

COMMONWEALTH OF MASSACHUSETTS RECEIVED
CITY OF GARDNER
ZONING BOARD OF APPEALS 2014 FEB 25 AM 11 41
DECISION

CITY CLERK'S OFFICE
GARDNER MA

NAME: Heidi S. Jeldres
ADDRESS: 235 Smith Street, Gardner, MA 01440

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

235 Smith Street

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

BOOK 33929 PAGE 215

ON APPLICATION DATED November 5, 2013 FOR A Use Variance TO:
Operate a restaurant at 235 Smith Street, Gardner, MA. Parcel ID W27-14-8. (Denied zoning approval by the Building Commissioner because it does not comply with Section 4 Use Regulations, 415 Table of Uses, Description of Use #44 Restaurant in Single Family Residential I zoning district of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its February 18, 2014 meeting voted to deny Variance to Heidi S. Jeldres, to operate a restaurant at 235 Smith Street, Gardner, MA .

The Public Hearing was held on January 21, 2014. The application was filed with the office of the City Clerk on November 5, 2013. The December 2013 meeting of the Board was postponed due to weather. At the Public Hearing, the Applicant, agreed to provide the Board with a thirty (30) day extension to render a decision. The original date for a decision was February 13, 2014, with the 30 day extension, the date then becomes March 15, 2014.

A site visit was held February 1, 2014.

The Applicant proposed to convert a portion of her home into a tea room/café with indoor and outdoor seating. Brunch and luncheon type food would be served. Small gatherings, bridal showers and the like were proposed to be held. The Applicant, in addition to having the small restaurant, proposed to sell baked goods and sell seasonal gardening items in an outbuilding. There was proposed to be a loop driveway with parking on the west side of the home. Renovation to the home would include interior renovations for disability access and other probable code issues.

At its decision meeting, the Board thoughtfully considered the project and the precedent it sets upon the neighborhood and also other applications that may come before the Board. What was presented was not a typical home occupation, as defined by the Ordinance, and have been allowed previously by the Board. While the impacts on the neighborhood of this proposal may have been minimal, the potential impacts of this decision would have been much greater.

The granting of the Variance would not create or aggravate a safety hazard. Although site distance from the driveways was marginal, the proposed one-way traffic flow pattern was the safest alternative.

The granting of the Variance would significantly derogate from the intent of the Zoning Ordinance. The District is zoned residential and the proposed use was commercial.

Whether there is a hardship related to shape, topography or soil conditions is irrelevant in the application of a Use Variance.

The request for a Use Variance is denied.

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 25th DAY OF February, 2014

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| <u>Raymond F. LaFond</u> <i>dk</i> | <u>Randall W. Heglin</u> <i>dk</i> | <u>Michael D. Gerry</u> <i>dk</i> |
| 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 _____ 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