



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

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**MINUTES**

**Zoning Board of Appeals Public Hearing Meeting – September 21, 2016  
115 Pleasant St., Room 103  
Gardner, Massachusetts**

**Sitting in on Hearing:**

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

**In Attendance:**

See sign in sheets

**Meeting Called To Order by:** Raymond LaFond, Chairman, @ 7:00 P.M. Room 103, 115 Pleasant St.,  
Ground Rules Read. No objection to videotaping/recording of the meeting.

**Public Hearings**

**Case #2016-08-01.** Pranavkumar Patel of 208 Lawrence Street, Gardner, MA applied for a Variance to install two signs, one 32 sq. ft. free standing sign with a front setback of six feet and a side setback of two feet, and one fifty square foot wall mounted sign, for a total signage of 82 sq. ft., at 157 West Street, Gardner Parcel ID #M27-23-28 which was denied by the Building Commissioner as it is not a permitted use in the GR3 zoning district and because it does not conform with Chapter 675, Article 9 of the City Code of Gardner. Chapter 67-920 G. No sign shall be erected with any part closer than 10 feet to the traveled roadway or side or rear yard lot lines. Chapter 679 950 A in residential districts, one sign identifying any other use which is conducted on the premises and is permitted in residential districts. All such signs shall not exceed two square feet of display area and if lit shall use indirect white light only.

Mr. Patel stated his name and address and informed the ZBA members that he is opening a store 157 West St., in Gardner and would like a free standing sign at the corner of West Street and Sand Streets so the public can see it from all directions and a wall mounted sign. He went through the Variance requirements. He addressed the Board stating that the wall sign does derogate from the intent of the Ordinance, it does not create a safety hazard as it will be on the building and it does not interfere with parking in front of the sign. He added that it has nothing to do with soil conditions. He stated that both signs would be worded the same way, and he agreed that he will not hang a banner from the sign on the side of the building. After talking with the Board he decided that he would be fine with one free standing sign on the corner of the building. When asked about the size of the sign he stated that he would be fine with whatever size the Board decided. He added that he would have support poles coming up from the pavement. Randy Heglin recommended a breakaway sign. Mike Gerry asked if the sign would be a safety hazard and with impede traffic. He was also asked about keeping the area clean around the sign. Mr. Patel stated that it would not interfere with traffic and that he would keep the area clean around it. When asked by the Board if the sign would be illuminated he stated that it would not and that it will be lit by the lights on the building.

The Chairman read a letter from Patricia B. Cosentino, of 10 Sunrise St., No. 1, Boston, West Roxbury, MA 02132, an abutter to the property. She is opposed to the appeal. She stated that she owns a business in the area and supports new business in Gardner but opposes a sign that impedes vision on Route 68. Mr. Patel stated that it would not impede the vision on Route 68.

The Chairman then asked if there are any City Officials present that are in favor of the request. None present. He then asked if any are opposed. None present. Then he asked if any abutters were for or opposed. No abutters were present.

The Chairman closed the hearing for further discussion.

**Case #2016-08-02** Alexander Lussier of 61 Sylvan Road, Gardner, MA applied for a Special Permit to conduct earth alterations by re-grading the rear of his property in Gardner, MA Parcel ID #R17-6-34. Denied by the Building Commissioner as it does not comply with Chapter 675-1070: Earth moving and earth alterations of City Code of Gardner. The Table of Uses #28 refers to Chapter 675-1070 which states that the use requested requires a Special Permit issued by the Gardner Zoning Board of Appeals.

Mr. Lussier appeared before the board and after giving his name and address he informed them that his property is in the cul de sac. He stated that he wants to regrade the slope back to the lot line. He explained that he wants to make more space for his children to play. He stated that he wants to put rif raf stone approximately 20 feet back of the grade to the toe of the slope to hold and catch the water. He wants to improve the drainage system as his yard is spongy. The materials taken from the property will go to Davenport Paving and Excavating so none of it will be left on his property. He added that most of the material being taken out is clay and he will not be selling it.

Mr. Lussier then went over the Special Permit Criteria and answered the questions. The district is zone SFR1 and is located in the rear of the property and is compatible with the current zoned uses of the neighborhood. All traffic shall utilize Sylvan Road as ingress and egress of said property. The road is publically maintained and has sufficient size for vehicular and pedestrian movement while the project is being completed. The project will be completed and is to take place entirely at a private residence. There are four off street parking spaces that will be used while the project is being completed. Number four does not apply to him. The proposed project of earth alteration shall be a nuisance with regard to naturally occurring water via ground and rain. There is a possible noise nuisance to the abutters to the properties. The proposed plans will remedy the water nuisances. The hours of operation will be from 7:30 a.m. to 5:00 p.m. He stated that he does not believe it will have any impact on the city. He also stated that the work being done is consistent with the City's Master Plan.

The Board made arrangements to view the project with Mr. Lussier on Friday at 4:30 p.m.

The Chairman asked if any City Officials would like to speak in favor of the project. No City Officials were present. He then asked if any abutters would like to speak in favor of the project.

Ronald Dyer of 86 Jackson Hill Road spoke in favor of the project as an abutter. He lives directly in back of Mr. Lussier's property. He informed the board that he is in favor of the project but does have some concern. He stated that he had a survey done in March and had concerns about erosion. Mr. Lussier explained that he does not intend on removing any vegetation. The Board invited him to meet them at Mr. Lussier's property on Friday at 4:30 p.m.

There was no opposition, nor questions from the Board. The case has been closed.

**Case #2016-08-03** Hassan Jaber, Zone Three Inc. f/n/a Hassan Corporation, 20 Eagle Road, Winchendon, MA for his property at 16 Pearson Blvd., Gardner, MA Parcel ID #R17-6-34 for a special permit to operate/construct a 4,940 sq. ft. building comprising of retail sales (2,273 sq. ft.) personal service (1,046 sq. ft.) other space (120 sq. ft.) and restaurant with a drive through (1,500 sq. ft.) for a coffee shop at 16 Pearson Blvd., Gardner. Denied by the Building Commissioner as it does not comply with require Chapter 675-410 Attachment 1 "Table of Uses" of City Code #45 "Restaurant, fast food, including appurtenant structures to provide a drive-thru or drive-in services requires a Special Permit when located in Commercial 2 zoning district.

Hassan Jaber, 20 Eagle Rd., Winchendon, MA, the applicant, Atty. Mark Goldstein, 144 Central St., Suite 101, Gardner, MA and Bill Hannigan from Hannigan Engineering, 8 Monument Sq., Leominster, MA were here to speak on Case #'s 2016-08-03 through Case #2016-03-11.

Bill Hannigan addressed the Board with plans for the proposed drive-thru. He noted that the Site Plan has been approved by the Planning Board. He presented the board with paperwork he received via email Trevor Beauregard, Director of the Planning Board regarding parking in front of the building from the Site Plan Review process. He noted that the two entrances to the property to have one as entrance and the other as an exit to allow

for better circulation through the sight with a one way traffic pattern. He noted that there will be five parking spaces in the front of the building, seven on the side and ten spaces in the back. The sewer system is in the back of the building. The site layout will allow a WB67 vehicle to go through it without a problem. There will be a single window at the drive thru that will serve as dual purpose. The traffic should flow smoothly. They had a Traffic Study done which is part of the Site Plan review. There is a dedicated area for pedestrians walking in and there will be only once customer entrance in the front. The Board suggested a designated area for employees to park.

Mr. Jaber stated that the peak hours of operation for the drive-thru would be from 4:30 a.m. to 8:00 a.m. He added that there will be 3 or 4 tables inside with 24 seats including tables and counter space. Water for the building will be tapped to the street line and there is an existing sewer line in the back. National Grid has the option of running the lines underground. They do have a drainage analysis and a maintenance plan. Conservation will be reviewing this plan as well.

Randy asked about snow removal. Mr. Jaber stated it will be placed on the edge of the property. Overflow snow will be stored at the rear of the property in the area of some of the excess parking and will be hauled off the property should the pile become too big.. The snow will not be left there for very long.

The lighting overhead will be LED lighting. They still have not finalized everything yet but will comply with zoning. There will be landscaping around the property to compliment Friendly's. There will be a dumpster in the back that will be completely fenced off with solid wall fencing.

Atty. Mark Goldstein reported on the criteria. The property will be strictly commercial. There will space for parking and unloading. They will be disposing of waste products and enhancing the walkway for the people walking in. It will keep with the character of the area.

Ray asked if there would be temporary signage. Mr. Jaber reported that they will not be asking for this. If the tenants want temporary signage it will be up to them to go to the Building Commissioner. They will not be applying for a stand-alone sign at this time.

It will not interfere with City services and will create employment in the City.

Ray asked about what kind of retail sales are anticipated. Mr. Jabar stated a coffee shop and some personal services. They will have more than one tenant. They have planned for 23 spaces with the Building Commissioner. This is all that's available no matter what. They expect the hours of operation to be from 4 a.m. to 11 p.m. Mike Gerry asked if the façade will look like the plans presented. Bill Hannigan reported that it would.

During the meeting, it was discussed that the internal building areas of the tenant spaces depicted on the plans were in a general manner with the intent of being able to calculate required parking. The applicant/agent stated that if the areas were to change they would need to provide appropriate parking calculations to the Building Commissioner.

The chairman asked if there are any City officials present to speak in favor of the project, then if there were any in opposition of the project. There were no City officials present. He then asked if there were any abutter in favor or against the project. There were no abutters present.

Ray then read a letter from James P. Kraskouskas, President of Anthony's Package Store, Inc. & VW Corporation as well as Trustee for Kiley's Way Condominiums, abutters to the property. Mr. Kraskouskas is 100% in favor of this development.

The Board left this open at this time to move on to the next case.

**Case #2016-08-04** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the 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. area.

Atty. Mark Goldstein spoke on this. The lot is actually 28,162 sq. ft. The shape of the land is causing the hardship. The lot is a pre-existing, non-conforming lot. Randy Heglin asked Mr. Jaber if he had approached any of the abutters to purchase the additional land needed. Mr. Jaber doesn't believe it is for sale. Mr. Hannigan stated that they have not reached out to the neighbors. The building probably was constructed pre-zoning. The building has been there since around 1967 before the zoning change.

There were no further questions from the Board. Ray LaFond stated that since there are no City Officials or abutters present he will forgo the questions for a response for this and the other cases coming up.

The Board did not close the case and will leave it open.

**Case #2106-08-05** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770A.(1) Parking located forward of the building.

Bill Hannigan reported that the Planning Board approved the Site Plan as submitted. Provisions in the Ordinance allow the Planning Board to grant permission for up to 8 parking spaces in front of the building. He requested clarification from Trevor Beauregard relative to the Planning Board's approval and was told that the "Board's approval of the site plan speaks for itself." He will forward his email from Treavor Beauregard to the office. Kathy will add that to the file and forward it to the Board.

**Case #2106-08-06** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770A.(2) Parking spaces within 10 feet from the lot line.

Atty. Mark Goldstein reported that there is not enough land to accommodate the 10 feet as well as the shape of the land. They have enhanced as best they can and added some buffer zones which cause a hardship. They will be adding landscape screening and/or a solid vinyl fence which was recommended by the Development Review Commission.

The Chairman continued to the next case.

**Case #2016-08-07** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770A.(3) More than one driveway within only 145 feet of frontage, plus driveways are not separated by the required 200 feet.

Mr. Hannigan stated that the two existing driveways are 75 ft. apart. The new driveways will be approximately 90 feet apart and redesigned to accommodate WB-67 vehicles. He noted that this will improve the flow of the site by separating cross traffic conflict lines which would be better for the traffic flow.

Ray LaFond asked if there would be signage marking the entrance and the exit. Bill Hannigan reported that the coffee shop Stop Sign and Do No Enter Sign will be per Mass. Highway type signage and the smaller enter/exit signs may be illuminated. Ray asked if this type of signage could cause people to be confused. Bill stated that he didn't believe that it would. Randy Heglin asked Bill Hannigan if the exit drive could be marked as a single car width.

The Board continued to the next case.

**Case #2016-08-08** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770B.(1) No screening provided from adjacent properties.

Atty. Mark Goldstein addressed this. They tried to do this the fencing, buffer zones and the shape of the property makes sense for safety issues. It buffers out the neighbors, the trash bin is completely covered up. The hardship is that there is nothing else they can do. Mike Gerry asked why the screen doesn't conform. Atty. Goldstein stated it is the width of the screen and the buffer.

No further questions. The Board left the case open and continued to the next one.

**Case #2016-08-09** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770B.(3)(a) Reducing the parking lot screening from desired design.

Bill Hannigan reported they can create a buffer three different ways; landscape, a berm, and/or fencing. The issue in this case is the width of the screen provided. Ray LaFond reported that the Board would like a solid year round screen.

The Board continued on to the next case.

**Case #2016-08-10** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 675-770D.(3)(b)(2)(f) Building with drive-thru services not located along the front lot line to the street edge.

Bill Hannigan reported with this type of retail use, many of the tenants that seek this type of location also want to have parking directly in front of the building. To provide the sidewalk, the parking space, the maneuvering aisle, and some limited landscape at the front of the property, the building is set at the proposed location. He also stated that if the building were pulled up to the front setback line, the layout of the drive-thru would not make sense. It would be a safety hazard and would be hardship so that they couldn't do the project.

The Board continued to the next case.

**Case #2016-08-11** Hassan Jaber, Zone Three Inc., f/n/a Hassan Corporation also asked for a Variance for 16 Pearson Blvd. Parcel ID #R17-4/15 denied by the Building Commissioner as it does not conform with Chapter 770D.(3)(b)(2)(g)[iv] Outdoor speakers not directed away from abutting properties.

Bill Hannigan reported that technology has changed and the new speakers have a volume control so that they can be turned down if they irritate the abutters.

Ray LaFond kept the cases open and noted that the Board will be having a Decision Meeting.

Ray Lafond made a motion to close the 9 hearings for Hussan Jaber, Zone Three Inc. f/n/a Hussan Corporation. Seconded by Mike Gerry. 3-0. So voted.

Ray LaFond made a motion to close all the hearings. Seconded by Mike Gerry. All in Favor. 3-0. So voted.

Ray LaFond will call a Decision Meeting.

### **Correspondence**

None

### **Minutes**

Motion to accept the minutes of the July 19, meeting by Michael Gerry, Seconded by Randy Heglin. 3-0 So voted.

### **Adjournment**

No other items on agenda. Ray LaFond made a motion to adjourn, seconded by Mike Gerry. 3-0 So voted.

The meeting adjourned at 9:56 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.

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Raymond F. LaFond, Chairman

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Michael D. Gerry, Third

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Randall W. Heglin, Clerk

**All detailed conversations, questions, comments & concerns are documented on DVD identified as September 21, 2016.**