

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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2010 APR 20 P 3: 32
CITY CLERKS OFFICE
GARDNER, MA

NAME: Mavericke Realty, LLC
ADDRESS: 38 Exchange Street, Athol, MA 01331

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES
LOCATED ON:

49 Cross Street Extension

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN
A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS:

BOOK 42790 PAGE 363

ON APPLICATION DATED February 18, 2010 FOR A **Special Permit** TO:
Build a 48' x 22' addition to your existing dental practice at 49 Cross Street Extension,
Gardner, MA. (Denied a building permit by the Building Commissioner because it does not
comply with Section 4, 422 Nonconforming Uses, a. Change or substantial extension of the
use, in Single Family Residential I Area, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its April 12, 2010 meeting voted unanimously to
grant with conditions a Special Permit to Mavericke Realty, LLC. to build an addition to the
existing dental practice at 49 Cross Street Extension, Gardner, MA.

A site visit was held on March 31, 2010. At the request of the Board, the Applicant placed
stakes at the locations of the corners of the addition. In addition, the Applicant had the
property surveyed and the lot corners located and indicated with witness stakes. The Board
inspected the location of the proposed addition, its proximity to both the side setback and
front setback, also inspected the rear of the building. Noted by the Board was the addition's
proximity to the existing parking area. The Applicant proposes to construct a 48 foot by 22
foot addition to the front of the building, encroaching upon the side setback and well within
the front setback requirement set forth by the Ordinance. This addition is proposed to
enlarge the operational area of the practice by increasing the building size from an existing
1730 square feet to 2786 square feet (61% increase). The addition is proposed to contain 3
treatment rooms. The existing area will be converted to spaces to support the practice, such
as lab, storage, etc. Currently, there exist 2 dentists and 2-3 hygienists at the facility, plus
support staff. The practice has outgrown its existing space and prefers to expand at its
present location. A professional dental practice has existed at the property for many years.
The last physical addition to accommodate growth and operational issues was in the 1990s.

The Board, in its deliberations, recognized the historical use of the property, its proximity to
abutting properties, including Helen Mae Sauter grammar school. Also considered by the
Board was the on-site safety of patients and others visiting the practice during and post
construction. In its decision, and the conditions precedent in granting the Special Permit, the
Board believes adequate measures are to be implemented to achieve the objective of the
Applicant and protect the public good.

The Applicant addressed the nine conditions outlined in Section 1182 of the Ordinance and are summarized below:

The proposed construction is not compatible with the approved use in the neighborhood. The Area is zoned Single Residential I. The dental practice is an existing non-conforming use. The property is abutted on three sides by residential homes, with the Helen Mae Sauter School directly across the street. The purpose of the addition is to improve the operations of the existing dental practice. It was represented to the Board by the Applicant's representative that the addition would not increase significantly the practice. The addition may allow the hiring of an additional hygienist, support staff or possible an additional dentist.

The addition will provide safe and convenient vehicular and pedestrian movement within the site and in relation to adjacent streets and properties. The addition will not affect the existing parking area. The Applicant represented that the parking area would be reconstructed and repaved upon completion of the addition. During construction, use of this parking area will be limited. There exists on-street parking on the north side of the street and along the south side, along Stone Field. There exists a sidewalk on the south side of Cross Street Extension. The Board, in its conditions for granting the Special Permit, addresses the safety of patients, employees, and visitors to the property.

The proposal will have no effect on the off street parking at the property. There exist 6 on-site spaces. The property would not be able to safely accommodate the additional spaces required to comply with the Ordinance.

The proposed addition will be connected to the public sewer and water. There exists a dumpster for the collection of refuse. At the site visit, the Board noted the proximity of the property to existing storm drainage system. In its conditions for the granting of the Special Permit, the Board addresses both site drainage and the location of the dumpster.

No permanent nuisance was proposed to be created by the project. While construction is ongoing, typical noise from a construction site will exist. Appropriate measures will have to be implemented to prevent erosion during construction.

The proposal was proposed to not be an inconvenience or hazard to abutters, vehicles or pedestrians.

The proposal is in harmony with the general purpose and intent of the Ordinance.

The proposal will not have a detrimental impact on City services, tax base, or employment opportunities. To the contrary, a 61% increase in the floor area will increase the tax base, and as indicated above, the addition may include a modest increase in employees at the practice.

The conditions set forth in the granting of this Special Permit for this property parallel the conditions granted for a Variance approved by the Board on April 12, 2010.

This Special Permit is granted with the following conditions:

- The Board approves an addition of the dimensions not exceeding forty-eight (48) feet by twenty (20) feet (48x20).
- The exterior of the addition to be clapboard style siding. Use of other material will require approval of the Board.

- A dedicated walkway (minimum 30" wide), appropriately delineated with paint or constructed as a sidewalk shall be reserved at the north side of the parking area. Appropriate wheel stops or other measures shall be employed to restrict the front edge of vehicles encroaching upon the dedicated walking area. The front edge of the parking spaces to be located no closer than eighteen (18) feet from street line (property line).
- The Applicant to submit an as-built survey once the addition is complete. Survey shall indicate limits of parking, drainage, setbacks, and location of existing and new addition on the lot. Survey to be completed by a registered land surveyor and submitted to the Building Commissioner and City Engineer for placement on file.
- Roof drainage and sump pump discharge to be tied into the storm drain collection system, with the approval of the Department of Public Works.
- Dumpster to be enclosed in privacy fence to block from view.
- Parking spaces to be delineated with appropriate traffic marking paint.
- Outdoor lighting shall not illuminate abutting properties so as to impact or disturb abutters.
- Signage shall comply with the Ordinance.
- Hours of operation for the contractor completing the construction to be 7AM to 5PM Monday through Saturday. The Applicant's representative indicated that there may be a necessity to work on Sundays to complete facets of the construction. Work will be permitted on Sundays between the hours of 10AM and 5 PM with the prior approval of the Building Commissioner.
- Contractor to employ whatever safety measures necessary to protect patients, employees, and visitors using the facility.

ANY PERSON AGGRIEVED BY A DECISION OF THE BOARD OF APPEALS OR ANY SPECIAL PERMIT/VARIANCE GRANTING AUTHORITY, WHETHER OR NOT PREVIOUSLY A PARTY TO THE PROCEEDING, OR ANY MUNICIPAL OFFICER OR BOARD MAY APPEAL EITHER TO THE SUPERIOR COURT, DISTRICT COURT, OR LAND COURT DEPARTMENT OF THE TRIAL COURT FOR THE COUNTY IN WHICH THE LAND CONCERNED IS SITUATED BY BRINGING AN ACTION WITHIN TWENTY (20) DAYS AFTER THE DECISION HAS BEEN FILED IN THE OFFICE OF THE CITY OR TOWN CLERK. (M.G.L. SECTION 17, CHAPTER 40A)

A COPY OF THIS DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 20th DAY OF April, 2010

Randall W. Heglin(d) Michael Gerry(d) Anthony J. Asmar(d)
 Randall W. Heglin, Chairman Pro Tem Michael Gerry, Clerk Anthony J. Asmar, Third Member

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached decision by the Zoning Board of Appeals was filed with my office on April 20, 2010 and that twenty days have elapsed since the filing of said decision with my office and that no appeal concerning said decision has been filed or that any appeal that has been filed has been dismissed or denied.

May 12, 2010

 Dated

Alan L. Agnelli

 Alan L. Agnelli, City Clerk