

COMMONWEALTH OF MASSACHUSETTS  
 CITY OF GARDNER  
 ZONING BOARD OF APPEALS  
DECISION

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 2011 JUL 20 P 12:44  
 CITY CLERKS OFFICE  
 GARDNER, MA

NAME: Chris A. Ouellette and Denise M. Ouellette  
 ADDRESS: 94 Leamy Street, Gardner, MA 01440

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED ON:

94 Leamy Street

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:

BOOK 8465 PAGE 314

ON APPLICATION DATED June 3, 2011 FOR A Variance TO:  
 Build an 8 foot by 21 foot deck at 94 Leamy Street, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 6, 620 Table of Lot, Area, Frontage, Yard, and Height Requirements in Single Family Residential I Area, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its July 19, 2011 meeting voted unanimously to grant with conditions a Variance to Chris A. Ouellette and Denise M. Ouellette to build an 8 foot by 21 foot deck at 94 Leamy Street, Gardner, MA.

The Public Hearing was held on July 19, 2011. At the Public Hearing the Applicant presented to the Board plans locating the deck on the left side of the house. The proposed deck (8' by 21') abuts the driveway. The front of the deck was represented as being no closer to the road than the residence, which according to the tape survey provided is approximately 15 feet. The side setback of the finished deck is proposed to be approximately 24.5 feet. The deck is not proposed to be enclosed. The Applicant provided photographs of the property with sufficient plans where the Board felt adequate information was provided therefore a site visit was not necessary.

The granting of the Variance does not create or aggravate a safety hazard. The construction of the deck is for the sole use of the residents of the property. No safety hazard is created by the addition of a deck.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that the existing deck, as proposed, does not comply with the front setbacks as required by the Ordinance. The existing residence predates the Zoning Act and does not conform to the current front setback requirements, and is a grandfathered structure. The Applicant represented to the Board that the deck would be no closer to the road than the existing house. A condition for the granting of the variance addresses this issue.

There exists a hardship related to shape, topography or soil conditions of the property. The Applicant represented to the Board that locating the deck to the rear of the property would

present construction challenges and increased costs due to the topography changes at the rear of the property. The Applicant also stated that a deck on the rear of the house would impact the abutters to the rear and the swimming pool.

This Variance is granted with the following conditions:

- Front setback of the deck to be the same as the existing residence.
- Deck to be constructed to the dimensions as submitted in the application.
- Deck not to be enclosed.

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 20th DAY OF July, 2011

Raymond F. LaFond dk     Randall Heglin dk     Michael Gerry dk  
 Raymond F. LaFond, Chairman     Randall Heglin, Clerk     Michael 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 \_\_\_\_\_ 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.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Alan L. Agnelli, City Clerk