

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

RECEIVED
2013 OCT 3 PM 1 23
CITY CLERK'S OFFICE
GARDNER MA

NAME: Jasminkumar Patel
ADDRESS: Building 2, Apt. 309, 47 Princeton Street, Leominster, MA 01453

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

5 Foss Road

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

BOOK 14410 PAGE 292

ON APPLICATION DATED June 26, 2013 FOR A **Use Variance** TO:
Operate a 3600 square foot retail store at 5 Foss Road (Parcel M27-17-63), Gardner, MA, owned by David L. Larocque, Trustee of DRL Trust, 173 Eric Drive, Palm Coast, FL. (Denied a zoning determination by the Building Commissioner because it does not comply with Section 4, Use Regulations, 415 Table of Uses, Description of Use #35 Retail store up to 15,000 sq. ft., is not an allowed use in Single Family Residential 1 zoning district of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its September 31, 2013 meeting voted unanimously to grant with conditions a Use Variance to Jasminkumar Patel to operate a 3600 square foot retail store at 5 Foss Road, Gardner, MA.

The Public Hearing held on August 27, 2013. A site visit was held on September 7, 2013.

The Applicant proposes to convert a vacant building located on the westerly corner of Foss Road and West Street into a convenience store. The building has historically been a restaurant but has been vacant for several years. The building is to be converted into approximately 3600 square feet of retail space for typical convenience store type items with the remainder remaining for storage and office/manager area. No drive through window was proposed. The hours of operation were represented as being 6AM to 11PM, 7 days a week. The exterior lighting of the parking area was of particular concern to the abutters. The Applicant indicated that he intends to replace the exterior lighting. The Board addresses this concern as a condition in the granting of this Variance.

The Applicant indicated that no beer/wine sales are anticipated at this time. There will be an exterior dumpster for refuse installed on the south side of the building.

At the Public Hearing, The Board was presented with a parking lot configuration plan that raised several questions. At the site visit, the Board looked very closely at the site, specifically the layout of the proposed parking, the existing surface drainage, condition of the existing parking lot and parking lot lighting. As a result of the site visit, the Board requested a revised plan, which is on file with the Board and by reference herein, is made a part of this decision. This plan is entitled: Proposed Retail Sales Building, dated: September 13, 2013. Scale: 1 inch = 20 feet, by: Szoc Surveyors. This plan provided a slightly revised parking layout.

The granting of the Use Variance does not create or aggravate a safety hazard. The Board considered the traffic flow within the proposed lot in its decision and addressed this in a condition for the granting of this variance. Reuse of this building will remove an attractive nuisance from the neighborhood. Currently, the building is vacant and falling into disrepair.

The granting of the Use Variance does derogate from the intent of the Zoning Ordinance in that this activity is not permitted in a Single Family Residential 1. The building exists and has been vacant for several years. Its historical use as a restaurant and bar is no longer a viable use as evident that it remains vacant. Several restaurants have tried to be established in the location without success. Locating a convenience store at this location will provide a need to the area. The Board is sensitive to the proximity of the business to the residential abutters and has set conditions for the granting of this Variance that the Board believes will have the business be compatible with the neighborhood.

In the issuance of this Use Variance, a hardship related to shape, topography or soil conditions of the property is not applicable in this case. A literal enforcement of this requirement would result in the detriment of the neighborhood in that the building would likely remain vacant and continue to fall into disrepair and become a nuisance and fire hazard to abutters.

This Use Variance is granted subject to the following conditions:

- Parking Lot Lighting – Sufficient lighting to provide customer safety and positioned such to not impact neighbors in full compliance with the Ordinance. The existing flood lights on poles to be removed. Parking lot lights on no longer than one (1) hour after closing, unless necessary for building security.
- Refuse dumpster to be fully enclosed in privacy fence that is to be maintained in good condition.
- Prior to issuance of Certificate of Occupancy, the Lot is to be cleared of all unsightly vegetation and remain so.
- Building and grounds to be maintained in good condition, there shall be regular trash cleanup around the building and grounds, no outside storage of materials, display racks, etc.
- Parking plan referenced above to be reviewed and approved by City Engineer.
- Paved parking area to be resealed and appropriately striped with pavement markings.
- Only one or westernmost curb cut on West Street to remain as entrance only to property as per submitted plan. Remaining curb cuts on West Street to be removed by the Applicant. Appropriate signage and pavement marking to be installed and maintained. All exits from property onto Foss Road.
- Any changes to free standing sign must meet the requirements of the Ordinance.

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 3rd DAY OF October, 2013

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 OCTOBER 3, 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.

OCTOBER 23, 2013
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk

