

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
DECISION

NAME: Gunatitanand, LLC  
ADDRESS: 47 Princeton Street, Building #2, Apartment #309  
Leominster, MA 01453

RECEIVED  
2015 MAR 30 PM 12:40  
CITY OF GARDNER  
GARDNER MA

DECISION OF THE BOARD OF APPEALS REGARDING THE USE OF THE PREMISES LOCATED ON:  
5 Foss Road  
Parcel ID #M27-17-63

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS Book 53215, Page 81.

ON APPLICATION DATED January 20, 2015 FOR A Variance to: Operate a 3600 square foot retail store at 5 Foss Road, Gardner, MA; Parcel ID M27-17-63, is denied as it does not comply with Section 4 Use Regulations, 415 Table of Uses, Description of Use #35 Retail Store up to 15,000 sq. ft., of the City Code of Gardner. The Code states that your requested use is "not permitted" in the SFR1 zoning district.

The Gardner Zoning Board of Appeals at its March 17, 2015 meeting voted to grant with conditions a Variance to Gunatitanand, LLC to operate a 3600 square foot retail store at 5 Foss Road, Gardner, MA.

The Public Hearing was held on February 17, 2015.

A previous Variance was granted to this applicant for this use by this Board on September 31, 2013. Due to inactivity at the property, the Variance lapsed; therefore the Applicant was required to reapply for the use. Due to the familiarity with the property, no site visit was held.

The Applicant proposes to convert a vacant building located on the westerly corner of Foss Road and West Street into a convenience store. The building has historically been a restaurant but has been vacant for several years. The building is to be converted into approximately 3,600 square feet of retail space for typical convenience store type items with the remainder remaining for storage and office/manager area. No drive through window was proposed. The hours of operation were represented as being 6:30AM to 10PM 7 days a week. The exterior lighting of the parking area was of particular concern to the abutters and Board. The Applicant indicated that he intends to replace the exterior lighting. The Board addresses this concern as a condition in the granting of this Variance.

There will be an exterior dumpster for refuse installed on the south side of the building with appropriate screening.

Parking spaces shall be as delineated and approved by the City Engineer on plan titled "Proposed Retail Sales Building" dated February 17, 2015 by Szoc Surveyors signed by the City Engineer and on File with the Board.

Official site plan of record is the above referenced plan.

The granting of the Use Variance does not create or aggravate a safety hazard. The Board considered the traffic flow within the proposed lot in its original 2013 and this decision and addressed this in a condition for the granting of this Variance. Reuse of this building will remove an unattractive nuisance from the neighborhood. Currently, the building is vacant and falling into disrepair.

The granting of the Use Variance does derogate from the intent of the Zoning in that this activity is not permitted in a Single Family Residential 1 District. The building exists and has been vacant for several years. Its historical use as a restaurant and bar is no longer a viable use as evident that it remains vacant. Several restaurants have tried to be established in the location without success. Locating a convenience store at this location will provide a need to the area. The Board is sensitive to the proximity of the business to the residential abutters and has set conditions for the granting of this Variance that the Board believes will have the business be compatible with the neighborhood.

In the issuance of this Use Variance, a hardship related to shape, topography or soil conditions of the property is a not applicable in this case. A literal enforcement of this requirement would result in the detriment of the neighborhood in that the building would likely remain vacant and continue to fall into disrepair and become a nuisance and fire hazard to abutters.

This Use Variance is granted subject to the following conditions:

- Parking Lot Lighting – Sufficient lighting to provide customer safety and positioned such to not impact neighbors in full compliance with the City Code. The existing flood lights on poles are to be removed. Parking lot lights on no longer than one (1) hour after closing, unless necessary for building security. Lighting plan to be submitted and approved by City Engineer and Building Commissioner prior to issuance of Occupancy Permit.
- Refuse dumpster to be fully enclosed in privacy fence (not chain link) that is to be maintained in good condition.
- Prior to issuance of Certificate of Occupancy, the Lot is to be cleared of all unsightly vegetation and remain so.
- Building and grounds to be maintained in good condition, there shall be regular trash cleanup around the building and grounds, no outside storage of materials, display racks, etc.
- Paved parking area to be resealed or resurfaced.
- Existing parking area shown as grindings on the referenced plan shall be paved.
- All parking spaces shall be appropriately delineated with pavement marking paint.
- Only one or westernmost curb cut on West Street to remain as entrance only to property as per above referenced plan. Remaining curb cuts on West Street to be removed by the Applicant. Appropriate signage and pavement markings to be installed and maintained. All exits from property will be onto Foss Road.
- Any changes to free standing sign must meet the requirements of the City Code.
- Landscaping screening plants as indicated on the above referenced plan shall be of an evergreen type and at the time of planting be at least 3 feet in height and must be maintained at a height not to exceed seven (7) feet at maturity. The plantings shall provide complete screening of abutting property as indicated on the plan.

Raymond F. LaFond, Chairman  
Randall W. Heglin, Clerk  
Michael D. Gerry

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 30 DAY OF MARCH 2015

Raymond F. LaFond  
Raymond F. LaFond, Chairman

Randall W. Heglin  
Randall W. Heglin, Clerk

Michael D. Gerry  
Michael D. 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 \_\_\_\_\_ 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.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Alan L. Agnelli, City Clerk