Rugby Street, mentioned that trailer parks are no longer allowed under current zoning laws.

Trevor Beauregard stated that the Planning Board recommends consider deleting the following sentence from the proposed Zoning Code Amendment: Article X, Subsection 675-1070, C (9) d. *-Notwithstanding the provisions of (9) a-c above the number of sstandalone licensed non-retail marijuana establishments shall not exceed one.* The Planning Board considers this clause to be overly restrictive. In addition, by limiting the number of non-retail establishments, the City stands to jeopardize the potential benefits associated with Community Host Agreements and local taxes generated by such uses.

Joan Gould questioned whether the City Council or Planning Board could place a limit on the number of solar overlay districts or retail marijuana establishments.

Mr. Beauregard responded, saying that retail marijuana establishments are limited to two citywide, per State regulation. Solar arrays are allowed in commercial and industrially-zoned areas, but not in residentially-zoned areas, except for those designated as overlay districts.

Ms. Gould questioned whether the number of solar arrays could be restricted.

Mr. Beauregard said that the number cannot be restricted where they are allowed by Special Permit – commercial and industrial areas.

President Scott Graves remarked that the City cannot limit the number of solar companies.

Citing Alan Rousseau's comments under Part 2, Councillor James Boone questioned the Planning Board members about open up residential development and changing it to "By right." He asked the reason that it is not like this today.

Russell Burke, Director of Planning, BSC Group, said that to his knowledge, the Town of Shutesbury is the only community in Massachusetts that grants the Planning Board with discretion to allow open space developments "by right." He outlined the standards by which the project proponent must adhere to and said that "it is not on our shopping list," but that the City "may want to look at as a shift in policy."

Planning Board Chairman Allen Gross added that the Planning Board must have rules and regulations to address it.

Ms. Gould questioned proposed changes to Earth Removal.

Mr. Burke responded, saying that the proposal does not include any changes to Earth Removals, except for changing the SPGA from the Planning Board to the ZBA.



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Ms. Gould noted that under current regulations, 15 cubic yards of earth can be removed in a year.

Mr. Burke remarked that there are other categories under “earth removal,” such as loam and silty material.

Mr. Burke stated that it is his intent to incorporate the comments provided by the City Councillors into the amended version of the Code and suggested that direction from the City Council and others would be appreciated. He plans to use the draft from this evening’s hearing and to track any further changes and to provide the Council with an updated version incorporating their recommendations.

President Scott Graves asked, “Then you will address all the comments?”

Mr. Burke said that he would address the comments; expressed optimism that he would answer all of the questions presented to him; and, to that to ask the Council to adopt the Ordinance, as is, is not an option.

Councillor Ronald Cormier noted that the Planning Board has concerns with an item and that it should be addressed at the same time.

Councillor Elizabeth Kazinskas questioned the timing of the hearing and adoption of the revised Code, noting the urgency to adopt zoning provisions relating to retail marijuana establishments.

Mr. Burke cited the date of the first notice of the public hearing, the effect of the “lookback clause,” and the risk that applicants face due to the “window.”

Councillor Christine Johnson suggested that the adoption of zoning provisions relating to retail marijuana establishments must occur fairly quickly.

Mr. Burke suggested that there are necessary changes to the Code, but that the existing structure and organization of the Code is good.

President Graves said that it is his impression that Mr. Burke disagrees with Paul DeMeo’s comments and added that the City Solicitor, Attorney Flick, could have drafted the Zoning changes.

Mr. Burke stated that certain amendments would be discussed and asked if the Council wants to do that as part of the deliberations.

Councillor Ronald Cormier suggested that the public hearing be continued to allow for more time to address changes.



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President Graves agreed. He suggested that perhaps the Council should order the Ordinance to First Printing and then have Mr. Burke incorporate the recommended changes; then pass the Ordinance with the proposed amendments.

Councillor James Johnson suggested that the Council hold a special meeting to address only the zoning update.

Councillor James Walsh concurred with Councillor Johnson, expressing concern about voting to order the Ordinance to First Printing without first considering the proposed amendments. He added that an Informal meeting, followed by a Special meeting, would be appropriate to act on the amendments.

Mr. Burke stated that he would make the changes to the document and provide the Council with an amended "tracked" version.

President Graves noted that before the Council votes on the Ordinance, that the Public Hearing would have to be closed. Councillor Walsh concurred.

Councillor Walsh suggested that the Council await the changes to the zoning amendment suggested by Mr. Burke and that the public hearing be suspended pending receipt of that.

President Graves called for a straw vote. Councillors unanimously agreed.

Referencing Mr. DeMeo's earlier comments, Mr. Gross remarked that Mr. Beauregard followed "normal operating procedures" which "is the Department's job," and "happens every day." Responding to an earlier comment about a request for plans for a Betty Spring Road development, Mr. Gross stated, "I have yet to see any plans for Betty Spring Road on this so-called project."

President Graves declared the Public Hearing suspended at 7:27 p.m.

Accepted by the City Council: *October 1, 2018*