

# MINUTES

Zoning Board of Appeals Meeting – February 16, 2021  
115 Pleasant Street, Via Zoom.  
Gardner, MA 01440

Sitting in on Hearing:

In Attendance:

Raymond LaFond  
Mel Cornett  
Michael Gerry  
Randy Heglin  
Rachel Taylor  
Steve Rockwood  
Paul Lieneck  
Karen Murphy

Angela Smith  
Andrea Bartlett  
Sam Andino  
Linda Page  
Atty Wayne LeBlanc  
Stephen DeBarros  
Mark Knolls  
Wesley Flis WBD

Edward Keohan  
Tiffany Warrila  
Scott McGee  
David Tralongo  
Paul Carlberg  
Jeanine & Debbie  
Atty Christine Tree  
Rays I pad.

Meeting Called to Order by Chairman Raymond LaFond at 6.05 PM

Mr. LaFond went over the ground rules for the Zoom meeting and how the proceeding will 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 the requirements that must be addressed for a Variance or Special Permit. He then noted the meeting is usually streamed live to YouTube, but due to a meeting conflict tonight this meeting will be uploaded to YouTube at a later date this week, a request was made if anyone objected. There were no objections.

<u>Case #</u>	<u>Type</u>		<u>Address / Request</u>
Case #2021-02-01: <u>SP</u>		Sam Andino	155 Century Way, Keep Poultry.
Case #2021-02-02: <u>V</u>		Chair City Church	112 Central St, Operate Café at Church.
Case #2021-01-01: <u>SP</u>	<u>Con</u>	Angela Smith	145 Dyer St, Keep Farm Animals.
Case #2020-10-02: <u>F</u>	<u>Dec.</u>	Mark L Knoll	550 Betty Spring Road, Access Driveway
Case #2020-12-01: <u>SP</u>	<u>Dec.</u>	Andrea Bartlett	73/75 Prospect St, Keep Poultry.

**Other Business. Correction of Decision, 44 Rouville Ave. Clerical Error on Owner’s Name.  
Acceptance of Minutes from January 19 meeting.**

Tonight’s scheduled hearing is chaired by Mr. LaFond, the Clerk Mr. Gerry and third member Mr. Cornett. Mr. Heglin, ZBA member will be sitting on case 2020-10-02 this evening and will

be taking over as Chair for case# 2021-02-02. Items on this agenda may be taken out of order at the discretion of the Chairman.

Case #2021-02-01 Sam Andino, 155 Century Way, Keep Poultry.

Mr. LaFond opens the floor to Mr. Sam Andino asking him to address the board and all present with his application.

Mr. Andino stated that he currently owns 6 chickens with no rooster. The birds are kept for eggs and as a learning experience for his 4 children. The hens are kept in a coop which is completely penned in and the birds only roam when under supervision. They will serve as natural form of pest control as they eat ticks. He is also starting to compost the waste for use in the yard.

Mr. LaFond asked Mr. Andino to address the 9 questions set in the application for the Special Permit.

- 1) The coop is located in the back of the property and cannot be seen from the street, there have been no complaints from neighbors, the rear of the lot is wooded and the birds are compatible to the area.

Mr. LaFond asked if other chickens were kept around this location to which Mr. Andino believed there were chickens on West St, he has watched the zoom meeting on this case which was why he approached the board so he may keep his chickens in the right way with all permits needed to do so. The property is very rural and close to the solar field and the Gardner Fish and Gun Club.

Mr. LaFond asked about the size of the coop.

Mr. Andino informed the board that the coop was 8'x 4'ft with a run around the outside of it of about 4ft in front and 8ft wide. Total size of the bird's area is 12' x 8 which he admits is a little bigger then what he needs for the amount of birds he has, but the chickens seem happy.

Mr. LaFond asked about Roosters.

Mr. Andino stated no rooster is present nor will there be. They are new to poultry raising and are happy with what they have with no intention of growing the flock as they are still learning to raises the birds they have.

Mr. LaFond informed all that the board will limit the amount of birds to a certain number and hopefully as things move forward the city code will be amended to allow chickens to be kept, in the City of Gardner. They would have limitations in place but Mr. Andino already fits in to what conditions would be set in regards to number of birds and their living conditions.

Mr. LaFond asked if the birds were ever allowed to free roam.

Mr. Andino stated that they do allow them out in the back yard when the weather is better but the birds are not really roaming free as himself and his family keep watch and shepard them around to keep them safe.

Mr. LaFond asked about abutting neighbors.

Mr. Andino said that he had 40ft plus on either side of his house before the neighbor's property line and the rear was wooded with no homes behind.

- 2) The only traffic of any sort to come to the property is personal visitors with little to no access to the chickens.
- 3) Grain and feed is kept in the shed away from the coop. All supply's for the chickens are bought from local Tractor Supply Store so no deliveries occur.
- 4) Water is supplied via jugs from the house or the garden hose in the warmer months.

Mr. LaFond enquired about the waste and refuse from the birds.

Mr. Andino explained that they are currently learning how to use the waste as compost for the yard and will be buying new barrels that will turn the compost for them instead of having to do it manually. Any excess waste is disposed of in regular trash bags and removed with regular household trash.

- 5) There is no lighting to the coop. Dust and odor have not been a problem as the coop is cleaned at least once a week. They are very aware of smell and do not want that around the kids. Waste water is used in the yard.
- 6) The chickens are never left alone if they are not inside the coop so no disturbance to abutters will occur.
- 7) N/A
- 8) No impact to utilities or the tax base as the birds are for private use and consumption of eggs.
- 9) N/A

Any Reps from the City to speak on this case.

Mr. Roland Jean, City of Gardner Building Commissioner.

Mr. Jean informed all present that Mr. Andino had bought this case to the Zoning Board himself and had not been issued with any complaints or violations. Mr. Andino is just making sure things are above board and the birds are being kept correctly with all permits and limitations in place.

Any further questions or comments. No further comments were received from abutters or interested parties for or against the application.

Mr. Gerry requested a site visit.

Mr. LaFond confirmed a site visit scheduled for Saturday February 20<sup>th</sup> at 9am.

Motion to close meeting for case 2021-02-01

Unanimous motion to close.

Case # 2021-02-02 Chair City Church Represented by Attorney Christine Tree. Open Café.

Mr. Heglin to take over as Chairman for this hearing. Opening the meeting for Attorney Tree, representative of Chair City Church to present the case.

Atty Tree stated that this case was for a use variance to open a restaurant in part of the building owned by Pastor David Tralongo, Chair City Church. Atty Tree requested to be allowed to screen share with meeting so all can view plans and application on this case.

Mr. Heglin agreed.

A zoning map was shared on the screen.

Atty Tree explained that proposal to open a café on this property would be to aide with the overall cost of the church and building up-keep. It would be run as a nonprofit business and used as a training opportunity for local teens and job seekers. Café will serve breakfast and lunch with hours between 6AM and 2PM daily. The occupancy of the café is to be 73 diners. The location will be in the eastside of the building with its own parking area solely for customers. Parking lot to contain 19 spaces. The surrounding area is mostly mixed use and very little is residential homes. The construction of the café will be in keeping with the look of the current building?

Images were shared of the proposed look of the build and the location of parking.

Mr. Heglin asked if the whole building would be resurfaced as the new section had what looked like textured walls and not the current siding on the church building.

Atty Tree stated that only the exterior of the new section would be redone.

Mr. Cornett inquired about the entrance to the building being on Lynde St, would this be the only entrance or could you get access from Central St also? Is the kitchen on the back going to be an addition or would that be part of the current building.

Atty Tree confirmed that there will be no access from the rear of the building toward Central Street as that is designated Church parking, barriers will be in place to keep it separated. The entrance being on Lynde St is the best option for traffic safety and will cause the least disruption to the public.

Updated plans had been submitted to the Board today and distributed to Board members regarding the parking.

Mr. Cornett asked how they planned to restrict the parking spaces in the front of the building along Lynde Street to church use only as this parking area was part of the calculation when the Church was granted permission by the Board.

Atty Tree stated that the intention is for signage to be in place informing guests of limitation for these spaces although the only time this would be a problem would on Sundays when the church is session at the same time as opening hours.

Mr. Heglin asked why the handicapped parking was in the middle of the proposed parking lot and not closer to the entrance of the Cafe.

Atty Tree stated that a handicapped ramp is present and the parking space is located at the closest point of the ramp entrance.

Mr. Cornett asked about snow removal.

Atty Tree pointed out on one of the plans that snow removal had been considered and plenty of space was available to take care of it.

Mr. Heglin asked Attorney Tree to address the 3 questions set by the Variance application.

- 1) This is an existing building of significant size, there are very few other uses for this space. The Church alone covers incurs up to \$40,000 per year in annual upkeep fees with this cost surely to rise. The usage of a café will bring in income which will help to alleviate some of the annual cost. This will also be used as an opportunity to give back to the community as far as job training and placement programs for those in need. The intention to have the café open from 6am to 2pm, 7 days a week, the church has been lucky enough to have the backing of Cheryl Slack to oversee and run the café, Cheryl was the previous owner of Cruiser's here in the City of Gardner.

Mr. Cornett asked about the use of signage for the café.

Atty Tree stated that there will be a 2x2 sign which is allowed in this zoning area. Mr. Jean will be asked for his advice and guidance in this area as they move forward. They would like to place a free standing sign at the front of the building as well as signs directly on the side of the building itself. Consideration for a further sign, directing traffic is also a possibility at the junction of Lynde and Central St. As discussed they will also place signs to limit parking on the front of the building on Sunday's church guests.

Mr. Cornett inquired if the signs would be illuminated.

Atty Tree informed the Board that the free standing sign will be illuminated via a directional spot light, but the others located on the building will not have lighting.

Atty Tree informed the board that the Architect Mr. Lieneck was present at this meeting and would be happy to answer these questions.

Mr. Lieneck, Architect. The current lighting plan for this project is not yet finalized. They will be looking into LED lighting and the format of the lighting layout. The plan that was submitted does show clearly the intent and range of the lighting, but once again this is also subject to change.

Mr. Heglin directed Attorney Tree to continue with the second question of Variance.

- 2) There is no safety hazard as this is the use of an existing building, and is not detrimental to the public good the only other option for the building would be to leave it unused and abandoned. The café will be asset to the local community as a place to go and it will also pay taxes to the city. There are sidewalks present on Central St, and across the street on Lynde St. Crosswalks are clearly marked and the fact that the café will only operate during daylight hours, visibility is not a real problem in regards to pedestrian traffic and parking.

Mr. Heglin asked if there will be pedestrian access to the café from Central St.

Atty Tree insisted that the only access for the café would be on Lynde St.

Mr. Heglin asked if there was a plan in place for lighting the parking lot at all.

Atty Tree passed this question back to Mr. Lieneck.

Mr. Lieneck stated that a lighting plan for the parking lot had been submitted and there was ample illumination from the lights which would be attached the wall of the building.

Mr. Heglin asked about the illuminated bollards in the parking areas closest to the building as seen in the architect's rendition.

Mr. Linus stated that the current plan is to have all lights attached to the building directed at the parking lot. The lights on the pole in the picture shown was simply for show.

Mr. Cornett asked if the lights would be a distracting to any passing traffic or would they only be directed at the parking lot. Will the lights be motion activated or dimmable?

Mr. Linus reiterated that the final details on the lighting had yet to be completely worked out but color, wattages and the direction of all illumination will be taken into consideration.

Mr. Wesley Flis of Whitman and Bingham Associate requested to screen share so he could show a plan with the current proposed lighting system with the level of illumination though out the parking lot.

Screen share showed current proposed lighting plan.

Mr. Heglin asked about the trees present on the property and if any would have to be removed.

Atty Tree confirmed that a few trees would need to be removed to accommodate the parking lot but they would be replaced with smaller trees once the parking lot was completed.

Mr. Flis added that most of the larger pine tree on the property will remain but with the removal of just a few this will give the other trees more space to spread, as well as allowing more space for the parking lot. The trees were planted very close together to form a privacy barrier and within a few years they will have spread again with regrowth so little difference will be noticeable.

- 3) The intent and purpose of this application is in the greater good of the community as there is no restaurant or café close by the area so this would be beneficial to the surrounding area. As stated earlier this building would just be left unused and empty should this application not be granted. No new curb cuts were needed or excessive construction.

Any further questions or Statements.

Pastor David Tralongo, Owner of Chair City Church.

This café will be run as a sort of non-profit, the money made from patrons will go directly to the church for the annual upkeep and maintenance of the building. Employment will be a work study based program for the local youth and the job seeking community. Hoping to train and aid the area with able workers and equal opportunities.

No further questions.

Mr. Heglin explained that he felt there was no need for a site visit and that he would be comfortable to close this meeting and move to a decision meeting at our next scheduled meeting of the Board in March. The other members of the Board concurred.

Motion to close meeting; M Gerry, second M. Cornett.

Unanimous vote to close.

Case # 2021-01-01 Angela Smith 145 Dyer St. Raise and Keep farm animals. Continued.

Members hearing the case are Chairman LaFond, Member Gerry and Member Cornett

Mr. LaFond sitting as Chairman

Mr. LaFond informed all present that a site visit had been conducted on Saturday January 31<sup>st</sup> at 9am. Asking the board members to state any new questions or concerns they may have regarding this case.

Mr. Cornett voiced his concern with the amount of animals present and asked for a clarification on the amount of turkeys that would be purchased in the near future.

Ms. Smith confirmed that she intends to get 25 turkeys in the coming months. 5 of which she will process and freeze whole and the others will be ground into hamburger for easy storage in the freezer also.

Mr. Gerry also stated his concern with the amount of animals and asked Ms. Smith to quickly go over just what she has and what she intends to have in the future.

Ms. Smith happily confirmed that she currently owns 8 Guinea Hens but will not be getting more. 15 rabbits are the regular amount, she breeds them herself and once they get to about 12 weeks of age they will be processed and dressed for personal consumption. The rabbits have a rolling stock of 15 and will stay around that number. She currently has 3 pigs which are now pets but plans on getting 5 more for consumption this year. There are 6 geese but 3 will be leaving soon. There are 12 ducks but she will cut those back too if needed.

Mr. Cornett asked about other birds and if she has any roosters.

Ms. Smith confirmed she also has 45 chickens but will be happy with around 30, currently she has 3 roosters but will be willing to relocate 2 but would like to keep at least one as the rooster protects the flock and she can breed her own chicks.

No further questions.

Mr. LaFond requested to close the meeting and schedule a decision meeting for next month.

Motion to close meeting

Unanimous motion to close.

Case 2020-10-02 Mark Knoll 550 Betty Spring Rd, Finding. Decision.

Members hearing this continued case are Chairman LaFond, Member Gerry and Member Heglin.

Mr. LaFond submitted a letter received today from City Attorney John Flick.

February 16, 2021

**VIA ELECTRONIC MAIL**

Ray Lafond, Chair  
City of Gardner Zoning Board of Appeals  
95 Pleasant Street  
Gardner, MA 01440

Re: 550 Betty Spring Road, Gardner, MA

Dear Chairman Lafond:

This letter is in further response to the Zoning Board of Appeals request for a legal opinion regarding a matter currently pending before the ZBA. As you know, this matter involves three parcels, 550 Betty Spring Road, (PID X22-21-6), 572 Betty Spring Road (PID X22-22-8) and a parcel off Betty Spring Road, identified as PID X22-22-4A (the "Parcel"). It is my understanding that the owners of 572 Betty Spring Road also own PID X22-22-4A which abuts their property at 572 Betty Spring Road. There is a right of way over 550 Betty Spring Road which provide access to PID X22-22-4A without which (and were it not for common ownership with the owners of 572 Betty Spring Road) would be landlocked. This right of way appears to have been granted for the benefit of the owners of the "Parcel" and upon review and by way of letter from the applicant's counsel, said right of way was granted after the establishment of the City of Gardner Zoning Ordinance. Therefore, a pre-existing non-conforming use does not exist.

City of Gardner City Code, Zoning Ordinance §675-720 C permits a property to have two access driveways if the property has 200 feet of frontage and such driveways are at least two hundred feet apart as measured from the centerline of each access driveway. An access driveway is defined as a "travel lane that allows motor vehicle ingress from the street and egress from the site." City Code §675-710.

In the matter before the ZBA, the owners of the Parcel seek a finding by the ZBA that they may create a driveway over the right of way located on 550 Betty Spring Road solely for the purpose of accessing a parking area located on the Parcel. The Applicants have not asserted any other purpose for the proposed access. The problem with this request is that the establishment of a driveway on 550 Betty Spring Road (PID X22-21-6) would create an apparent violation of §675-720 C as 550 Betty Spring Road would have then have two driveways within 200 feet (from the centerline) of each other. I agree with the applicant's counsel that so long as the proposed driveway does not provide access to 550 Betty Spring Road, but limits access to PID X22-22-4A it would not constitute a

violation of §675-720 C for the owners of 550 Betty Spring Road as the apparent intent of the restriction in §675-720 C is to restrict driveways serving the same parcel.

However, the Applicant's request is complicated by the fact that the Applicants also own the abutting property at 572 Betty Spring Road and have two established driveways over 572 Betty Spring Road. One driveway provides access to 572 Betty Spring Road only and the other driveway appears to provide access to the Parcel. After visually inspecting both driveways and the right of way, and using a range finder, the two driveways located on 572 Betty Spring Road are within 160 feet of each other, and the driveway serving just 572 Betty Spring Road is approximately 150 feet from the centerline of the right of way. Upon further review, it is my understanding that the driveway which traverses 572 Betty Spring Road (PID X22-22-8) provides access to the Parcel. Given the location of that access driveway, it is likely that its centerline, at various points, is within 200' of the right of way located on 550 Betty Spring Road. Therefore, if the Applicants were permitted to establish a driveway over the right of way, the Parcel (PID X22-22-4A) would be accessible by two driveways within 200' of each other. Thus, the Parcel would be in violation of §675-720 C.

Based on the foregoing, it is the Law Department's legal opinion that in order to avoid a violation of §675-720 C the Applicants would have to terminate the driveway access to the Parcel by way of 572 Betty Spring Road (PID X22-22-8). It is important to note that the Applicants cannot simply eliminate the offending portions of the access driveway as 572 Betty Spring Road would then have two driveways serving 572 Betty Spring Road and would be in violation of §675-720 C. The entire driveway would have to be eliminated. Even if the Applicants conveyed the Parcel to a third party, all access to the Parcel over 572 Betty Spring Road (PID X22-22-8) would have to be eliminated in order to avoid a violation of §675-720 C. It should be noted that this only resolves the driveway restriction set forth in and further zoning relief may be required to address frontage requirements, etc. depending on the proposed use.

Please let me know if the Board has any additional questions or comments regarding this matter.

Very truly yours,

John M. Flick

Cc: Building Department  
Wayne M. LeBlanc, Esq.

Mr. LaFond asked if there were any further questions from the board.

Mr. Heglin asked to clarify that if the applicant could use the driveway on the right side of the property which is already present for access to the back lot, a determination is not required or if

the Applicant removed the driveway and existing access then the right of way in question would be the access to the rear property.

Mr. LaFond stated that this was correct but with the advice given in the above stated letter then there is little choice but to deny this finding as the placement of this driveway on the right of way will cause put 2 driveways with 160ft of each other when the code state no closer than 200ft.

Attorney Leblanc Representing Mark Knoll.

Atty Leblanc requested to be heard even though the meeting is closed to which Mr. LaFond allowed the statement in light of new documents being issued today.

Atty LeBlanc questioned the statement of the letter asking that if the applicant removed the driveway on the right side of the property, closest to the Westminster line would this then grant the use of the right of way.

Mr. LaFond asked if this would be a consideration of the applicant, and if so would Mr. LeBlanc be willing to put together a statement for Mr. Flick to review before they move forward with a decision.

Mr. Heglin suggested that we set a date for a decision meeting sometime in the next few weeks so all materials can be reviewed and all parties better prepared.

Mr. Le Blanc agreed to this this suggestion and confirmed he will compile a letter for Mr. Flick.

Motion to close meeting with Decision at scheduled March meeting.

Unanimous vote toe to close.

Case # 2020-12-01 Andrea Bartlett 73-75 Prospect St, Raise chickens. Decision.

Mr. LaFond addressed the Board stating that a letter had been received from Angela today and it had been submitted to the file but was not needed to be read aloud in the meeting. A second site visit had been conducted on Saturday 23<sup>rd</sup> as modifications had been made from the first visit.

Motion to move to Decision.

Unanimous vote to move.

Discussion.

Mr. LaFond stated that Ms. Bartlett currently has 28 chickens and would like to add more to a total of 40 birds.

Ms. Bartlett confirmed that 40 would be the maximum she would want but defiantly more than the 28 she has now.

Mr. Cornett stated that the past cases before the board for chickens have been limited to a max of 12 birds and that this should be the case for Ms. Bartlett also.

Mr. Gerry agreed that 40 is an awful lot of birds for the amount of land available and that 12 should be the limit set for this property.

Mr. LaFond agreed the with the other board members stating that moving forward, he hopes the city will make changes to the code so people can keep chickens without issue but again the amount will be limited to 12 at the most and No roosters. There would not be a need to relocate or cull any birds. The flock will be allowed to reduce in size through natural causes until the limit of 12 is met.

Ms. Bartlett asked for clarification on the amount of birds per lot as she has the two parcels of land so it would count as 24 chickens correct.

Mr. LaFond stated that this was not the case as all the birds were kept in one area and the application was for one property and one applicant so her limit would be 12 chickens. Though no official ordinance is in place yet the limit will be for 12 birds at most.

Motion to grant special permit with condition of no more than 12 chickens and no rooster.

Unanimous vote to grant with condition.

Any further business.

Correction need for a past decision document.

Mrs. Taylor stated that Mr. McGee from 40 Rouville Ave, had problems registering his decision with Mass Registry of Deeds as the document did not clearly state he was the owner of the property. He has requested we reprint the decision with the clerical error corrected.

Motion to accept the request and make the change. (LaFond, Gerry & Heglin)

Unanimous vote to amend document

Acceptance of minutes from January meeting.

Motion to accept the minutes.

Unanimous vote to accept minutes.

Any further business.

No Further business.

Motion to adjourn

Unanimous vote to Adjourn.

Meeting Adjourn 8:17pm.



Raymond LaFond, Chair



Michael Gerry, Clerk



Mel Cornett, Member

R Heglin (127)

Randal Heglin, Member.