MINUTES
Zoning Board of Appeals Meeting – September 15, 2020
115 Pleasant Street, Via Zoom.
Gardner, MA 01440

Meeting Called to Order by Acting Chairman Randall Heglin at 6:00 PM. Mr. Heglin went over the
ground rules for the Zoom meeting and how the proceeding where to take place, stating “In pursuant to
Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L.
c. 30A, §20, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people
that may gather in one place, this meeting of the Gardner Zoning Board of Appeals will be conducted via
remote participation and on the City’s YouTube Channel. The audio or video recording, transcript, or
other comprehensive record of proceedings will be posted on the City’s website as soon as possible after
the meeting. Since this meeting is being conducted via Zoom, all votes taken will be by roll call and all
participants to raise their hands to be recognized”. Mr. Heglin explained the requirements that must be
addressed for a Variance or Special Permit. He then noted the meeting was being streamed live to
YouTube, and requested if anyone objected. There were no objections.

Case No. | Case Type | Case Description
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2020-09-01 | Variance | 47 Douglas Rd / Setback for Stairs.
2020-09-02 | Extension of Special Permit | 101 Linus Allain Ave / Maki Earth Removal.
2020-09-03 | Variance | 18-19 Ashley Dr. / Relief from Frontage Requirements

Mr. Heglin informed the Board and all present that tonight’s meeting would be heard out of the
order of the Agenda and will begin with case # 2020-09-02

2020-09-02 Extension of Special Permit & Variance 101 Linus Allain Ave / Maki Earth Removal. REASON FOR REQUEST: Earth Moving and Alterations application 15-07-2, was filed in September of 2015 for 5 years, which ends in September 2020. Maki is requesting an extension of 5 more years to complete the project.

Mr. Heglin clarified to the Board that the original case was granted back in September of 2015 with
conditions of a yearly progress report to be placed in the file. Should more time be needed then the
applicant would need to come back before the Zoning Board of appeals for a time extension.

Mr. Heglin opened the floor to Jim Leblanc of Maki Corporation, asking him to bring the Board up
to date on current progress.
Mr. Leblanc thanked the Board for hearing his case, he stated that the application originally asked for 10 years as they knew the project would be time consuming. Maki are doing all the earth removal themselves and often have to mix other products such as sand and loam into the soil in order to sell it as a usable product. Maki does intend to eventually build another property on the land once it is cleared as the company is expanding rapidly. The land still needs a lot of excavation to lower the elevation before the land will be ready for building use.

Mr. Heglin asked if five year’s was sufficient time for this project to be completed or if more or less time would be adequate. Could the work be completed within a year?

Any questions from the Board.

Mr. Gerry asked how far along the project was and when do they think it will completed.

Mr. Leblanc stated that this is a slow going process as the land is rough and very sandy so the removal will take time to complete.

Mr. Cornett asked where the soil was moved to.

Mr. Leblanc informed the Board that the soil was processed and then sold.

Mr. Cornett asked if they have to wait for a buyer before they remove earth, and is this an issue as far as moving soil, not being able to store it somewhere else.

Mr. Leblanc confirmed that this is often the case.

Mr. Heglin asked if there had been any complaint on this project from abutters or anyone else.

Mr. Leblanc had no complaint from anyone and often talks to all abutter with no issue being brought up.

Mr. Cornett asked how far along in the project there were in square feet or percentage of land.

Mr. Leblanc estimated they were about half way done, but didn’t know the exact square footage. They have prepared for erosion and water drainage, having built a retention pond out front and are currently excavating another at the rear.

Mr. Heglin questioned Mr. LeBlanc as to why he had left it so late to file for an extension, as a conditions of the previous case was that an extension should be filed six months before it was due to expire.

Mr. Leblanc apologized for not applying sooner and that is was an oversite on his part.

Any further questions from the Board.

Any representative from the city

Mr. Jean had no objection to this extension

No abutters present for questions.

No further questions

Motion made to move to decision.
Mr. Gerry stated that Maki was a good standing company, they have been in Gardner for a long time and offered both employment and tax revenue to the city. He believes they will do a good job with this project and have no complaint about granting the extension.

Mr. Heglin suggested that the board keep all conditions in place from the original case.

Motion to grant extension with existing conditions.

All Board members voted in favor unanimously.

Extension of five years Granted with exiting conditions.

Mr. Leblanc was informed the decision will be sent via mail once it was stamped by city clerk.

2020-09-01 Variance - 47 Douglas Rd / Setback for Stairs.
Application to build a front staircase at 47 Douglas Rd, Gardner, MA Parcel ID # M27-17-06, located in the Single-Family Residential One zoning district (SFRI), is denied as it does not comply with Chapter 675, Article 2 Table of lot area, frontage, yard & height requirement of City Code of Gardner. The table requires a 30 foot front setback, and your drawing shows only an 8 foot setback.

Mr. Heglin opened the floor to Mrs. Murphy

Mrs. Murphy informed the Board that the work was already completed and was unaware that she would need a permit or zoning relief as the stairs were being built in the same footprint as the existing stairs. The original stairs were in extreme disrepair and Mrs. Murphy was concerned that injury would occur without having them repaired. When the contractor came to do the repair the stairs were in such bad shape there was no other option but to completely replace the whole thing. As the work was being completed, she received a stop work order in regard to there being no building permit for the job. Upon applying for the building permit she was further informed that should would also need variance relief from the zoning board in order to keep the renovated stairs.

Mr. Heglin asked if the stairs were now nearer to the sidewalk or if they had moved in anyway.

Mrs. Murphy again stated the stairs are exactly where they were before. There is no landing and the existing porch is classed as the landing even though it is enclosed the door opens inward. If a landing is needed she can remove the porch but does not want to do that as it will incur a larger cost of which she cannot afford. She believes the stairs were never built correctly and this is the first time she has had them repaired in the 18 years she has lived there.

Mr. Heglin asked Mrs. Murphy to clarify that the bottom step was 13ft from the public side walk to which she confirmed it was and it was outlined in the plan she had submitted with her application.

Mr. Heglin asked the applicant to address the 3 questions required for a variance.

1) The stairs have not moved or been changed in size
2) The stairs are much nicer looking now with no detriment to the neighborhood, the safety hazard has actually been removed by repairing the steps.
3) No change to the look of the area as the again the steps are in the same place as before. She would rather not tear them down because there is no landing present.

Mr. Cornett asked if there was a landing present at all.
Mrs. Murphy clarified that there was no landing but a porch.

Mr. Jean stated that the landing was actually a requirement.

Mrs. Murphy would rather keep her porch but would be willing to tear it down if the Board were insistent on there being a landing.

No further questions from the Board.

Any representatives from the city.

Mr. Jean informed that a landing is required by code as the stairs are built on an egress. Upon his inspection of the property he stated that the stairs could have been built on the side of the property to avoid a need for a variance but Mrs. Murphy had already started the project, and was not interested in relocating the steps to bring the stairs up to code or they would need to be torn down.

Mrs. Murphy asked to not have to tear down the stairs as she is on a fixed income and cannot afford the extra cost this would cause.

Any questions from abutters.

Mr. Paul Leblanc of 44 Douglas Rd has no objection to the new stairs. The old stairs were deplorable and a safety hazard. The mail man was nearly injured by using them. They are built in the same footprint as before and the old ones were unrepairable. The risers and treads were held together with dry wall screws and he believes they were never built to code to begin with. The stair location has not moved in any way so are in line with the setbacks and zone of the original build. This is a big improvement to the look and safety of the house and he has no objections with a variance being granted.

No further questions.

Mr. Heglin suggested a site visit for this property which the board members agreed with.

Site Visit arranged for Tuesday September 22nd at 4.30pm.

Any further questions.

Mr. Jean clarified that the stairs are built with an egress door and that is not up for discussion. The case is for the setback issue only.

Motion to close hearing

Board voted to close.

2020-09-03, Variance - 18-19 Ashley Drive / Relief from Frontage Requirements

Application to construct a Single family home at Lot 18-19 Ashley Dr., Gardner, MA Parcel ID # W22-12-61, located in the Single Family Residential 1 zoning district (SFR 1) is denied as it does not comply with Chapter 675, Article 620 Attachment 2:1 of City Code of Gardner. Required frontage in SFRI is 100’ your proposed lot has 40’ of frontage.

Mr. Heglin opened the floor for representation of this case.

Christine Tree of Christine Tree legal, representing Brenda Erickson. Ms. Tree informed the meeting that Mrs. Erickson and assistant Attorney Zarrella were also on the zoom call for this case.
Ms. Tree requested to screen share with the Board so she could better present the case.

A plot plan was projected onto the screen to which Ms. Tree began explanation.

Ms. Tree explained that back in 1993/95 the land was approved to become two separate lots. The driveway is already built back in 1992. Mr. Gagnon changed his mind at that point and decided not to build on the lot at all. The property has since been transferred to trust before Mr. Gagnon died. The Trust under the care of Brenda Erickson, would now like to revert the lot back to a single plot. As stated there is currently 40ft of driveway already present. The requirement of 100 ft, of frontage is not possible as there is no free neighboring land available. The plot of land is shaped in a way that the lot narrows greatly in the front and only allows for the driveway present. Frontage relief is need to make this a buildable lot.

Mr. Heglin asked if there was any wetland present on the property.

Ms. Tree clarified that Murdock pond was at the rear of the property and believes that wetland is present in a part of the lot, should the lot be split into two lots then conservation would need to be consulted but with this only being one lot there is enough area to avoid wetland and build far enough to one side to not have it be an issue.

The lot is located on a cul-de-sac so there is not through traffic, and the property would have a turn-around driveway so there would be no danger to passing traffic as vehicles would not need to reverse from the driveway.

Ms. Tree shared on her screen a plot plan showing the stream, Murdock pond and where possible wetland could be present. The Board also viewed photographs of the current driveway, on these pictures you could see there was also service covers present for water and sewer hook ups to the town water supply.

Mr. Cornett asked for confirmation on town water and sewer being present.

Ms. Tree confirmed that the town water and sewer was already installed and that there was currently a service cover present at the rear of the property. Building of a single family home on this lot would be beneficial to the town by adding to the tax base. There is two acres of land available for building and with this variance the owner will be able to sell the lot as buildable land. Ms. Tree also asked for a two year period in which to keep the variance so the land could be sold accordingly.

Mr. Cornett asked where exactly on the lot the house would be built.

Ms. Tree stated that they were looking to sell as a buildable lot and the location of the house would depend on the buyer, so no plans could be submitted as a condition.

Mr. Cornett asked for confirmation on where on the lot the wetland is.

Ms. Tree shared on the screen the plot plan, once again and pointed out the stream that ran on the right side of the plot, stating that the stream was about 30ft into the property.

Mr. Cornett then asked if the home would be built further over to the left in order to keep with the setbacks.

Ms. Tree confirmed that any build would have to be placed a little more to the left to conform to the setback and there was plenty of room to do so.
Mr. Heglin asked if the land had been surveyed recently to which he was informed it had not.

Mr. Heglin inquired if the corners were set, he feels it will be beneficial to walk the lot so the Board can see more of the property and confirm where the wetland is and where the corners of the driveway are set.

Ms. Tree will happily arrange a site visit and should wetland become a question she would take it to the conservation board.

Mr. Cornett asked once again if there was any kind of plan submitted on where the house should be built and if this should be a condition of the variance.

Site Visit arranged for Tuesday September 22nd at 5pm.

Mr. Heglin requested that markers be in place for the corners of the property when the site visit happens.

Ms. Tree agreed they will be in place.

Ms. Tree ended the screen share.

Any further questions.

No further question.

Mr. Jean stated that he had looked up the conservation map for the property and no wetland was present on this lot. The stream on the right side is 30ft on the property but he feels that the lot has more than enough space to have a house built over to the center left of the lot. He had no objections and is in favor of the applicant.

No abutter present.

Mr. Heglin asked how the board would feel about a plan to build being in place.

Mr. Gerry feels there in no need for this and he trusts Mr. Jean’s opinion on the acreage and space to build.

Mr. Gerry requested to leave this hearing open until after the site visit so the Board can form a better opinion.

Mr. Heglin agreed to this, the hearing will conclude at the next scheduled zoning meeting on October 20th.

No further question.

Motion to accept minutes from previous decision meeting on September 2nd.

Minute accepted on a unanimous vote by the Board members.

Motion to adjourn meeting.

Meeting Adjourned at 7.11pm.