

MINUTES

Zoning Board of Appeals Decision Meeting – March 16, 2021
115 Pleasant Street, Via Zoom.
Gardner, MA 01440

Sitting in on Hearing:

Raymond LaFond
Mel Cornett
Michael Gerry
Randy Heglin.

In Attendance:

David Tralongo	Angela Smith	GETV
Rachel Taylor	Atty Wayne LeBlanc	Deborah Smith
Steve Rockwood	David Antaya	Scott Mc Gee
Mark Knolls	Atty Christine Tree	Cheryl Slack
Edward Koehan	Caron Murphy	Jim

Meeting Called to Order by Chairman Raymond LaFond at 6 PM

Mr. LaFond went over the ground rules for the Zoom meeting and how the proceeding will take place, stating “In pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the Gardner Zoning Board of Appeals will be conducted via remote participation and on the City’s YouTube Channel. The audio or video recording, transcript, or other comprehensive record of proceedings will be posted on the City’s website as soon as possible after the meeting. Since this meeting is being conducted via Zoom, all votes taken will be by roll call and all participants to raise their hands to be recognized”. Mr. LaFond explained the requirements that must be addressed for a Variance or Special Permit. He then noted the meeting is usually streamed live to YouTube, but due to a meeting conflict tonight this meeting will be uploaded to YouTube at a later date this week, a request was made if anyone objected. There were no objections.

Mr. LaFond explained that this is a decision meeting and the floor will not be open to communication from the applicant. Questions may be asked of the applicant but that is all. No further correspondence can be submitted at this point unless requested from the Board.

<u>Case #</u>	<u>Type</u>	<u>Address / Request</u>
Case #2020-10-02: <u>F</u>	<u>Dec.</u>	Mark L Knoll 550 Betty Spring Road, Access Driveway.
Case #2021-01-01: <u>SP</u>	<u>Dec</u>	Angela Smith 145 Dyer St, Keep Farm Animals.
Case #2021-02-01: <u>SP</u>	<u>Dec</u>	Sam Andino 155 Century Way, Keep Poultry.
Case #2021-02-02: <u>V</u>	<u>Dec</u>	Chair City Church 112 Central St, Operate Café at Church.

Other Business. Acceptance of Minutes from Feb meeting.

Tonight's scheduled meeting is chaired by Mr. LaFond, the Clerk Mr. Gerry and third member Mr. Cornett. Mr. Heglin, ZBA member will be sitting on case 2020-10-02 this evening and will be taking over as Chair for case# 2021-02-02. Items on this agenda may be taken out of order at the discretion of the Chairman.

Case # 2020-10-2 Finding for access driveway at 550 Betty Spring Road. Attorney Wayne LeBlanc representing applicant Mark Knoll.

Mr. LaFond opened the case for discussion from the Board.

Mr. Gerry stated the board had received a letter from both Attorney LeBlanc and the City Solicitor John Flick in regards to the removal of a driveway on 572 Betty Spring Rd, and would then necessitate the use of a shared right of way between 572 & 550 Betty Spring Rd to access the lot in the back.

Mr. LaFond explained he had spoken to Attorney John Flick about this case and had been out to look at the site again this morning. The terrain on the left side of 572 Betty Spring Rd is very steep and would require a lot of work as it is also heavily wooded. The granting of this finding should stipulate that the driveway currently on the right side of 572 would have to be completely removed before any work could be done to create the new driveway access on the left side over the right of way. This was a condition bought up by John Flick in the letter sent to the board. (Letters mentioned are included at the end these minutes.) Mr. LaFond had concerns that vehicles would not be able to move safely under current condition.

Mr. Heglin agreed that the landscape was steep in the area and questioned if the driveway would be able to be built in the location proposed. The City engineer may need get involved as he is the one who oversees the curb cut, the building inspector will need to approve all work before it starts. To clarify, the Board is not granting a curb cut or giving approval to build but are only granting the approval of the finding.

Mr. LaFond reiterated that this is a finding case and no permission is being granted to start any of the projects. All guidelines and permitting processes must be followed moving forward, such as obtaining permits and applying for the curb cut through the proper channels.

No Further questions or discussion

Motion to approve the finding with the condition of removing driveway from 572 Betty Spring Rd.

Unanimous vote to grant finding with conditions.

Case # 2021-1-1 Angela Smith 145 Dyer St. Raise and keep farm animals.

Mr. LaFond stated that a site visit was conducted January 30th at 9.30am. Mrs. Smith was very informative and cooperative when asked questions. There is currently a large number of animals present including 6 geese, 18 ducks, roughly 45 chickens including 3 roosters, 6 guinea hens, 3 pigs, two of which are potbellied plus one larger Hampshire pig. There is also an intent to get 25 turkeys, rabbits and more pigs later in the year. The property is located in Zoning District, Single Family Residential 1 (SFR1). No farm animals are allowed in that zone without a special permit.

Mr. Cornett voiced his concern about the number of animals on the property and the condition of pens. There is little space for all the animals already and with the intent to adding more this will only make the crowding worse.

Mr. Gerry also voiced concern for the number of animals and the conditions of the lot. There is little space for the animals already without adding additional animals and fowl .He added that Mrs. Smith had mentioned wanting more pigs in the future also.

Mr. LaFond addressed the 9 criteria items of the Special Permit to help define the parameters of the Board's decisions.

1. The proposed use as a farm is not compatible for the SFR1 zoning district.
2. There is plenty of space for traffic so no issues for pedestrians or vehicles.
3. No impact on parking
4. There is not enough space for the applied use, inadequate facilities and utilities for keeping that many farm animals. A large pile of waste product was present, uncovered and served as a natural fence along side, bordering Dyer St. Erosion could occur and byproducts of this fence could flow onto the street and abutting properties.
5. A nuisance possible be created from the noise and smell of animals and waste products.
6. Proposal will be an inconvenience or hazard to abutters, vehicles or pedestrians.
7. The proposal is not in harmony with the neighborhood.
8. No detrimental impact on the City services
9. Proposal is not consistent with the City's master plan.

Any further questions. None

Motion to move to vote

Unanimous Vote to Deny Special Permit with the condition of 12 chickens at maximum, no roosters and no other animals.

Mr. Cornett suggested a time period should be set to give the applicant time to rehome the animals.

Mr. LaFond deferred the time period to be arranged between Mr. Roland Jean, Zoning Enforcement Officer for the city and the applicant.

Case # 2021-2-1 Sam Andino 155 Century Way, Special Permit to raise Poultry.

Mr. Andino was not present at the meeting

Mr. LaFond open the floor to discussion from the Board.

Mr. Cornett stated that a site visit was conducted on 2/20/2021 and he found that the pen and coop was one of the best he had seen. The birds cannot be seen from the front of the house and is completely enclosed within the yard. Mr. Andino has 6 birds and clearly stated he would not want a bigger flock.

Mr. Gerry agreed that Mr. Andino did a good job and the coop was nicely built.

Mr. LaFond agreed that he had no issues with the application and that all criteria for the special permit was adequately met. He would like to add that being as Mr. Andino had voiced not wanting more than 6 chickens that his permit be set at 6 chickens and no rooster.

Motion to vote.

Unanimous voted the granted a special permit with the conditions of allowing a maximum of only 6 chickens and no roosters.

Case 2021-2-1 Chair City Church, David Tralongo. 112 Central St. Use Variance for Café.

Mr. Heglin to take the role of Chairman for this case.

Mr. Heglin stated that this property is well known to the board and no site visit was needed, the application was very well presented by Attorney Christine Tree.

Motion to move.

Mr. Heglin went over the application stating the property on Central St was currently being used by Chair City Church for religious purposes, the easterly side of the building is not being utilized at the moment and is the site of the requested café. The café will have seating for 78 patrons and will need a 950sqft addition to accommodate a kitchen area, there are plans to clear a few trees to accommodate 19 parking spaces. The café entrance will be off Lynde St, and will offer business hours of 6am to 2pm Saturday through Sunday. In the application there was plans put forward for lighting of the parking lot and it was discussed that certain parking spaces that ran parallel with the building would have signs stating it was for church parking only. Moving forward Mr. Heglin suggested the following conditions be placed upon granting the use variance.

- 1) Exterior lighting plan will need to be reviewed by City engineer and soft light to be used.
- 2) Dumpster/ grease receptacles should be enclosed and out of sight of abutters and public.
- 3) Hours of Operation will be limited to 6am to 2pm 7 days a week, with no evening hours.
- 4) Construction work will be done Monday through Friday 7am to 6pm; 8am until 1pm Sat.
No work on Sundays
- 5) Parking on Lynde St to be restricted during church activities, services, funerals etc.
- 6) Tree's that are removed from the property for parking will need to be replaced with smaller shrubbery to maintain a nice look.
- 7) Signage to only be illuminated only during hours of business
- 8) Restaurant to comply with applicable city code, health regulations, sewer use, fire and safety.

Mr. Gerry had connection issues and a short respite was taken while Mr. Gerry called into the meeting via phone.

No further discussion.

Mr. Gerry called in to meeting and agreed to all the conditions suggested by Mr. Heglin.

Motion to grant the Use Variance to David Tralongo of Chair City Church with the 8 conditions previously stated.

Unanimous vote to grant Use variance with conditions.

Mr. LaFond reclaimed the Chair.

Any further business

Acceptance of minutes from February 16th meeting.

Unanimous vote to accept minutes.

Motion to Adjourn Meeting

Unanimous vote to Adjourn.

Meeting Adorned 6.50PM



Raymond LaFond, Chair



Michael Gerry, Clerk



Mel Cornett, Member



Randel Heglin, Member.

Letters Regarding Case # 2020-10-02

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KGMLAWYER.com LUIS O. PEREZ
MELVYN GLICIO.LAN

February 25, 2021

John M. Flick, City Solicitor

City of Gardner Law Department
144 Central Street, Suite 201
Gardner, MA 01440

Via Email and First-Class Mail

RE: 550 Betty Spring Road, Gardner, Massachusetts
Application for Finding
Gardner Zoning Board of Appeals
Decision Meeting of February 16, 2021

Dear Attorney Flick:

As you are aware, I represent the interests of Marc L. Knoll and Suzanne Knoll, owners of a certain parcel of real estate located at Betty Spring Road (rear), Gardner, Massachusetts, Assessor's Parcel ID No. X22-00022-0004A, by virtue of a deed recorded with the Worcester District Registry of Deeds in Book 32338, Page 275.

A Decision Meeting was held by the Gardner Board of Appeals on February 16, 2021. At that meeting, Chairman Lafond read your legal opinion letter dated February 16, 2021, verbatim, and the Board considered the Law Department's legal opinion outlined in said letter.

In conjunction with your last paragraph on page 2 of said letter, the Board requested that I prepare a document to be submitted to you for consideration by the Board prior to their decision on this matter.

Attached please find a copy of what I call "Proposed Findings" relating to the last paragraph on page 2 of your February 16, 2021 legal opinion letter.

John M. Flick, City Solicitor
February 25, 2021
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Please contact me if any additional information is necessary relating to this matter.

Sincerely,

Wayne M. LeBlanc WML/klh
Enclosure

Cc: Rachel Taylor (via email only)

PROPOSED FINDINGS

On September 15, 2020, Applicants, Marc L. Knoll and Suzanne Knoll, owners of property located at 572 Betty Spring Road (ND X22-22-8) and a parcel off Belly Spring Road, identified as ND X22-22-4A (the "Parcel") filed an Application for a Finding seeking determination by the Gardner Zoning Board of Appeals that the installation of an access driveway from Betty Spring Road to the Parcel (PID X22-22-4A) over a 40' right of way located at 550 Betty Spring Road (PID X22-2 1-6) would not constitute a violation of Gardner Zoning Ordinance Section 675-720 C.

The Board began a hearing on this matter on October 20, 2020 with continued hearings on November 17, 2020, December 15, 2020 and January 19, 2021 with the hearing being closed on January 19, 2021.

The Board held a decision meeting on February 16, 2021 and March 16, 2021 resulting in the following Findings:

1. The entire driveway from Betty Spring Road to the Parcel (PID X22-22-4A) located easterly of the Applicants' property at 572 Betty Spring Road (ND X-22-22-8) be removed and eliminated.
2. Provided that said driveway referred to in Paragraph 1 hereinabove is removed and eliminated by the Applicants, the driveway shown on a Site Plan dated 11/13/20 prepared by Szoc Surveyors and filed with the Board shall be constructed within the 40' right of way existing on the property at 550 Betty Spring Road (ND X22-21-6). Said driveway shall be solely for the benefit of the Applicants' Parcel off Betty Spring Road identified as the Parcel (RD X22-224A) and shall not service, be used for or benefit the property located at 550 Betty Spring Road (PID X22-2 1-6).
3. The construction of said access driveway to the Parcel (PID X22-22-4A), after tree removal and elimination of the entire driveway referred loin paragraph 1 hereinabove, is found not to be in violation of Gardner Zoning Ordinance Section 675-720 C in that said access driveway provides access only to the Parcel (PID X22-22-4A) and not to 550 Betty Spring Road (PID X22-21-6) and therefore, does not constitute a second driveway to said property located at 550 Betty Spring Road (PID X22-21-6).

CITY OF GARDNER LAW DEPARTMENT

John M. Flick
City Solicitor

Ethan Kolodny
Assistant City Solicitor



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February 16, 2021

VIA ELECTRONIC MAIL

Ray Lafond, Chair
City of Gardner Zoning Board of Appeals
95 Pleasant Street
Gardner, M A01440

Re: 550 Betty Spring Road, Gardner, MA

Dear Chairman Lafond:

This letter is in further response to the Zoning Board of Appeals request for a legal opinion regarding a matter currently pending before the ZBA. As you know, this matter involves three parcels, 550 Betty Spring Road, (PID X22-21-6), 572 Betty Spring Road (PID X22-22-8) and a parcel off Betty Spring Road, identified as PID X22-22-4A (the "Parcel"). It is my understanding that the owners of 572 Betty Spring Road also own PID X22-22-4A which abuts their property at 572 Betty Spring Road. There is a right of way over 550 Betty Spring Road which provide access to PID X22-22-4A without which (and were it not for common ownership with the owners of 572 Betty Spring Road) would be landlocked. This right of way appears to have been granted for the benefit of the owners of the "Parcel" and upon review and by way of letter from the applicant's counsel, said right of way was granted after the establishment of the City of Gardner Zoning Ordinance. Therefore, a pre-existing non-conforming use does not exist.

City of Gardner City Code, Zoning Ordinance §675-720 C permits a property to have two access driveways if the property has 200 feet of frontage and such driveways are at least two hundred feet apart as measured from the centerline of each access driveway. An access driveway is defined as a "travel lane that allows motor vehicle ingress from the street and egress from the site." City Code §675-710.

In the matter before the ZBA, the owners of the Parcel seek a finding by the ZBA that they may create a driveway over the right of way located on 550 Betty Spring Road solely for the purpose of accessing a parking area located on the Parcel. The Applicants have not asserted any other purpose for the proposed access. The problem with this request is that the establishment of a driveway on 550 Betty Spring Road (PID X22-21-6) would create an apparent violation of §675-720 C as 550 Betty Spring Road would have then have two driveways within 200 feet (from the

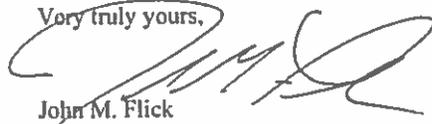
centerline) of each other. I agree with the applicant's counsel that so long as the proposed driveway does not provide access to 550 Betty Spring Road, but limits access to PID X22-22-4A it would not constitute a violation of §675-720 C for the owners of 550 Betty Spring Road as the apparent intent of the restriction in §675-720 C is to restrict driveways serving the same parcel.

However, the Applicant's request is complicated by the fact that the Applicants also own the abutting property at 572 Betty Spring Road and have two established driveways over 572 Betty Spring Road. One driveway provides access to 572 Betty Spring Road only and the other driveway appears to provide access to the Parcel. After visually inspecting both driveways and the right of way, and using a range finder, the two driveways located on 572 Betty Spring Road are within 160 feet of each other, and the driveway serving just 572 Betty Spring Road is approximately 150 feet from the centerline of the right of way. Upon further review, it is my understanding that the driveway which traverses 572 Betty Spring Road (PID X22-22-8) provides access to the Parcel. Given the location of that access driveway, it is likely that its centerline, at various points, is within 200' of the right of way located on 550 Betty Spring Road. Therefore, if the Applicants were permitted to establish a driveway over the right of way, the Parcel (PID X22-22-4A) would be accessible by two driveways within 200' of each other. Thus, the Parcel would be in violation of §675-720 C.

Based on the foregoing, it is the Law Department's legal opinion that in order to avoid a violation of §675-720 C the Applicants would have to terminate the driveway access to the Parcel by way of 572 Betty Spring Road (PID X22-22-8). It is important to note that the Applicants cannot simply eliminate the offending portions of the access driveway as 572 Betty Spring Road would then have two driveways serving 572 Betty Spring Road and would be in violation of §675-720 C. The entire driveway would have to be eliminated. Even if the Applicants conveyed the Parcel to a third party, all access to the Parcel over 572 Betty Spring Road (PID X22-22-8) would have to be eliminated in order to avoid a violation of §675-720 C. It should be noted that this only resolves the driveway restriction set forth in and further zoning relief may be required to address frontage requirements, etc. depending on the proposed use.

Please let me know if the Board has any additional questions or comments regarding this matter.

Very truly yours,



John M. Flick

Cc: Building Department
Wayne M. LeBlanc, Esq.
