

CITY OF GARDNER  
ZONING BOARD OF APPEALS  
GARDNER MA 01440

(978) 630-4007

February 18, 2025, at 6:30 pm

Minutes  
Zoning Board of Appeals  
In-Person Meeting  
Perry Auditorium, Annex Building, City Hall

MEMBERS PRESENT

Raymond LaFond, Chairman  
Melory Cornett, Member  
Richard Hanks, Member  
Laurie Wiita, Member  
Robert Rice, Alternate Member

CITY OFFICIAL

Thomas Zuppa, Building Commissioner

ATTENDEES (See Sign-In Sheet):

Terese Coponen	Joshua Joslyn	Ken Huang
Matthew Perimian	Steven Rockwood	Stanley Luczko
Emily Merlino	Ayano Polanco	Roy Coponen
Justin Enright	Ulises Polanco	Atty. Christine M Tree
Norma Fortado	Kristina McArdle	Paul De Meo
Margaret L Luczko		

The Chairman Raymond LaFond called to order the meeting at 6:30 pm.

The Chairman read the ground rules by which the Zoning Board operates.

The Chairman asked the audience if anyone objected to the videotaping of the hearing.

No objections.

The Chairman read the agenda.

Cases #

Case: 2022-01-01(con)	SP	Jonathan Bombaci, 163-165 Pine Street. PID # R22-6-8. Update on Special Permit violation.
Case: 2024-09-01(con)	V	Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Relief on side yard setback.
Case: 2024-09-02(con)	V	Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Build Single Family House.
Case: 2024-09-03(con)	SP	BCF Investment LLC, 75 Oak Street. PID #M27-24-57. Change the status from a Two Family to a Three Family.
Case: 2024-01-11(con)	V	Roy Coponen, 68 Acadia Road. PID #M32-21-6. Construct a 24-36 Ranch Style Single Family Home.
Case: 2025-01-01	V	Christof Chartier, 242 W Broadway. PID #R17-16-10. Relief on signage "SAWA".
Case: 2025-02-01	V	Christof Chartier, 108 Grant Street. PID #R22-7-14. Relief on rear setback for second egress.
Case: 2025-03-01	SP	Russell J Burke, Keyes Road, Lots. PID #H27-14-101, H27-14-102, H27-14-103. Environmentally restore the disturbed 20 acres.
Case: 2025-02-01	AA	Kristina McArdle, 877 Timpany Blvd. PID #M07-15-4. Retail from Home Occupation.



**First Case:** 2022-01-01 (con) Special Permit, Jonathan Bombaci, 163-165 Pine Street. PID # R22-6-8. Update on Special Permit violation.

The Chairman asked for Atty. Tree to begin the presentation.

Atty. Tree is a Fitchburg resident and represents the Permit Holder. Matt Perimian is one of the Co-Owners in partnership with Jonathan Bombaci. Mr. Bombaci is unable to attend tonight's meeting.

Atty. Tree stated, "We are here to discuss a written update that was submitted in January. We've complied with all other conditions, but we are not going to be able to expand the parking area. This was an abandoned property that was renovated through a Special Permit as an 8-unit building. Along with being able to reuse the use of a multifamily, the parking spaces were reduced from 16 spaces to 11 spaces. Two of the parking spaces were buddy parking on the right-hand side to be allocated to one unit. The remaining spaces were to be constructed by a parking area in the rear of the property supported by a substantial retaining wall. The property in the back slopes down substantially and quickly. A big retaining wall had to be constructed already for that parking area. The parking lot was constructed short by error of the previous contractor by approximately 8ft. That resulted in us having only 7 parking spaces fitting in the back instead of 9 with the two on the side. We were brought back to the Zoning Board for a review of compliance with conditions including, but not limited to, amendment of that parking area of the construction to be in compliance with the plan that was allowed under the Special Permit. We are not going to be compliant with the plan as allowed under the Special Permit. We started out with a couple of issues:

1. Making sure all our inspections and certificates were completed.
2. The Final inspection for the Certificate of Occupancy cannot be issued until the parking issue has been resolved, but a Temporary Certificate of Occupancy has been issued.
3. The Building Commissioner requested that we have an architectural plan depicting a change in landing on a stairwell and has given a date of May 20<sup>th</sup> for that to be submitted.
4. Certificate of Inspections for all units have been issued.
5. For the retaining wall, a building permit was issued for the new retaining wall.
6. The parking spaces shall be appropriately delineated.

Conditions:

1. Eight units, seven spaces in the back and two allocated to the same unit on the side. We do technically meet that condition, but the construction was not part of the allowed plan. The parking spaces have been delineated, and a letter was sent out to the tenants instructing them of a one car park once they are allocated per unit. Atty. Tree presented pictures of the delineated parking done in November. She also presented a picture of the notice sent to the abutters with the instructions on how to park.
  2. Buddy Parking is located on the North side of the building. It would be for one apartment and be clearly identified. In the resolution, it was added to make sure that signage was installed. The signage was installed first temporarily in August and then permanently in October. That was also subject to the letter for the tenants as presented. Atty. Tree presented a picture of the temporary sign. The sign has been installed on the property.
- Member Cornett asked Atty. Tree if any tenants had been parked in the buddy parking area.

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Mr. Perimian responded “yes”. The tenants utilize the parking lot. The new retaining wall is not going to happen. We will need to schedule that in the Spring.

3. Property Management Candor Realty is under contract to remove the snow at 163-165 Pine Street. Atty. Tree presented a copy of the Tenant Notice that informed them of the snow removal process.

Atty. Tree expressed her concern with the construction of the retaining wall.

1. A contractor constructed the retaining wall using the plan but failed to follow it. As a result, we are short of 7 spaces. We had a plan for expansion, but the cost has tripled to quadruple. We are going back to the people that did submit bids. The contractors have expressed their concerns with the construction of the new retaining wall because it will damage the existing wall if constructed.

Mr. Perimian stated that the contractors expressed concerns about safety and provided us with two letters of this. Atty. Tree stated that the equipment is going to have to come from behind. Since it is on a hill, the construction would be a challenging hike, and it is completely unimproved. We would need to take down the previous retaining wall to fill it in. The equipment is subject to slide instability, creating ground instability (the instability of the soil that supports the whole building). They have substantial concerns about their equipment and their property and about their employees. The Board has previously stated that they are not concerned about the cost. The permit holder should have paid attention. The reason that we are here is because they failed to provide sufficient oversight. But we are talking about a cost which was expected to be \$50 to \$60,000 and the lowest written bid was \$150,000 and 185 and 196. All the other bids were higher than those. Approximately \$200,000 is the projected cost of creating two parking spaces. Between the two factors they are not willing and are not able to.

Atty. Tree stated that she has given the applicant three options.

1. Eliminating units.

Atty. Tree stated that the contractors that have submitted the bid have expressed that it is dangerous on the rear side of the area from the original area in which the parking area was originally constructed.

Atty. Tree expressed that she is not a contractor, but she is just forwarding the opinions of the contractors that were given.

Member Hanks stated that looking at the contours, it looks like you have more than 7ft before the first wall. Again, you have at least 8 to 10ft before you hit that slope. I don't see why that wall cannot be taken down and moved back.

Atty. Tree stated that the contour lines are subsidiary across that entire lot. On the plan presented, you can see the topographical lines more to one side than the other making it more difficult for the construction of the wall.

Member Hanks stated the original wall was not placed in the correct area, but the original design had the retaining wall 7ft back. Now it's impossible to go 7ft back?

Atty. Tree responded that the weight of the machinery is too dangerous. We are trying to approach from the other side.

Member Hanks asked why from the other side and not approach from where you would have done it from the first time?



Atty. Tree expressed that the Contractors have said that the wall that exists needs to be torn down. Then you would have heavy equipment on top of the back area that is held by a retaining wall. They would have a problem with the weight of that machinery. I'd love to say we can comply, but we can't.

Atty. Tree presents the Milestone checklist. At this time, we have gotten to step 4 which is the middle of the checklist but will have to stop. I have three possible solutions.

1. Accept the existing conditions by reducing the required parking by 9 spaces and requiring the permitholder to submit an as-built plan depicting the parking lot as it was built.
2. Allow the permit holder to provide the two missing off-street parking spaces to the nearest property it owns at 307 Pine Street.
3. Reduce the number of dwelling units to 7 and one parking space per unit.

Atty. Tree proposes reducing the number of dwelling units from 8 to 7, generally one car park. One unit requires 2 parking spaces. Reduce to one parking space if we have 7 units. Right now, they have a vacant unit, and we can make that reduction right now without throwing anybody out.

Chairman stated that he has two questions.

1. He asked Atty. Tree if all the Certificates of Occupancy have been approved or signed off by the Building Commissioner or do, we still have some outstanding issues that must be corrected.

Atty. Tree stated the Temporary Certificate as a whole.

The Chairman asked for how long is the Temporary Certificate for?

Atty. Tree responded generally for six months.

Thomas Zuppa, Gardner's Building Commissioner, stated other variable permits that need to be addressed are two egress issues, handrails, and rectifying the life safety issues. The Temporary Certificate of Occupancy expires in six months dated May 20, 2025. If the Temporary Certificate of Occupancy expires, the building cannot be occupied. If the permit contractor has abandoned the permit, a letter from the contractor must be submitted to close the permit.

Atty. Tree stated the permit holder had until May 20<sup>th</sup> to submit an architectural plan. Atty. Tree asked the Building Commissioner if she was right on the interpretation.

Thomas Zuppa responded yes, as a part of the proposed work and the other issues that need attention.

Member Wiita asked Thomas Zuppa if he had read the letter with the proposed resolution.

Thomas Zuppa responded yes. Only his opinion is not viable. The Zoning Board of Appeals will vote to allow apartments to be removed or not rented.

Member Hanks stated that this situation has gone a complete circle back to the Board. At the beginning of the application, a Special Permit was given with concessions to eliminating five other parking spaces. We are back to complete what you have agreed upon from the beginning. A couple of years ago when I was not part of the Board, it was agreed that the retaining wall was built in the wrong place. Conveniently, both contractors say the same thing almost like it's hazardous and cost prohibitive, and we must come from the bottom up. It's practically as if the contractor was coached



on what to say in order to make it look like it's practically infeasible to do the work. I've seen people build in less than 7ft and move. I don't see 7ft that's impractical to do. The cost is not an issue to the Board. The issue with the Board is that you must comply with the Special Permit conditions. Atty. Tree agreed with Member Hanks. But the cost of \$100,000 dollars can be used for better housing. Adding to the \$1.4 million dollar project, \$1 million dollars is too high of a cost for parking. We have offered concessions. They've had to cover my cost, the engineering cost and the permit cost that will go down the drain because the wall will not be able to be built. I hope they'll be at least 7 units of housing that are currently being used and have sufficient parking. Some reasonable response will help other contractors understand that Gardner is a reasonable place to do business and construct a project.

Chairman stated that there is an issue here that must be corrected and there is a timeline.

2. Will the applicant be willing to give up another apartment so we have two units empty?

Mr. Perimian responded that they are not willing to vacate another unit due to the parking issue since parking spaces are available.

The Chairman, I'll leave a question outstanding for the next hearing. On the 307 Pine Street property, does it have sufficient parking and if they add two additional parking spaces will it meet the requirements suggested that this matter be talked about among the owners. No need to answer that question now. What would the impact be if instead of losing one unit you lose two? What would be its negative?

Chairman commented this case will continue to next month with an update.

The Chairman asked for a motion to continue this case until next month's hearing. All in favor say "Aye". Present member said "Aye". The Chairman asked any opposition say "Nay". No opposition. Unanimously continuance granted.

**Second & Third Case:** 2024-09-01(con) Variance, Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Relief on side yard setback.

Case: 2024-09-02(con)Variance, Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Build Single Family House.

My name is Atty. Christine M Tree, resident of Fitchburg, I am here representing the owners, Margaret and Stanley Luckzo. They had received permission from Mr. Foster for the Use Variance and the other for a dimensional Variance. This is my first time in this case and there have been several proceedings before me. At one point, there is a question of whether this was Chapter 48 section 6. Our previous City Solicitor, John Flick, concluded the use was not grandfathered. The Building Commissioner had submitted a letter to that effect that the dimensional grandfathering does not apply, I disagree. We have the proceedings of the two Variances, and I believe I have the criteria, so I am going to pursue that.

The lot has 50 ft of frontage and 7400 sq ft of area and about 150 to 160 ft long. The assessor's office had deemed Talcott Ave a residential one and it is actually Industrial 2. The entirety of Talcott Ave is a little offshoot from West Broadway, and it is entirely single-family homes in the Industrial 2



neighborhood. What we are looking for is permission to build a single-family home. Due to the determination letter use which is correct a use Variance is required in order to build a single-family home in the Industrial 2 district. In addition, we have not met the industrial district requirements for 30,000 sq ft of area as opposed to the 74, 000 we have, 150 ft of frontage as opposed to the 50 we have, and a side yard setback of 20ft as opposed to the 13 and 7 ft we'd proposed, both dimensional relief and use.

The lot visually from the street is very leveled with a slight slope down, mostly clear, and on either side, there are single family homes. 0 Talcott Avenue is a small dead-end street. To the left and right of the property are all single-family homes, farther to the right you will see the Bowling at West Broadway. Aerial view of the neighborhood shows that Talcott Avenue has 10 lots, 8 that are single family dwellings, 1 non-buildable vacant lot, and the other is our vacant lot in the Industrial 2 zone.

Atty. Tree stated, in your materials I have compiled the table. Those are the ten lots on Talcott Ave and an explanation of what they are, which is either vacant or single-family dwellings. In 1974, the zoning ordinance was adopted. A few of the properties had been constructed prior to the zoning ordinance but at least one Variance has been issued due to peculiar circumstances and the existing dwellings. I also wanted to note that not one home on this street is dimensionally compliant with Industrial 2. The area and frontage are too small.

The Chairman stated for clarification that none of the Talcott Avenue properties meet the dimensional setback entirely.

Atty. Tree agreed, the neighborhood is not compliant as to use and dimensions.

It originates from 1925 which platted out the whole area for residential development. That is how we ended up with this neighborhood. The space and the existing structure are the criteria on which we base the application. The structures of single-family homes on non-compliant lots that have built themselves around it. The shape being small thin and has little frontage, unusual in the Industrial 2 district because this is a residential neighborhood in the Industrial 2 District.

Atty. Tree presented a depiction of the lot in Talcott Avenue in Industrial 2.

The Chairman asked Mr. Luczko, what is the distance from the side property line to your structure? Mr. Luczko responded approximately 15ft.

1. Desirable relief may be granted without substantial detriment to the public good or creating or aggravating a safety hazard.

Atty. Tree stated that they had just discussed that there is sufficient distance between the buildings that is proposed. There would be no inquisition in the use there. We should not create any additional safety hazard greater than presented by other buildings. Atty. Tree used pictures as an example of other single-family homes in Talcott Avenue. The size of the house is consistent with the other buildings.

2. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of this Code but not otherwise.



Atty. Tree commented that we rely on the fact that the zoning ordinance is to provide for the most appropriate use of the property. I cannot imagine the imposition of a factory going on a 50 by 150ft lot.

Member Hanks asked the applicant if he is married to that house plan or could they go with a narrower plan deeper.

Atty. Tree replied, "no". The applicant is not married to the plan. I also wanted to point out that there were two different setbacks 7 and 13ft. We assume there's going to be a 3ft concrete uncovered walkway into one side of the house.

The Chairman asked all Board members if they had any questions. None of the members had any comment at the time. The Chairman asked the city representative present, Mr. Zuppa, if he had any questions. No questions or comments at the time.

The Chairman asked if any members would like to make a motion for the two Variances. One of the Variances is for a residential structure and the other one is for the side setbacks. They've got plenty of frontage and more than adequate on the rear.

The Chairman stated that he has a motion on case: 2024-09-02(con) Variance, Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Build Single Family House. Member Laurie made the motion. The Chairman asked all members all those in favor say "Aye". Present members said "Aye". The Chairman asked all those opposed. No opposition. The Chairman asked any further comments or discussions. No further discussion or comments. Unanimously granted.

Case: 2024-09-01(con) Variance, Donald S Foster II, 0 Talcott Avenue. PID #M17-8-8. Relief on side yard setback and area. Member Cornett, so moved on to this application. The Chairman asked all those in favor say "Aye". Present members said "Aye". No opposition. Variance unanimously granted.

**Fourth Case:** Case: 2024-09-03(con)Special Permit, BCF Investment LLC, 75 Oak Street. PID #M27-24-57. Change the status from a Two Family to a Three Family.

Atty. Tree is a Fitchburg resident and is representing BCF Investment, LLC. This property is a two-family dwelling with three units. We are requesting to have the property status changed to a three family. We are here to request a continuance. The first quote was quite high while we were investigating whether a conversion to an Accessory Dwelling Unit property might be more appropriate. The conclusion is that the property is not suited to that. We are going to approach the Special Permit and are requesting a two-month continuance now to be able to have the plan drawn up. I do have a letter with the request to continue.

The Chairman asked for a motion for the continuance. All those in favor say "Aye". Present member said "Aye". No opposition. Continuance Unanimously granted.

**Fifth Case:** Case: 2024-01-11(con) Variance, Roy Coponen, 68 Acadia Road. PID #M32-21-6. Construct a 24-36 Ranch Style Single Family Home.



Joshua Joselyn, from 323 West Lake Road, Fitzwilliam, NH., Graz Engineering presenting. We've gone through Conservation. They were not going to allow us to build on the 60ft no build zone. Originally, we had a structure of 24 by 36 proposed. Conservation requested that we change the layout of the structure to an L-shape structure. The L-shape structure is 60.2ft from the Wetlands on one corner and 60.5ft from the Wetlands on the other corner, meeting their no build zone requirements. The structure has the exact same square footage as the 24x 36 house and added a concrete patio on it. We are seeking relief from the front yard setback of 15.5ft and the front angle is 4.9ft and side setback of 8.0ft. The 8ft side setback is the same setback from the mobile home structure that was in place. One unique feature of this property is that it's located at a roadway intersection. The frontage that we are seeking of 4.9ft front setback is at an angle right away. It is about 21.9 ft from the edge of pavement of the right of way. I added the dimensions of the neighboring properties. The property to the North is 16.8ft from that front right away.

Mr. Joselyn stated that they had brought some pictures for the presentation. The Chairman asked if the abutter had been contacted about the new plan.

Mr. Coponen stated I have not talked to him about the changes.

The Chairman asked if the neighbor had made any comments.

Mr. Coponen responded that the neighbor has not expressed any concerns.

The Chairman explained that the application has a lot of modifications but since it has not been published the abutter is not aware.

Member Hanks explains that the application has changed, and the abutter is not aware of those changes and the abutters need to be aware.

The Chairman stated if you have a certified letter that you have notified the abutters, then we can look at this amendment. None.

Another option is to withdrawal without prejudice to reapply before the two years. Applicant chose to withdraw without prejudice.

Member Hanks made a motion to allow withdraw all of application without prejudice. The Chairman asked all in favor say "Aye". Present members said "Aye". Unanimously, application to withdraw without prejudice granted.

**Sixth Case:** 2025-01-01 Variance, Christof Chartier, 242 W Broadway. PID #R17-16-10. Relief on signage "SAWA".

My name is Christof Chartier, and this is Ken Huang, the owner of the renovated SAWA where Southside used to be. We came across an issue with the sign that neither Ken nor I were aware of. Ken and I were not aware of the sign size limit. Ken purchased the signs before we were aware of them. Mr. Zuppa had denied the sign's size. One of the signs is to be installed at the front of the building, facing 242 West Broadway and the other one facing the West Broadway Plaza. Both signs are too big. My understanding of the sign ordinance is the signs must be 4ft in height and our signs are 4.6ft. The signs must be less than 80sq ft which we meet. On the secondary sign, it should be on the side facing the new plaza, the sign must be less than 40sq ft, which we are very close on



that. Christof explains that the signs have letters above them which makes it hard to give the exact dimension.

Member Cornett asked if they are seeking permission to have the 6in difference.

Mr. Chartier responded that they are seeking relief on the 6 in. height.

Member Cornett asked if they are also seeking relief on the square footage.

Mr. Chartier replied that they are compliant with both signs on the square footage. I read on the ordinance that in no case are you allowed to be above a buttress wall.

The mansard roof is about 8ft of the ground and 6ft and about 10 pitches or so

Member Hanks stated that the sign is above the roof line.

Member Cornett stated that they have the option of lowering the sign down by at least 6 inches.

Mr. Chartier replied that on the neighborhood that it is located you have one plaza on each side, and it is commercial. The sign would be a foot higher than it should be. I do not believe it would do any harm but at the same time I don't know why this ordinance was written.

The Chairman stated that the ordinance is made to maintain the conformity. The Chairman asked the applicants if they had reached out to the Building Commissioner before these signs were purchased. Mr. Christof replied, "no".

The Chairman stated we cannot set a precedent and allow a proposal because it was purchased ahead of time and then realize that it does not meet the requirements and comes before the Board, then others will do the same.

Reviewing the case, you have enough space to drop down the sign 6 inches.

Mr. Chartier replied, "that is correct".

The Chairman stated that they could cut the sign.

Mr. Huang replied, when we were informed by the Commissioner that the sign was too big, we tried to cut the sign. But the sign has our name on it which is on the edge of it. If the letters were smaller, we would be able to cut them right away.

The Chairman replied that is option B, option A is to lower the sign. Why would you not want to lower the sign? You'd be complying. No one contacted the Building Department, who went ahead and bought it and now the burden falls on the Zoning Board because you bought the sign.

Thomas Zuppa, our Building Commissioner, the sign is too big in a couple of ways. The sign is too tall and too high.

Member Hanks, your printed plans show around 9ft from the ground to the bottom of the sign as I zoom in on that print.

Member Cornett, I believe that we are talking about two different things. One with the sign being too tall over the roof. The second issue is that the sign itself is too big.

Mr. Chartier replied correct.

Member Hanks stated to the applicant, Your sign seems simple. What is it black letters and white background. Do you have a picture of it?

Mr. Chartier replied, it had black letters and a white background and the logo.



Member Hanks commented, one sign you're allowed 80 sq ft and the other one you are allowed 40 sq ft and they are both the same size 4 and a half by 9 sq ft?

Mr. Chartier, correct.

Member Hanks asked the applicant if the stand-up sign was still there?

Mr. Chartier responded yes, that it was grandfathered in because it was preexisting. It is still there, and we put in a new insert.

Member Hanks stated that those stand-up signs are used to show the restaurant is there and the one above the door is for the location of the restaurant.

Member Hanks, what material is the sign made of?

Mr. Huang, the sign is made of aluminum, metal and plastic with some lighting on the letters.

Member Hanks asked if the sign was internally aluminum housing with some kind of plastic.

Have you spoken to a company to see if they could trim it down on all four sides to get you to the 40 sq ft or does it have to be a whole new sign, or can they modify that one?

Mr. Huang stated we tried to find that out at first, but the letters are too close to the edge of it.

The Chairman asked the applicant again, have you contacted the sign company?

Mr. Chartier replied that they have contacted Jake Lyman who did the other sign out front and yes, we contacted Ken's contact.

Member Hanks asked Mr. Zuppa, how do we define the sign board area.

Member Hanks read the zoning ordinance on sign requirements. The display area the total surface area, individual letter sign or irregular shaped sign or irregular shaped sign shall be the areas of the smallest rectangle into which the letters placed back-to-back and face an opposition direction. The display area shall be defined as the area from on face of the sign.

Mr. Zuppa responded in the area within the housing area.

Member Cornett, we are going to consider the shape, topography and the land location is more isolated, and in a mall. It is not near the rest of the restaurant and that's part of the thought process.

Mr. Chartier stated that he had a conversation with a Board member or two in which he was asked to answer the criteria questions.

1. I wrote a letter that I brought to Mariela in which I uploaded to the file. The reason for the appeal is that we purchased the wrong sign. It was our mistake. We have them and like to use them, if possible.
2. The topography in the area the building is in a commercial area surrounded by two shopping malls. On the other side there's a Cumberland Farms. There's a Cumberland Farms and residential area on just one side. Neither of the signs face the residential area.
3. I don't think that the building would have more effect than the building itself and all the cars in the parking lot. Nor would it be more impactful than the surrounding commercial shopping areas that are there.

Good signage is more appropriate on a commercial building in my opinion to identify its purpose. The restaurant used to be Southside restaurant before. I don't think that it will impact on the neighborhood in any way.

The Chairman asked if Member Hanks had any questions.

Member Hanks asked the applicant if they see an issue if they lowered the sign?



Mr. Chartier explained that it is not what they would like to do. But if the Board is willing to grant permission if we lower the sign we're willing to do so.

Member Hanks asked the applicant if it's just one sign that is not compliant.

Mr. Chartier replied that both signs are not compliant in height.

Member Hank, you have the right to lower them.

Mr. Chartier, there are three different things that are not compliant.

Member Cornet explained that the sign has no big impact since it is in a commercial environment.

The Chairman asked the Board members if they had any further questions. No questions or comments. The Chairman asked if any city officials had any questions or comments regarding this request.

Mr. Zuppa responded that he agrees with the Board in believing that 6 inches is a minimum space, not that I notice a significant height from the road. It was included in the Zoning Determination letter as part of the zoning.

The Chairman asked if there were any abutters that would like to speak regarding this application. Any interested parties that would like to speak regarding this application? Is there anyone here that would like to speak in opposition to this application? No comments on any of the questions.

The Chairman asked for a motion. Member Cornett so moved. The Chairman asked all those in favor of granting this application say "Aye". Present members said "Aye". Granted the Variance for the size but not the height. The sign's condition would be to lower the sign. The Chairman rephrased the motion to granting the Variance with the condition of lowering the sign. The present members agreed. The Chairman asked all those opposed. No opposition. Variance granted with the condition of lowering the signs. Unanimously approved.

**Seventh Case:** 2025-02-01 Variance, Christof Chartier, 108 Grant Street. PID #R22-7-14. Relief on rear setback for 2<sup>nd</sup> Egress.

Good evening, my name is Christof Chartier. This is a two-family building that I am renovating. Many two-family houses have two side porches with an entrance on the first floor that goes to the second floor. Essentially there is no second egress out of the building. The building property is located on Grant Street adjacent to Peabody Street. The setback sides are too tight and have a porch on them. The porch runs the entire length of the building. I we build a second egress in the rear left corner. On the first floor, the egress would be graded. On the second floor, it would have to be a 3 ft clear landing with a set of stairs going down. It's a two and a half landing story. On the back landing for the second floor coming down.

Member Cornett asked if both units are occupied.

Mr. Chartier, the whole building is vacant.

The Chairman found the application incomplete as it did not have a plot plan as requested.

I do not have dimensions or property lines. I do not see the property line and how far it is from the proposed structure to the property line. I also do not see the dimensions of the proposed structure.

Mr. Chartier stated that he printed a copy of the parcel from the Gardner City website. The property dimensions are in there. The structure is 10ft from the rear setback. I must add a second egress



somewhere on the building and there is nowhere that I can, that meets the setback. The location of the proposed egress is the side that has less impact on the neighborhood and building.

The Chairman requested a plot plan.

Mr. Chartier asked if the plot plan is part of the application.

The Chairman replied, yes. If this case ends up in a courtroom, I will have nothing to prove the dimension other than what you have said. Let's continue this case until next month, bring a plot plan and make sure to have all the dimensions.

Member Hanks explained that the Chairman was requesting the dimensional amount relief request to be able to have a number verifiable of the relief that you are requesting.

1. There is nowhere on the property to place second egress that meets the side yard setback. I chose the left rear corner due to the grade and the topography in the least impactful part to place the secondary egress. The second egress is required for the safety of future inhabitants. I did have dimensional in there, but I can see why it is not easily seen.

Member Hanks commented to Mr. Chartier that he will be needing the plot plan that shows how much the dimensions on the proposed structure will be and how far from the property line it will be.

The Chairman stated to Mr. Chartier that he will ask questions according to his criteria answers.

1. There's nowhere on the property where we can put a second egress that meets the setback.

The Chairman responded to Mr. Chartier that he would like a certified plot plan.

Member Hanks made a motion to continue the hearing until next month.

The Chairman asked all those in favor say "Aye". Present members said "Aye". The Chairman asked any opposition. No opposition. Continuation granted until next month's hearing.

**Eighth Case:** 2025-03-01, Special Permit, Russell J Burke, Keyes Road, Lots. PID #H27-14-101, H27-14-102, H27-14-103. Environmentally restore the disturb 20 acres.

My name is Russell Burk, I am the Project Manager and North County Trust is the owner of the 20 acres on Keyes Road. The first thing that North County Trust would like to do is to level the earth. Earth moving and earth removal Special Permit is required for this. It also required going in front of the Conservation commission because where the earth soil that was going to be removed was in the 100-buffer zone of the Wetlands. We just received today the order for the Conservation conditions. The proposed work entails the regrading of gravel. The property is about 157 acres. A Special Permit was approved for a 107-acre lot was for a subdivision some 10 plus years ago. The bank took the property over about 10 plus years ago. The bank tried to sell it and find any buyers. Ultimately the bank decided to work with the North County Land Trust in which Emily Merlino is here representing. The proposal of this application is turning the property back to an open conservation area. There will be no export or import of materials other than the existing materials. There is minimal traffic going in and out of the property. There is not going to be a back-and-forth heavy machinery. There will be equipment moving around the materials all around. It will be a restoration of the property to start generating some natural, as well as selected plantings to augment the natural vegetation for to create more suitable habitat vegetation. The existing soil has poor sandy nutrients. The sandy plains grassland the environmental ecology people think this is the



better way to treat this property rather than try to bring in topsoil and plant materials there that don't want to go there.

The Chairman asked if they will be planting shrubbery or other.

Ms. Emily Merlino is the Director of land programs for North County Land Trust. We are only going to do planting on the remaining slope. We are moving some of the material for erosion control. There are some seed bank plants. We are looking for a little boot system to establish across the site. We already have some establishments and we're going to take a wait and see approach for one to two years.

The Chairman asked if Ms. Merlino is going to identify the naturalized plants that were in that area or still in that area. Ms. Merlino replied that they would be planting the little blue stem that is already there and a few other species of Inland sand plains grasslands. It's a keystone piece of that habitat.

The Chairman stated that he had walked the property from the beginning of the previous project. Then we were notified that on the previous project, utilities were going to be installed. The Bulldozer made a pile of dirt, probably about 25ft and then that was the end of the project.

Mr. Burke has done a storm water plan as part of the Conservation Commission permit that met all the requirements from BEP in terms of runoff in the sector. The Conservation Commission approved the application with an order of conditions.

The Chairman asked about the 9 criteria questions that he must address.

Mr. Burke read the nine criteria and his responses.

1. The proposal shall be suitably located in the neighborhood in which it is proposed and/or the entire City and shall be compatible with neighborhood character, existing uses and other uses permitted by right in the same district.

Mr. Burke responded that they are trying to reclaim it back into its natural state shape as much as possible.

2. The proposal shall provide convenient and safe vehicle and pedestrian movement within the site and in relation to adjacent streets, property and improvements.

Mr. Burke responded there are two entrances to the property. The vehicles would be the site equipment moved into the property for restoration.

3. The proposal shall provide adequate space for off-street parking, loading and unloading vehicles, and goods, products, materials and equipment incidental to the normal operation of the establishment or use;

Mr. Burke responded that he believes that they have enough room at the site to probably to store equipment.

4. The proposal shall provide adequate and appropriate facilities and utilities for the proper operation of the proposed use and disposal of sewage, refuse or other waste products and methods of drainage of surface water.

Mr. Burke responded that they would need some temporary sewage for the portable sanitary facility that would be provided by the contractor.



5. The proposal shall not constitute a nuisance due to air and water pollution, erosion, flood, noise, odor, dust, vibrations, lights or visually offensive structures or site features.

Mr. Burke responded that in fact they will be removing some offensive site features.

6. The proposal shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians, as determined by the SPGA.

Mr. Burke's response was that the proposed work will constitute a limited substantial inconvenience or hazard to abutters during the construction period.

7. The proposal shall be in harmony with the general purpose and intent of this chapter.

Mr. Burke response was that we believe that the environmental restoration of the failed subdivision is within the purpose and harmony and general purpose of the code.

8. The proposal shall not have a significant detrimental impact on City services, tax base, and employment opportunities.

Mr. Burke responded that it may have a negative effect on the tax base because it's going to be owned publicly, not generating tax revenue.

9. The proposal is consistent with the City's Community Development plan or Master plan.

Mr. Burke stated that the city does not have a Master plan. The Conservation Commission area is mentioned in the city's open space and recreation plan which basically states the proposed restoration proposed by the North County Land Trust is consistent with the goal of improving the upkeep of open space in the city of Gardner.

The Chairman asked Mr. Burke, in his restoration project, how many days will he be working.

Mr. Burke responded that he does not have that information, but **Emily** will be working directly with the contractor and assumes that it will be five days a week.

The Chairman asked if they will be working during the holidays.

Ms. Merlino replied, "No, holidays".

The Chairman asked what are the hours of operation.

Mr. Burke stated that the Board can set the timing but it would probably be 7am until 5pm.

Ms. Merlino stated that she had spoken to the contractors and made them aware of the school hours to prevent any traffic issues.

The Chairman suggested that the applicant reached out to the school Department and review the bus route to prevent traffic issues.

The Chairman asked if any abutter that would like to speak in favor of this application. No response.

The Chairman asked if any interested parties that would like to speak in favor of this application.

Paul DeMeo, a resident of Gardner, used to be the director of North County Land Trust. The previous development was discontinued. The retention basins were already put in. There was an excavation at 10am from all of the roadways. It was and is still stockpiled. The equipment will not have any impact on the neighborhood because of the setbacks from Princeton Street and Keyes Road. On the other side of the railroad tracks, you have a junkyard. On the other side you have Alan Russo who owns 75 acres. Alan, who is my brother-in-law, supports this project, bringing the restoration back to Simplex property that dates back in time the late 1700s. It still has the Sol Hole on it that dates back to the "Ebenezer Keys". The Conservation Commission has issued an order of



conditions of approval. I hope that the ZBA supports this case behind North County Land Trust and approves this tonight. Thank you.

The Chairman asked if there are any other interested parties in favor of.

The Chairman asked if there is anyone that would like to speak in opposition to this application.

No interested party in opposition.

The Chairman discussed with members the conditions would be the days and hours of operations of school hours. Member Hanks, the hours of operation between 7 am and 5pm Monday through Friday with no holidays. If for some reason the hours have to be extended, notify the Building Commissioner.

Member Hanks made a motion. The Chairman asked all those in favor say "Aye". Present members said "Aye". The Chairman asked all those in opposition say "Nay". No opposition. Permit granted unanimously.

**Nine Case:** 2025-02-01, Administrative Appeal, Kristina McArdle, 877 Timpany Blvd. PID #M07-15-4. Retail from Home Occupation.

My name is Kristina Mc Ardle, I reside at 877 Timpany Blvd. Due to unforeseen circumstances, I started the process in the wrong way. I am a permitted Cottage Baker and am trying to obtain approval to have a farm stand on my property to sell baked goods to Gardner residents. Within the packet there is an email that is from November 5 at 10:47 title water testing from Board of Health Inspector stating to please acquire a form of intent from the Building Department as well. The reason my water gets tested is because I have a private well. I do not have public water. If the building department was a crucial step in the application, then why was I given the wrong information. Rather than wait until I was ready for inspection for approval and all of that? If my farm stand is an outward manifestation, then why are there multiple farm stands in Gardner operating with no issues? There's one on Willis Road and there's one on Whitney Road which is approximately more than 300ft of abutters, they are operating with no issues. I've also received support letters from Gardner individuals. Some owners of farm stands are supporting this even though we are all from the same town. To further demonstrate the strong community backing this project, I launched a business on a Facebook page which has already garnered over 50,000 views and nearly 600 followers. For a business allegedly causing a negative outward manifestation this level of support I speak volumes.

This Home Occupation violates code 675-830, there shall be no public display on site retail sale of goods. Others are currently operating with no issues. I don't know if they are operating between the guidelines and the parameters of the codes, but they are operating. I reached out to my neighbors to gauge their opinions about having a farmstand in our community. You'll see in the packets I have attached signed letters from all of the abutters on Timpany Blvd. in support of the farm stand.

Other Gardner residents signing that letter in support, as well as other individuals from the surrounding towns. Other farm stand that are currently open have all of the requirements from the Board of Health but not from the Building Department. It seems that there's one hand not talking to the other for some reason. For example, on Monday January 13, 2025, Micah, the Health Department Director, called me in regard to what is or what isn't allowed under the Cottage Food



Law. During the conversation, it might be confirmed that I am permitted to conduct deliveries and pick ups on my property. An example, if the person paid online and picked up the goods or if they paid at the time of picking up the goods, the transaction was done on the property or in some way shape or form. Mc Ardle stated that Mayor Nicholson had confirmed both scenarios acceptable. I've been in contact with the City Councilor George Tyros on January 30, 2025, I have been in contact with the Building Department and the Board of Health to try to get help with resolutions. I've invested hours of work and thousands of dollars which I've also attached an itemized investment list of the investments for the bakery at home to show the Board everything that I purchased for the Cottage kitchen on my home. For the inspection opening my Cottage Bakery kitchen I was inspected and approved by the Board of Health. I am fully permitted to sell the baked goods. Mc Ardle read that on the permit there was some language there I can provide a copy if needed. It says the type of business and any restrictions in retail sales are not permitted without approval from the ZBA, permit is for preparation only of non-time temperature controlled for safety-based Goods on certain food temperatures like cream cheese, milk, dairy products, stuff like that. Baked goods jams, jellies and other non-time temperature control safety Foods produced at a Cottage food operation, I found it intriguing that my permit states that verbal language, so I reached out to the two Cottage Bakers that I had mentioned before on Leo Drive and Main Street, ironically their permits do not say this verbiage. I am not sure if this is a new policy that the Board of Health and the Building Department have come up together. They are doing the same as I am even though I am permitted to do it from one department not the other. Why is it okay for another bakery in the city of Gardner to operate, which is great, but I can't do the same. But I can't do the same because I want to have a farm stand?

The Chairman responded that they are hearing her case and the other that you've mentioned have not come before us. If they are operating, we have no idea. You are here for an Administrative Appeal. Ms. McArdle replied, correct. The Chairman, you are here appealing Mr. Zuppa's decision. The Chairman, in comments of the Board of Health, we cannot stand up to that as we were not part of that decision process. What Mr. Zuppa and the Zoning Board go to the Zoning Ordinance and that tells us whether a yes or no. I do not want you to speak with regards of other people since they are not part of this hearing. Know you were denied under 675-830 Home Occupation. We have never had Home Baked goods before. A good part is under 15% floor space, everything that they produced was either shipped out or mailed out. There was no retail activity of people coming in picking up buying. It was all done by delivery to the houses, or they delivered it to the post office. The Board is focusing on 675-830 Home Occupation is defined herein. Established in a Residential District and Commercial One. "No more than one person other than the resident shall be engaged in the conduct of the property. No offensive noise, vibrations, dust. There shall be no public display on site retail sale of goods. There shall be no signs except that permitted in the Zoning Ordinance." Such use shall be clearly secondary to the use of the premises which, yours would be, there is no retail sale on the property.

The Chairman stated that on the packet, Ms. McArdle submitted, there is a little shack for the product to sell. That is retail sale, and a public display not allowed in the Zoning Ordinance. It is not up to the subject to discussion, it's clear that the answer is no. I can't speak on the Board of Health, but the first course of action was Mr. Zuppa. We read 675-830 but 675-203 also talks about Home Occupation and it's not allowed with a retail sale or public display of goods or the public coming in to pick it up.



Ms. McArdle asked if it's just too big or does it need to be smaller. The Chairman replied, it's just no per the ordinance.

What about the hours of operation of the farmers market? Ms. McArdle replied I am asking because I could possibly sell my baked goods there to have it accessible to customers.

Member Hanks asked Mc Ardle if she is asking to sell at the farmer's market.

Ms. McArdle replied that Gardner residents should have access to baked goods; they shouldn't have to rely on a big box or go across lines to Templeton, Winchendon, or Westminster. That all have farm stand and thriving because that's what residents want. The Chairman replied that they are not looking at Farmers Market here, we are looking into a Home Occupation. Member Laurie stated that Gardner is not a right to Farm community.

Member Hanks clarified that a Farm stand would be to sell agricultural product. If you are growing wheat and then making the product out of it, then theoretically, possibly, you have gone through the Commissioner that would probably qualify for farm stand. But you buy all of your products like your eggs, your wheat. To qualify for a farm stand, you have to be an agricultural use.

Ms. McArdle presented a letter by Mayor Nicholson in support. Member Hanks stated that Ms. McArdle did a phenomenal job with your application. What the Chairman is saying you are here to appeal the Building Commissioner's determination. You would have to show us that he is incorrect with his determination. It's clear that there are retail sales at that location. You have the ability through the Board of Health and Home Occupation to run a business as long as people are not coming there to pick up your product. The Chairman explained to Ms. McArdle that her application was for Home Occupation but what she would need is to apply for a retail occupation to sell goods in the right place.

The Chairman read the Mayor Letter of support. (see City Clerk for a copy)

The Chairman asked the Board Members if they have any comments or questions.

Member Cornett stated that Ms. McArdle can come before the Board with a Variance requested.

The Chairman advised the applicant to have legal counseling if she wishes to pursue the Bakery Goods.

The Chairman asked if any members had any further questions. Member Hanks made a motion to vote on the Administrative Appeal. The Chairman asked if the Board agrees with the Building Commissioner's decision that would be "Aye," if the Board does not agree with Mr. Zuppa's decision, that would be a Nay. Present members said "Aye" to support Mr. Zuppa's decision. No Nays. The Building Commissioners decision is upheld.

## MINUTES

The September 30, 2024, October 22, 2024, and November 19, 2024, minutes were submitted for approval. The Chairman asked for a motion to accept the minutes. Member Hanks made a motion to accept the minutes. Present members voted unanimously and approved.

## NEW BUSINESS

The Gardner Zoning Board of Appeals annual report was submitted for approval. The Chairman read the report. Present members voted unanimously and approved.

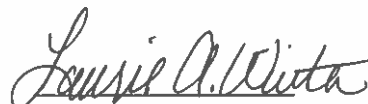
Meeting adjourns at 10:15 pm.



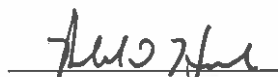
 

Raymond LaFond  
Chairman

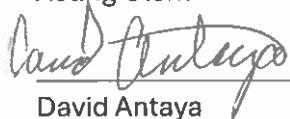
Melory Cornett  
Acting Clerk



Laurie A Wiita  
Member



Richard Hanks  
Member



David Antaya  
Alternate Member

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Robert Rice  
Alternate Member

