

MINUTES

Zoning Board of Appeals Decision Meeting– January 29, 2018
115 Pleasant Street, Room 103
Gardner, MA 01440

Sitting in on the Decision Meeting:

Raymond LaFond
Randall Heglin
Michael Gerry
Mel Cornett

In Attendance:

Sign-In Sheet Attached

The Decision Meeting was called to order by Randall Heglin at 6:30 p.m. in the City Hall Annex, Room 103, Gardner, MA.

The Decision Meeting commenced on:

Case# 2019-01-01: Kinzer Drive Solar, LLC's application to construct Large Scale Ground Mounted Solar Array at Kinzer Drive Gardner, MA Parcel ID # M17-18-10, located in the Industrial One zoning district (I1) is denied as it does not comply with Chapter 675-410 #80 of City Code of Gardner. The "Table of Uses" states that its use requested, requires a "Special Permit" (SP) issued by the Gardner Zoning Board of Appeals.

Mr. Heglin, Mr. Gerry, and Mr. Cornett were sitting on this case, It was to be taken out of order.

Mr. Heglin made a motion to move on the above case, it was seconded, and unanimously approved.

Mr. Cornett began discussions by stating that after review of the application and site visit all requirements had been met and he didn't feel there was any reason to deny, especially after looking at the property.

Mr. Heglin stated that given the Conservation Committee's prior approval, the site visit reflected the clearing had been mostly completed. He believed there'd be minimal grading due to solar panels being built with sloping, and the 6' fence allowing 6" at the bottom for wildlife he felt no need for objection.

Mr. Gerry noted that the nearest house was on the North side of Rt. 2 , significantly away from the proposed project.

Mr. Heglin reiterated that both Conservation Committee and the Planning Board have already approved this.

Mr. Heglin made a motion to move on the above case, it was seconded.

The Board approved the motion to grant the Special Permit to Kinzer Drive Solar, LLC case #2019-01-01, to construct a Large Scale Ground Mounted Solar Array at Kinzer Drive with no conditions.

Decision Meeting continued on:

Case# 2019-01-03: Linda O'Connell's application to construct a 8' x 10' deck at 38 Metcalf St.,

Gardner, MA Parcel ID # R12-15-9, located in the Single Family Residential One zoning district (SFR1) is denied as it does not comply with Chapter 675, Attachment two Table of Lot, Area, Frontage, Yard and Height Requirements of City Code of Gardner. The zoning code states that this use requires a thirty foot front setback. O'Connell's plan reflects a sixteen foot front setback.

Mr. Heglin, Mr. Gerry, and Mr. LaFond were sitting on this case.

Mr. LaFond stated that this property was viewed at a site visit, to view placement of the proposed deck. The location was clearly marked with footings already installed. The Board noted that the total lot size was approximately 30,000 square feet with most of the property located to the rear of the house. The rear of the property consisted of a large amount of vegetative overgrowth and a significant amount of various scrap metal pieces. A potential location for the deck to the rear of the home was noted, however a large amount of scrap metal would need to be removed.

This is in a residential neighborhood, and it was noted that no other houses had decks located on the front of their homes.

Mr. Heglin stated that the proposed deck wouldn't be much closer to the sidewalk as the current steps are. He agreed there was plenty of room in the back yard but that applicant stated placing deck in back would cause a hardship. No evidence was presented to substantiate the perceived hardship.

Mr. Heglin and Mr. LaFond discussed there being properties in the neighborhood that had enclosed porches on the front of their properties that took up as much space as her proposed deck. It was also noted that the enclosed porches were pre-zoning.

Mr. LaFond reiterated that there was no space on the side and too much metal debris in the back for the proposed deck.

Mr. LaFond requested a motion to vote on the Variance. The motion was made and seconded and votes cast.

The Motion for Case# 2019-01-03 was denied by a 2 yes 1 no vote.

Decision Meeting Continued on:

Case# 2019-01-02: Alan Belanger's application to construct a single family home at Outlot F Whitney St., Gardner, MA Parcel ID # R07-19-14A, located in the Rural Residential Two zoning district (RR2) is denied as it does not comply with Chapter 675, Attachment 2 Table of lot, area, frontage, and height requirements of City Code of Gardner. The zoning code states that the use requested is a "not permitted" use in the "RR2" zoning district.

- 1. The Table of Uses requires one hundred and fifty (150) feet of frontage. The submitted plot plan shows 138.78 feet.**

Mr. Heglin, Mr. Gerry, and Mr. LaFond were sitting on this case.

Mr. Gerry advised that if this request was approved, the Board should consider Conditions: front lot access, rear lot only to allow one (1) single family home to be constructed, no subdivision of the rear lot (Outlot F).

Mr. Heglin stated the Representative of the Applicant indicated this was a self-inflicted hardship created by the previous owner of the land. Due to this subdivision, the front lot cannot be sold as a buildable residential lot,

thus the abutting back lot is landlocked.

Mr. Heglin stated if the Board was agreeable to no further subdivision of the back lot, he'd be agreeable to it.

Mr. LaFond agreed that it was a self-inflicted hardship, but there was now 20+ acres of landlocked property.

Mr. LaFond stated that under prior zoning codes this was defined as a "pork chop" lot, but this definition is not included in the current ordinance. Mr. LaFond stated that the job of the ZBA is to ensure the best interests of the City, the Neighborhood, and Abutters are considered when rendering a decision.

The matter of whether only one (1) single family house would be the only construction allowed was considered and discussed. There was clarification that "accessory" buildings (shed, garage, etc.) would be allowed.

Mr. Heglin stated that if this wasn't approved it would be 20+ acres of potential buildable land could not produce any tax revenue. To put this property on the tax rolls would require significant financial expense to redesign the parcel and achieve proper access to the property.

Mr. LaFond stated that he'd like to see the old "pork chop" ordinance resurrected and incorporated into current zoning ordinance, due to the amount of additional lots in the City that have this same issue. This action would need action by the Planning Board and City Council.

After consideration and discussion, a vote was taken and the Variance was unanimously approved and granted with the following conditions:

- Outlot F with frontage on Whitney Street is to provide only driveway access to the rear lot only. No residential structure to be constructed or located on Outlot F.
- Only one single family home to be constructed on the rear lot. The house to meet all zoning dimensional setback requirements.
- Outlot F cannot be further subdivided.
- The rear lot is not to be sub-divided to permit additional building lots. This condition does not preclude the Applicant from selling portions of the property to abutters for the benefit of all parties.

Decision Meeting continued on:

Case# 2018-11-01: ZPT Energy Solution's application to construct a Large Scale Ground Mounted Solar Photovoltaic Installation at 0 Lovewell St., Gardner, MA Parcel ID # R07/3/11, located in the Rural residential Two and Residential One zoning district (RR2 & R1) is denied as it does not comply with Chapter 675, Article 580 B. of City Code of Gardner. The zoning code states that the use requested is a "not permitted" use in the "RR2 or R1" zoning district.

B. Designation of overlay locations. The overlay locations designated by Gardner City Council, in accordance with MGL c. 40A, § 5, where ground-mounted large-scale solar photovoltaic installations may be sited as of right. Said overlay locations are shown on the Zoning Map of Gardner, Massachusetts, pursuant to MGL c. 40A, § 4. This map is hereby made a part of this chapter and is on file in the office of the City Clerk.

The discussion opened by Mr. Heglin, stating he was unable to attend the site visit, and he would appreciate a summary from other board members.

Mr. Gerry stated that on the site visit the Engineer was asked if the land could be used for residential properties. The Engineer stated yes, and there could be potentially be a residential development of approximately 160 homes

(believed to be 167, but not positive), which was an allowed (permitted) use for this parcel of land.

Mr. LaFond, Mr. Gerry, and Mr. Heglin all discussed this possibility, that they were aware, as the zones are R1 and RR2 so it would be permitted. It was discussed that the proposed solar project would consist of +/- 6 months of construction, with only single vehicles entering per year thereafter for the maintenance of the solar panels and the vegetative growth within the project. Comments were made that the proposed use would be far less intrusive to abutters than 100 +/- houses, potentially 200 +/- children and +/- 200 vehicles. The length of construction for a residential subdivision could exceed 6 months. The Board also had to consider the possibility of setting a precedent by granting this Use Variance Application which could have significant impact on any future similar applications.

Overlay Districts for this type of use can be and have been established by the City Council. A petition for a Solar Overlay for this location was put before and denied by the City Council with the only options being to apply for a Use Variance from the Zoning Board or abide by the Council's decision.

The Zoning Board is charged with following the existing code and evaluating the impact of the proposed variance/special permit request presented to them. Emotional or personal decisions cannot or should not be considered when making the decision.

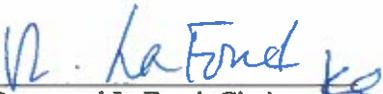
Mr. LaFond stated that there is an appeal process in place for both the Applicant and Abutter if they disagree with the decision of the Board. The guidelines for filing an Appeal are available in the Office of the City Clerk.

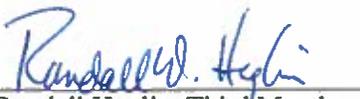
Mr. LaFond requested for a motion to move for a vote on the Use Variance request. The motion was made and seconded.

The vote to approve the Use Variance request **Case# 2018-11-01** was denied by a 2 (yes) to 1 (no) vote.

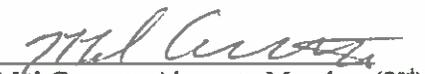
Mr. LaFond motioned to adjourn, all agreed.

The Decision meeting adjourned at 7:05 p.m.


Raymond LaFond, Chairman


Randall Heglin, Third Member


Michael Gerry, Clerk


Mel Cornett, Alternate Member (2nd)