

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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CITY CLERK'S OFFICE
GARDNER MA

NAME: Robert H. Morgenstern and Louise D. Morgenstern
ADDRESS: 33 Sunset Road, Gardner, MA 01440

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

33 Sunset Road

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

BOOK 7232 PAGE 120

ON APPLICATION DATED July 25, 2012 FOR A **Special Permit** TO:
Construct an exterior deck at 33 Sunset Road (Parcel ID # R12/9/29), Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 6 Density & Dimensional Regulations, 620 Table of Lot, Area, Frontage, Yard and Height Requirements, in Single Family Residential 1 Zoning District, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its September 18, 2012 meeting voted unanimously to grant with a condition a Special Permit to Robert H. Morgenstern to construct an exterior deck on a pre-existing non-conforming structure located at 33 Sunset Road.

The application for Special Permit was filed with the office of the City Clerk on July 25, 2012.

Public Hearing held on September 18, 2012. As the Applicant provided sufficient photographic documentation, the Board determined no site visit was necessary.

The Applicant proposes to construct a 6' wide deck attached to the house as a means of access to the house from the driveway on the opposite side of the house. This deck would access the house through an existing entrance and also provide access to deck which is to be constructed concurrent with this application at the rear of the house. The deck is not proposed to be enclosed. From the pictures and other documentation provided by the Applicant, the deck is to be located approximately 15" from the property line. The driveway for the neighboring property is along this common property line. As the existing building is an existing nonconforming structure on an existing non-conforming lot, the Applicant seeks relief from the Ordinance under Section 432.2 of the Ordinance.

The Board recognizes that the house is located on a lot of approximately 6200 square feet in a subdivision that was created prior to the enactment of the Ordinance and that all neighboring lots also do not meet the square footage requirements of the Ordinance.

At the Public Hearing, the Applicant addressed the nine conditions outlined in Section 1182 of the Ordinance and are summarized below:

The proposal is compatible with the use in the neighborhood. The area is zoned Single Family Residential. The deck addition is an extension of an existing use, and is for the benefit of the residence.

The proposal will provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements. The deck is for residential use and is located on the side and to the rear of the existing house.

Adequate off street parking, loading and unloading exists at the site for the proposed use. As this application is for a residential deck on an existing residential dwelling, this condition of the Ordinance is not applicable.

The requirement that this project as proposed will contain adequate facilities for sewerage, refuse and waste products and surface drainage is not applicable to this application for a deck.

The Applicant indicated the proposal will not constitute a nuisance due to air or water pollution, erosion, flood, noise, odor, dust, vibrations, lights, or visually offensive structures or site features. The Board recognizes that noise during construction will exist but will be temporary.

The project shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. This application is for a residential deck and to be located solely on the Applicant's property. As such, this condition is not applicable.

The existence of a residential deck in a residential zoned neighborhood is appropriately located and in harmony with the general purpose and intent of the ordinance. The project enhances the residence by expanding the outdoor living area.

The construction of the deck would not have a detrimental impact on city services, tax base, and employment opportunities.

The improvement of residential properties should be consistent with the City's Community Development Plan or Master plan.

A Special Permit is granted with the following conditions:

- Due to the proximity of the deck to the property line, the setback of the deck to be verified by a licensed Land Surveyor with certification provided to the Building Commissioner.

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 24th DAY OF September, 2012

Raymond F. LaFond dx Randall W. Heglin dx Michael D. Gerry dx
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 24, 2012 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 15, 2012
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk