



**CITY OF GARDNER
ZONING BOARD OF APPEALS
CITY HALL ANNEX, ROOM 101
GARDNER, MA 01440
(978) 630-4007 • Fax (978) 632-3313**

MINUTES

**Zoning Board of Appeals Decision Meeting – October 3, 2016
Police Station, Police Chief’s Conference Room
Gardner, Massachusetts**

Sitting in on Hearing:

Raymond E. LaFond, Chairman
Michael D. Gerry, Third Member
Randall W. Heglin, Clerk

In Attendance:

The Applicant wasn’t in attendance

Meeting Called To Order by: Raymond LaFond, Chairman @ 6:25 p.m. in the Police Station, Fire Chief’s Office, Gardner, MA. The meeting was delayed.

Decisions

Randy Heglin moved to go to Case #2016-08-03. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-03 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Special Permit to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA. **Denied by Building Commissioner as it does not comply with required 675-410 Attachment 1 “Table of Uses” of City Code of Gardner states that line #45 – “Restaurant, fast food, including appurtenant structures to provide drive-through or drive-in services requires a Special Permit when located in the Commercial 2 zoning district.**

Ray LaFond stated that Hassan Jaber of Zone Three, Inc., Atty. Mark Goldstein and Bill Hannigan addressed the issues at the September 21, 2016 public hearing.

1. The proposal is suitably located in the neighborhood and compatible with the neighborhood, existing uses and other uses permitted by right in the same district. The property is located within the Commercial 2 Zoning District and is abutted by other commercial activities including a fast food restaurant with drive-thru, a sit down restaurant, gas station with drive-thru, motel, liquor store and laundromat.
2. The proposal provides for safe vehicular and pedestrian movement within the site and in relation to adjacent streets, property and improvements. The project includes the razing of the existing building, modifying the existing parking configuration, one way traffic flow through separate signed entrance and egress driveways, relocation of the city sidewalks with ADA compliant disability ramps.
3. Adequate off-street parking exists with the redesign of the site. The proposal exists with 23 spaces delineated on the plan. The Applicant/Representative represented to the Board that as the tenants of the building are not yet determined, the ultimate use of each tenant would be a function of the available parking. Deliveries are expected to be made in vehicles up to semi-trailers in size and accommodation for loading/unloading is shown on the plan.

4. The proposal provides for the adequate and appropriate facilities and utilities for the proper operations of the proposed use and disposal of sewerage, refuse, other waste products, and other methods of drainage of surface water. Submitted to the Board was a complete site plan including an appropriately screened site for refuse dumpsters, parking lot drainage, appropriate grease trap and connection to public water and sewer.
5. The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or other structures. The proposal includes parking lot lighting, although a specific lighting plan was not provided. The Board addresses this in a condition for the granting of this Special Permit. The Board also recognizes that there will be construction related noise until the project is complete. The Board addresses this as a condition in the granting of this Special Permit.
6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The site plan addressed both onsite pedestrian movements and off-site with the relocation of the city sidewalk. Traffic lanes for the drive-thru are delineated on the plan. The driveway width raised a concern with the Board with respect to the exit driveway and the possibility of two cars being in the drive side by side. The Board addresses this concern in a condition for the granting of this Special Permit. The outdoor speaker associated with the drive-through may impact abutters. The Board also addresses this concern in a condition for the granting of this Special Permit.
7. The proposal is in harmony with the general purpose and intent of the Ordinance. The property is located within the Commercial 2 district and its proposed use is compatible.
8. The proposal will have a significant positive impact city services, tax base, and employment opportunities.
9. The proposal should be consistent with the City's Urban Renewal Plan or Master plan.

Ray noted that the plan was approved by the Planning Board.

There were no comments from the Board. All in favor.

The Board then addressed the conditions.

Randy Heglin added that the hours of operation for construction be put in the conditions. Hours will be from Monday through Friday 7:00 a.m. to 6:00 p.m., Saturday 8:00 a.m. to noon and no work on Sundays and state holidays.

Mike Gerry had concerns about the snow taking up too much space and that it needs to be removed in a timely manner. After discussion, the snow pile may not be in excess of 6 feet high and should not take more than four parking spaces.

Randy wants to make sure the storm water management plan is followed.

Randy Heglin made a motion to approve the Special Permit with the following conditions:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.

- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

All in favor. 3-0.

So voted.

Randy Heglin made a motion to move on to Case #2016-08-04 to vote with conditions as voted on the Special Permit will also apply to all the Variance requests are precedent to this. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-04 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA. **Denied by Building Commissioner as it does not conform with Chapter 675-620 Attachment 2 Table of Lot, Area, Frontage, Yard and Height, lot contains less than the required 30,000 sq. ft. of area.**

Randy Heglin made a motion to approve this Variance with the following conditions:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

Seconded by Mike Gerry. 3-0.

So voted.

Randy Heglin made a motion to move on to Case #2016-08-05. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-05 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation , 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA. **Denied by Building Commissioner as it does not conform with Chapter 675-770A.(1) Parking located forward of the building.**

Mike Gerry addressed the parking issue. Randy Heglin noted that the Planning Board had approved up to eight parking spaces in the front of the building.

All in favor of the Variance to include the conditions as given in the Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon

- No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0.

So voted.

Mike Gerry made a motion to move on to Case #2016-08-06. Seconded by Randy Heglin. 3-0. So voted.

Case #2016-08-06 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA. **Denied by Building Commissioner as it does not conform with Chapter 675-770A.(2) Parking spaces within 10 foot from any lot line.**

Mike Gerry noted that they are doing the best they can with what they have. Randy noted that side characteristics exist to enhance the property and they put in greenery as an improvement by not meeting the 10 ft. requirement.

All in favor of approving the Variance with the following conditions a required for the Special Permit:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0.

So voted.

Randy Heglin made a motion to move on to Case #2016-08-07. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-07 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA. **Denied by Building Commissioner as it does not conform with Chapter 675-77A.(3) More than one driveway with 145 feet of frontage, plus driveways are not separated by the required 200 feet.**

They currently have two driveways but they do not have the required 200 ft. frontage. The driveways are going to be 90 ft. apart.

All in favor to approve the Variance with conditions as per Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0. So voted.

Mike Gerry made a motion to move on to Case #2016-08-08. Seconded by Randy Heglin. 3-0. So voted.

Case #2016-08-08 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA.. **Denied by Building Commissioner as it does not conform with Chapter 675-770B.(1) No screening provided from adjacent properties.**

The plan is instead of screening they will be planting shrubbery. There will also be a barrier installed by fencing. They are making every attempt they can to limit encroachment on the abutters.

All in favor to approve the Variance with conditions as per Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0. So voted.

Randy Heglin made a motion to move on to Case #2016-08-09. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-09 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance

to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA.. **Denied by Building Commissioner as it does not conform with Chapter 675-770B.(3)(a) Reducing of parking lot screening from the required design.**

The proposed landscaping buffer does not comply with the 10 ft. buffer to adequately screen parking as is required by the Code. The applicant has plans to put fencing and landscaping plantings in the area that it does not currently exist.

All in favor to approve the Variance with conditions as per Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0. So voted.

Mike Gerry made a motion to move on to Case #2016-08-10. Seconded by Randy Heglin. 3-0. So voted.

Case #2016-08-10 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4,940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA.. **Denied by Building Commissioner as it does not conform with Chapter 675-770D.(3)(b)(2)(f) Building with drive-through services not located along the front lot line to the street edge.**

It is not possible to do this without imposing on the abutters. They will move the building as close to the front as is possible.

All in favor to approve the Variance with conditions as per Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.

- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0. So voted.

Randy Heglin made a motion to move on to Case #2016-08-11. Seconded by Mike Gerry. 3-0. So voted.

Case #2016-08-11 Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for property at 16 Pearson Blvd., Gardner, MA Parcel ID # R17-4-15 for a Variance to operate/construct a 4, 940 sq. ft. building comprising of retail sales (2273 sq. ft.), personal service (1046 sq. ft.) other space (120 sq. ft.) and a restaurant with drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner, MA.. **Denied by Building Commissioner as it does not conform with Chapter 675-770D.(3)(b)(2)(g)[iv] Outdoor speakers not directed away from abutting properties.**

Mike Gerry reported that he is satisfied with the setup of the speakers. There is a volume on the speakers should there be complaints from the abutters but the applicant does not expect it to be an issue with the abutters.

All in favor to approve the Variance with conditions as per Special Permit as follows:

- The hours of construction are to be as follows:
 - Monday-Friday – 7AM to 6 PM
 - Saturday – 8 AM to Noon
 - No work on Sundays & Holidays
- Lighting plan to be night-sky compliant and approved by the City Engineer
- Variable volume control to be installed on the outdoor speaker and shall be adjusted accordingly in the event of a complaint addressed to either the tenant(s) of the building, the Applicant or Property Owner, or the City.
- Appropriate pavement marking to be installed and maintained to delineate a single lane of exit from the site.
- Snow Removal – the plan as outlined on the plan of record to be followed. The stockpiled snow is not to occupy more than four (4) parking spaces and to be removed if exceeds this or any parameter in the snow management & removal plan.
- The stormwater drainage system to be operated and maintained per the referenced plan.

3-0. So voted.

Adjournment

No other items on agenda. Randy Heglin made a motion to adjourn, seconded by Mike Gerry. All in Favor. 3-0
So voted.

The meeting adjourned at 7:06 p.m.

Next Public Hearing Meeting will be on Tuesday, October 18, 2016, 2016, at 7:00 p.m. in Room 103, City Hall Annex.

 Raymond F. LaFond, Chairman

 Michael D. Gerry, Third

 Randall W. Heglin, Clerk

All detailed conversations, questions, comments & concerns are documented on DVD identified as October 3, 2016.