

ORIGINAL

COMMONWEALTH OF MASSACHUSETTS
 CITY OF GARDNER
 ZONING BOARD OF APPEALS
DECISION

RECEIVED

2010 OCT 28 P 12: 33

CITY CLERKS OFFICE
GARDNER, MA

NAME: James S. McMilleon and Donna M. McMilleon
 ADDRESS: 9 Minuteman Drive, Templeton, MA 01468

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

Lot B, Pearl Street
Map X-37-60-1

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

BOOK 36670 PAGE 190

ON APPLICATION DATED August 5, 2010 FOR A **Variance** TO:
 Build a new home on Lot B, Pearl Street, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 6, 620 Table of Lot, Area, Frontage, Yard and Height Requirements, in Rural Residential II Area of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its October 19, 2010 meeting voted unanimously to grant with condition a Variance to James S. and Donna M. McMilleon to build a new home at Lot B, Pearl Street, Gardner, MA.

The Public Hearing was held on September 21, 2010. At the Public Hearing the Applicant presented to the Board an "Approval Not Required" subdivision of land survey plan dated August 14, 2005 showing the a larger lot owned by the Applicant subdivided into two lots which at the time conformed to the Ordinance. Lot B at the time of the subdivision of the lot complied with the frontage, area and depth requirements of the Ordinance. In February 2006, the Ordinance was amended whereby the lot no longer conformed to the frontage and area requirements of the Ordinance.

A site visit was held on October 9, 2010.

The granting of the Variance does not create or aggravate a safety hazard. The construction of a new home on the property is on a public roadway with sufficient sight distances in each direction.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that the lot does not comply with the current dimensional requirements of the Ordinance. The subdivision of the land in August 2005 occurred concurrent with the updating of the Ordinance in fact the Ordinance was amended six months after signing of the Approval Not Required plan. The Board believes that the changes to the Ordinance were in review at the time of the signing.

There exists a hardship related to shape, topography or soil conditions of the property. The lot as subdivided lacks the area and frontage to comply with the current regulations. The Applicant advised the Board that he contacted the abutter to possibly purchase sufficient property to comply with the Ordinance. The abutter was reportedly not agreeable to this proposal.

This Variance is granted with the following condition:

- The construction of the home to comply with all dimensional setback requirements of the current Ordinance.

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 28 th DAY OF October, 2010

Raymond F. LaFond *dk* Randall Heglin *dk* Michael Gerry *dk*
Raymond F. LaFond, Chairman Randall Heglin, Clerk Michael Gerry, 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 October 28, 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.

November 17, 2010

Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk

