

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

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2011 OCT 31 P 1:41
CITY CLERKS OFFICE
GARDNER, MA

NAME: Lower Parker Street Realty Trust
ADDRESS: 632 Parker Street, Gardner, MA 01440

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

632 Parker Street

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

BOOK 29720 PAGE 358

ON APPLICATION DATED September 9, 2011 FOR A **Variance** TO:
Install a four (4) foot chicken logo over existing free standing sign at Duguay's Chicken & Seafood, 632 Parker Street, Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 9 *Signs and Advertising Devices*, 914 #1 *Resident Identification Sign*, in Single Family Residential I Area, of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its October 18, 2011 meeting voted unanimously to grant, with conditions, a Variance to Kevin Barry Smith, Trustee of Parker Street Realty Trust to erect an approximately four (4) foot high chicken over an existing free standing sign at Duguay's Chicken & Seafood, 632 Parker Street, Gardner, MA.

The Public Hearing was held on October 18, 2011. At the Public Hearing, the Applicant presented plans and photographs of the proposed sign. The four (4) foot chicken is to be constructed of 1- inch thick PVC plastic. It is proposed to not be illuminated. This sign is replacing an existing 8-10 foot chicken sign that was assumed to be in existence since the opening of the establishment in 1969. In recent past, the restaurant experienced a devastating fire. The building and business is being reconstructed, including the signage to the business. The proposed chicken is replacing an outdated and weathered beer sign. The chicken is to be installed on the existing post.

The business is assumed to be an existing grandfathered business in a Single Family Residential I zone.

Due to the information provided by the Applicant and the familiarity of the Board with the site, a site visit was deemed not necessary.

The granting of the Variance does not create or aggravate a safety hazard. The proposed ornamental chicken is located above an existing internally illuminated sign. The chicken replaces a historic sign that existed at the business. The proposed sign will not affect the movement of vehicular and pedestrian traffic. The increased signage will allow patrons of the establishment to more easily see the establishment, thereby may improve the safety of vehicles entering and exiting the establishment.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that this type of sign is not in compliance with the Ordinance. The Board recognizes the business use in the residential zone and further recognizes the necessity to advertise a business. The Board recognizes the uniqueness of this proposed ornamental chicken and sets forth a condition in the granting of the Variance to address the condition and maintenance of the sign in the future.

There exists a hardship related to shape, topography or soil conditions of the property. The business is located near the bottom of a downward gradient. Increased signage will improve the visibility of the business to oncoming traffic by making the sign more visible. The additional signage will provide greater time for patrons to adjust vehicle speeds to accommodate entering or exiting of the parking lot.

The Variance is granted with the following conditions:

1. There is to be no specific illumination of the decorative chicken.
2. The Applicant to provide the sum of two hundred dollars (\$200.00) to the City Treasurer who shall hold this amount in escrow. This amount to be held in escrow in the event the decorative chicken falls into disrepair and requires its removal.
 - a. The amount in escrow is available for use by the City of Gardner for the removal of the decorative chicken if in the opinion of the Building Commissioner, the chicken becomes unsightly, or has fallen into disrepair, or has determined that the structure is a hazard, or has determined that the chicken is no longer being maintained in a visually aesthetic state.
 - b. The Building Commissioner shall notify by Certified US Mail or other acceptable delivery, with returned receipt, the current owner of the property and advise the owner a date certain, not to exceed 30 days, that the decorative chicken and supporting structure must be repaired, remedied, or removed. A copy of the Notice to be provided to the Board.
 - c. Should the owner not act to remedy the situation in a timely manner, the Building Commissioner may use whatever means necessary, City or hired forces, to remove and dispose of the structure. If the structure is brought to a salvage yard, the owner may retrieve the property there or if sold as salvage, any proceeds are to be used to offset the costs of removal.
 - d. The amount available for removal is the \$200 plus any accrued interest, as determined by the City Treasurer, plus any salvage value if applicable.
 - e. Should City Forces be used to remove the structure, the cost for removal to be based on the current FEMA equipment rates at the time of removal plus all labor and benefit costs to effectuate its removal, plus any disposal costs if necessary.
 - f. Should a private contractor be used to remove the structure, the cost for removal is the invoiced cost of removal and disposal.
 - g. The Building Commissioner shall notify by letter to the City Treasurer, with copies to both the property owner and the Board, the costs of removal. Any backup documentation, invoices, etc. shall be included.
 - h. Upon receipt of sufficient documentation from the Building Commissioner, the Treasurer shall release the funds necessary to effectuate the removal.
 - i. Should the cost for removal exceed what is available in escrow, the property owner at the time of removal shall pay the difference.
 - j. Should the amount in escrow exceed the costs necessary for removal, any balance shall be released to the property owner or record at the time of release.
 - k. Should the property owner decide to remove the decorative chicken on their own volition, the Building Commissioner shall certify its removal and duly notify, by letter,

the City Treasurer of the sign's removal and recommend release of the escrow to the property owner. Upon receipt of such letter, the amount held in escrow, including any accrued interest shall be released to the property owner.

- l. Should ownership of the property be transferred, the amount in escrow shall remain until such time the decorative chicken and supporting structure is removed.
- m. The Building Commissioner shall authorize any release of funds by the City Treasurer. In the absence of the Building Commissioner, the Board of Appeals may authorize its release with majority vote of the Board at a regularly posted meeting and only upon all conditions precedent.

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 31st DAY OF October, 2011

Michael Gerry dt Randall Heglin dt Wayne Gallant dt
 Michael Gerry, Chairman Pro Tem Randall Heglin, Clerk Wayne Gallant, 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 31, 2011 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 21, 2011
Dated

Alan L. Agnelli
Alan L. Agnelli, City Clerk