

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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CITY CLERK'S OFFICE
GARDNER MANAME: Thomas Sullivan and Abigail Allen
ADDRESS: 137 Hosley Road, Gardner, MA 01440DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED
ON:Parcel ID #R17-9-8, Victorial StreetIN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A
DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:BOOK 49427 PAGE 136

ON APPLICATION DATED March 15, 2013 FOR A **Special Permit** TO:
Construct a building for a fitness club at Parcel ID #R17-9-8, Victoria Street, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 7, #752 (p) Schedule of Parking Uses, in Commercial 2 zoning district, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its June 10, 2013 meeting voted unanimously to grant with conditions a Special Permit to Abigail Allen and Thomas Sullivan to construct a building for a fitness club to be located on Victoria Street on Parcel R17-9-8.

The application for Special Permit was filed with the office of the City Clerk on March 15, 2013.

Public Hearing held on April 16, 2013, continued to May 21, 2013. A site visit was held on May 22, 2013.

The Applicant proposes to construct a building of approximately 13,540 square feet for the construction of Planet Fitness in a Commercial II District. The proposed use, an indoor fitness club, is an allowed use. The Applicant seeks a Special Permit for relief from the Parking requirements of the Ordinance. Based upon the application, the required parking for the use is 90 parking spaces. The Special Permit seeks approval for a total of 97 parking spaces, with 18 spaces along or within the layout of Victoria Street. An additional 13 proposed spaces are within a section of South Main Street that at the time of the Board's hearing and deliberation is in the process of City Council action for discontinuance as a public way. Additionally, at the time of the Board's decision the Applicant is in discussions with the abutting railroad and Massachusetts Department of Transportation regarding access agreements to enhance site access and parking.

At the Public Hearing, the Applicants and their representative 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 Commercial 2. The proposed use, an indoor fitness facility, is an approved use in the district. The use abuts a residential area. The proposed use will have limited effect on the neighboring residential abutters.

The proposal will provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements. The project underwent Planning Board review and approval and conditions were set by the Planning Board. The Board considered the final revision as approved by the Planning Board and set forth additional conditions which in the opinion of the Board will further enhance the safety of pedestrians and vehicles within and at the site.

The Applicant asserted that adequate parking exists with 66 on-site parking spaces, 18 spaces within the layout of Victoria Street and 13 spaces within the layout of South Main Street. The Board has considered the parking plans as submitted and approved a total of 79 spaces as currently proposed. The approved spaces at this time are the 66 on-site spaces and the 13 spaces on South Main Street. This is further addressed in the conditions for the granting of this Special Permit.

The project as proposed will contain adequate facilities for sewerage, refuse and waste products and surface drainage. The project will be connected to municipal sewer and water and the drainage system has been designed to show no negative impacts to abutting properties up to and including a 100 year storm event. The ultimate location of the refuse dumpster is addressed as a condition of this Special Permit as its final location and screening was indeterminate at the time of the application.

The Applicant indicated and the Board generally concurs that 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 from the construction phase of the project may impact abutters and to address this concern, set hours of construction as a condition for the granting of this Special Permit.

The project shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The Board recognized the concerns of the abutters as it relates to traffic. It is believed that the impact of the proposed use will have minimal impact. It was noted by the Board at the site visit that between 5:30 and approximately 6:15 PM, very few automobiles passed the site on Victoria Street. The Board recognizes that the busiest time for the facility will likely be early morning between 5 and 7 AM and early evening between 5 and 7 PM.

The existence of a fitness club in a commercial 2 zone is appropriately located and in harmony with the general purpose and intent of the ordinance. The property once housed a furniture factory and in later years housed a furniture factory outlet, most recently resting vacant. The Applicant razed the old wooden facility in preparation for this project but preserved the old historic brick chimney and intend on incorporating it within the design of the building.

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

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

A Special Permit is granted with the following conditions:

- Hours of construction shall be
 - M-F 7 AM – 6 PM
 - Sat 8 AM – 5 PM
 - No work on Sundays, Holidays, or beyond these hours unless approved in advance by the Building Commissioner.
- Applicant or designee to provide documentation acceptable to the Board and Building Commissioner from the Providence & Worcester Railroad allowing the construction of parking area and parking as depicted on the Definitive Site Plan dated November 5, 2012. Documentation to be provided prior to the issuance of a Building Permit.
- Applicant or designee shall acquire legal title or rights to that portion of South Main Street from Victoria Street to the cul-de-sac adjacent to Route 2 that allows for the construction of a parking lot as depicted on the Definitive Site Plan dated November 5, 2012. Documentation acceptable to the Board and the Building Commissioner to be provided prior to the issuance of a Building Permit.
- Applicant or designee to submit documentation acceptable to the Building Commissioner that depicts the location and screening for an on-site dumpster.
- There shall be internal vehicular interconnection between the parking area on the property and the proposed lot on the section of South Main Street.
- The four (4) parking spaces proposed on the north side of Victoria Street which were proposed as back out spaces are not approved.
- The Board offers no opinion on the 14 proposed parking spaces on the south side of Victoria Street that were proposed as part of the project as parking is currently prohibited by City Ordinance and any changes require City Council approval.
- Applicant or designee to submit to the Board a revised site plan prior to issuance of a Building Permit.

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 June, 2013

Randall W. Heglin ^{dk} Michael D. Gerry ^{dk} Anthony J. Asmar ^{dk}
Randall W. Heglin, Acting Chairman Michael D. Gerry, Clerk Anthony J. Asmar, 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 JUNE 21, 2013 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.

JULY 12, 2013
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk