

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

2015 SEP 21 10 12 04

NAME: Donald Laing, DPW Inc.
dba Domino's Pizza
4 Boyden Road
Holden, MA 01520

On behalf of
Aaliyah, LLC
2138 Silas Deane Highway
Rocky Hill, CT 06067

ADDRESS: 403 Parker Street
Gardner, MA 01440

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED AT:
403-405 Parker Street
Parcel ID #M-22-2-52

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS Book 52446, Pages 327-329.

ON APPLICATION DATED July 21, 2015 FOR A **Special Permit** to: Expand a pre-existing non-conforming use of a fast food restaurant located at 403 Parker Street, Gardner, MA, Parcel ID M22-2-52. A building permit denied by the Building Commissioner because it does not comply with Chapter 675, Article 410, "Table of Use" schedule of the City Code of Gardner.

The Gardner Zoning Board of Appeals at its September 15, 2015 meeting voted unanimously to grant a Special Permit with conditions to Donald Laing, DPW Inc., dba Domino's Pizza, on behalf of Aaliyah, LLC for relief Chapter 675, Article 410 of the Code.

The Public Hearing was held on August 11, 2015. Because of familiarity with the location by the Board, a site visit was not held.

The Applicant proposes to enlarge the existing Domino's Pizza by relocating an interior wall by 8 feet to accommodate three tables with a total of 8 seats and an additional bench for waiting customers. All renovations are to be done on the inside of the building. There are no exterior renovations proposed.

The Applicant has also applied for a Variance from the Board for this activity.

At the Public Hearing, the applicant addressed the specific criteria for a Special Permit as outlined in Section 675-1170 of the City Code and are as summarized below:

1. The proposal is suitably located in the neighborhood and compatible with the neighborhood, existing uses and other uses permitted by right in the same district. The Domino's restaurant has existed at this location for 30 years. It shares a portion of the building with an existing Convenience store that has existed for more than 30 years. Properties to the south, east, and north are mixes single family and multi-family residential properties.

2. The proposal provides for safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property and improvements. The project includes an existing parking lot consisting of 14 spaces. The Applicant has applied for a Variance for relief of the parking requirements of the Code. There is existing on-street parking on both the north and south sides of Parker Street. There are also existing sidewalks on both sides of the road.
3. Adequate off-street parking is limited at the property. Deliveries are made in semi-trailers and are made approximately 2 times weekly, typically in the morning. No additional property exists to create additional parking or dedicated loading area. Deliveries currently exist and it was not demonstrated to the Board that the existing schedule creates problems for the businesses, abutters, or others.
4. The proposal provides for the adequate and appropriate facilities and utilities for the proper operations of the proposed use and disposal of sewerage, refuse, other waster products, and other methods of drainage of surface water. The proposal in an existing building with no exterior additions planned or proposed. All renovation to occur on the inside of the building. The building is served by Public Water & Sewer. A trash dumpster exists at the rear of the property.
5. The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or other structures. The proposal does not contain changes to the exterior lighting. The Board has concerns about the adequacy of lighting in the parking lot and addresses this concern as a condition for granting this Special Permit. The open hours of the business were presented as Sunday through Thursday until midnight and Friday and Saturday open until 1 AM.
6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The work proposed is within the existing building. The proposal enhances the operation of the existing business to comply with corporate branding changes of the Domino's chain.
7. The proposal should be in harmony with the general purpose and intent of the Ordinance. Although it is an extension of a non-conforming use, the proposal is enhancing an existing business. There have been commercial businesses at this location for decades.
8. The proposal will have a significant positive impact city services, tax base, and employment opportunities.
9. The proposal is should be consistent with the City's Urban Renewal Plan or Master plan in that it is supporting a business that has existed at this location for 30 years.

The Special Permit is granted with the following conditions:

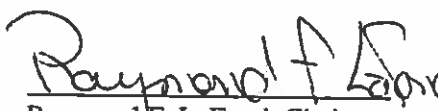
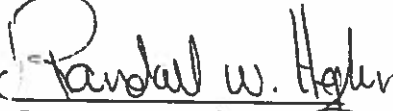




- The business is to maintain the current business hours with closing at Midnight (Sunday through Thursday) and 1 AM on Fridays and Saturdays.
- Applicant to improve lighting in the parking area for customer safety. Lighting to be night-sky compliant and shall not extend beyond the property line. A lighting plan shall be

submitted to the Building Commissioner for approval. Parking area to be illuminated no later than 1 hour after closing of businesses in the building (Domino's or convenience store), except for security level lighting as may be appropriate.

ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD OF APPEALS OR ANY SPECIAL PERMIT/VARIANCE GRANTING AUTHORITY, WHETHER OR NOT PREVIOUSLY A PARTY TO THE PROCEEDING, OR ANY MUNICIPAL OFFICER OR BOARD MAY APPEAL EITHER TO THE SUPERIOR COURT, DISTRICT COURT, OR LAND COURT DEPARTMENT OF THE TRIAL COURT FOR THE COUNTY IN WHICH THE LAND CONCERNED IS SITUATED BY BRINGING AN ACTION WITHIN TWENTY (20) DAYS AFTER THE DECISION HAS BEEN FILED IN THE OFFICE OF THE CITY OR TOWN CLERK. (M.G.L. SECTION 17, CHAPTER 40A)

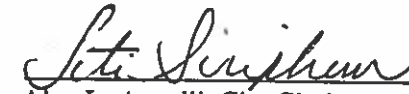
A COPY OF THIS DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 21st DAY OF SEPTEMBER 2015

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| Raymond F. LaFond, Chairman  | Randall W. Heglin, Clerk  | Michael D. Gerry, Third Member  |

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached decision by the Zoning Board of Appeals was filed with my office on SEPTEMBER 21, 2015 and that twenty days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

OCTOBER 13, 2015
Dated


Alan L. Agnelli, City Clerk
TITI SIRIPHAN, ASSISTANT