



CITY of GARDNER
Office of the City Clerk
95 Pleasant Street, Room 121
Gardner, MA 01440
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GARDNER, MA

CITY OF GARDNER
NOTICE OF JOINT PUBLIC HEARING

Pursuant to G.L. 40A, § 5, notice is hereby given that the City Council and Planning Board will conduct a **Joint Public Hearing** on **Monday, November 7, 2022 at 6:30 P.M.** in the City Council Chamber, Room 219, City Hall, 95 Pleasant Street, Gardner, to consider amending Chapter 675, the Zoning Code of the City of Gardner. The proposed Amendment involves changing the zoning of 20 parcels of land along West Broadway from Kendall Pond Road west to the Templeton line from Commercial 2 to General Residential 3 on the Zoning Map. Information regarding this amendment is available for viewing in the City Clerk's Office, the Department of Community Development and Planning (DCDP), or on the City's webpage – www.gardner-ma.gov.

All persons interested in this matter and desire to offer testimony are invited to attend the hearing:

Titi Siriphan
City Clerk

CITY OF GARDNER

DEPARTMENT OF COMMUNITY DEVELOPMENT AND PLANNING



October 13, 2022

Elizabeth Kazinskas, Council President
C/o Titi Sirphan, City Clerk
95 Pleasant Street, Room 121
Gardner, MA 01440

RE: Petition #10798 – Zoning Map Amendment – West Broadway, Kendal Pond Road to Templeton Line

Dear President Kazinskas:

On October 11, 2022, the Planning Board voted unanimously (3-0) to recommend the City Council consider approving the proposed zoning map amendment referenced above. The amendment includes changing the zoning of 20 parcels from Commercial 2 to General Residential 3. The Planning Board also voted to request a joint Public Hearing between the Board and City Council on the matter. Currently, all uses on the impacted parcels are residential and either preexisting nonconforming or developed through a use variance. The change would create all conforming uses for the existing developed parcels and allow residential uses on the undeveloped parcels, including those owned by the petitioner of the amendment.

The Planning Board looks forward to joining the City Council at a public hearing scheduled at your earliest convenience. Please contact Trevor Beauregard if you have any questions or need additional information.

Sincerely,

Mark M. Schafron, Planning Board Chairman

C: Mayor Michael J. Nicolson
Trevor M. Beauregard, Director
Roland Jean, Building Commissioner



Christine Tree Legal

Christine M. Tree
ctree@christinetreelegal.com
 Anthony Zarrella, Of Counsel
azarrella@christinetreelegal.com

September 14, 2022

Elizabeth J. Kazinskas, Gardner City Council President
 c/o Titi Siriphan, City Clerk
 City Hall
 Gardner, MA 01440

Re: Petition to Amend Gardner Zoning Map, Ward 3, West Broadway

Dear President Kazinskas:

Please be advised that I represent PrivateOversight, LLC, managed by Joanne Tavano, which owns property off West Broadway and more particularly three parcels on West Broadway with the property ID's H17-7-1, H17-12-2, and H17-13-9. As permitted by M.G.L. c. 40A §5, and after consultation with the Building Department, the Planning Department, and informal presentation to the Planning Board, I am submitting the enclosed Petition on behalf of the property owner for amendment of the Gardner Zoning Map on the westerly side of West Broadway in Ward 3. PrivateOversight's lots lie in two different zoning districts for Gardner, C2 and R2, and a corner lies in Templeton. My client is requesting a change in the zoning designation for these lots and the surrounding area to GR3, which would be substantially more suitable for the company's planned residential development as well as for the existing residential uses on the surrounding parcels.

Under the Zoning Ordinance the C2 Zoning District does not permit residential development, not even single family homes, without a variance. Currently, only 7 of the 28 occupied parcels in this section of the C2 district are conforming (most parcels are not being used in conformity with zoning), and a map showing the parcels proposed to be changed to a GR3 designation is enclosed with a list. My client has also conducted a traffic study concerning her proposed residential development, which is enclosed herewith for informational purposes.

A change in the zoning would be beneficial not only for my client, but for the other parcels in this district. Most of the properties on West Broadway west of Kendall Pond are residential uses, but are located in C2, a commercial zone. These are either preexisting nonconforming residences, or allowed by a use variance such as the cul-de-sac neighborhood on Deer Hill Road. All residential uses,

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including single-family homes, are prohibited in C2, and are therefore treated as a nonconforming use for zoning purposes. This means the use is subject to more limitations. As an example, if any single family home is vacant for two or more years, it can be deemed abandoned and will lose its right to be used as a single family home. Additions, extensions or modifications may require zoning relief. In short, the C2 zoning does not match the actual use of the land in this area.

By contrast, the property uses allowed in C2 are likely to cause detriment to the surrounding residents. A retail store, bank, car salesroom, or restaurant could operate by right. A marijuana retailer could open by special permit. Disruptive commercial uses could lead to problems with the surrounding residents due to the hours of operation, delivery trucks, noise and general incompatibility of the use.

For these reasons, we believe that the proposed zoning map amendment would be beneficial to the City and the surrounding neighborhood. My client and I would welcome a chance to meet with you or with any member of the City Council and go through the proposal to answer any questions or concerns. I am also happy to go through the history of this project with the City.

I expect this petition will be referred and pass through a review process with the Planning Board and with the Council. We are happy to respond to any requests for additional information.

Thank you for your time and consideration of the Petition.

Sincerely,

Christine M. Tree

Enclosures
CMT/jjr

TO THE HONOURABLE CITY COUNCIL OF THE CITY OF GARDNER

Ladies and Gentlemen:

The undersigned PrivateOversight LLC Petition your Honorable Body to:

Amend the Gardner Zoning Map by changing the zoning district designation for the following listed parcels, lying at the westerly end of West Broadway to the Templeton municipal boundary, from the Commercial 2 Zoning District and the Rural Residential 2 Zoning District to the General Residential 3 Zoning District, as follows:

Assessor's Map/Lot/Block	Property Address	Current Zoning District	Proposed Zoning District
H17-72-1	West Broadway	COM2	GR3
H17-7-1	West Broadway	COM2 & RR2	GR3
H17-12-2	West Broadway	COM2 & RR2	GR3
H17-13-9	Airport Road	RR2	GR3
H17-7-8	1022 West Broadway	COM2	GR3
H17-7-7	9 Deer Hill Road	COM2	GR3
H17-7-6	17 Deer Hill Road	COM2	GR3
H17-7-5	25 Deer Hill Road	COM2	GR3
H17-12-9	33 Deer Hill Road	COM2 & RR2	GR3
H17-12-4	41 Deer Hill Road	COM2 & RR2	GR3
H17-7-4	30 Deer Hill Road	COM2 & RR2	GR3
H17-7-3	22 Deer Hill Road	COM2	GR3
H17-7-2	14 Deer Hill Road	COM2	GR3
H17-7-10	6 Deer Hill Road	COM2	GR3
H17-3-9	985 West Broadway	COM2	GR3
H17-8-13A	950 West Broadway	COM2	GR3
H17-8-16	957 West Broadway	COM2	GR3
H17-8-13	940 West Broadway	RR2	GR3
H17-8-15	945 West Broadway	COM2	GR3
H17-3-1	935 West Broadway	COM2	GR3

The proposed amendment to the zoning map will bring the zoning district for these parcels into better conformity with their current actual use for residential purposes, while still allowing for the possibility of home occupations accessory to the primary residential use. This will also eliminate parcels falling across two zones, and nonconformities in the neighborhood, and is in furtherance of declared purpose of the Zoning Ordinance “to encourage the most appropriate use of land throughout the City.”

No new lot boundaries are created by this proposed amendment, merely the reclassification of existing parcels.

The Petitioner PrivateOversight, LLC, by Joanne M. Tavano, Member/Manager, is the owner of Parcels H17-7-1, H17-12-2 and H17-13-9, which are parcels to be affected by the zoning map amendment pursuant to M.G.L. c. 40A §5, and is therefore eligible to Petition for this zoning map amendment.

AN ORDINANCE AMENDING AN ORDINANCE ESTABLISHING THE BOUNDARIES OF THE DISTRICTS OF THE CITY WITH REGULATIONS AND RESTRICTIONS TO BE ENFORCED AND TO BE KNOWN AS THE ZONING ORDINANCE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GARDNER AS FOLLOWS:

That “An Ordinance Establishing the Boundaries of the Districts of the City with Regulations and Restrictions to be enforced and to be known as the Zoning Ordinance” (Compilation of Ordinances No. 62) adopted by the City Council December 9, 1970 and amended several times thereafter be further amended as follows:

Designate parcels H-17-72-1 (a non-listed use), H17-7-1, H17-12-2, H17-13-9 (currently vacant lots) H17-7-8, H12-7-7, H17-7-6, H17-7-5, H17-12-9, H17-12-4, H17-7-4, H17-7-3, H17-7-2, H17-7-10, H17-3-9, H17-8-13A, H17-8-16, H17-8-13, H17-8-15, and H17-3-1 (currently single family homes) as General Residential 3 (GR3) pursuant to Article III, §675-310 Types of districts and Article XI, §675-1160 Amendments. Said General Residential 3 (GR3) shall be shown on the Zoning Map of Gardner, Massachusetts.

Parcels to be Rezoned

Petition 10798- Zoning Map Amendment COM2/RR2 TO GR3

Conformity of affected parcels if the proposed zoning map amendment is passed.

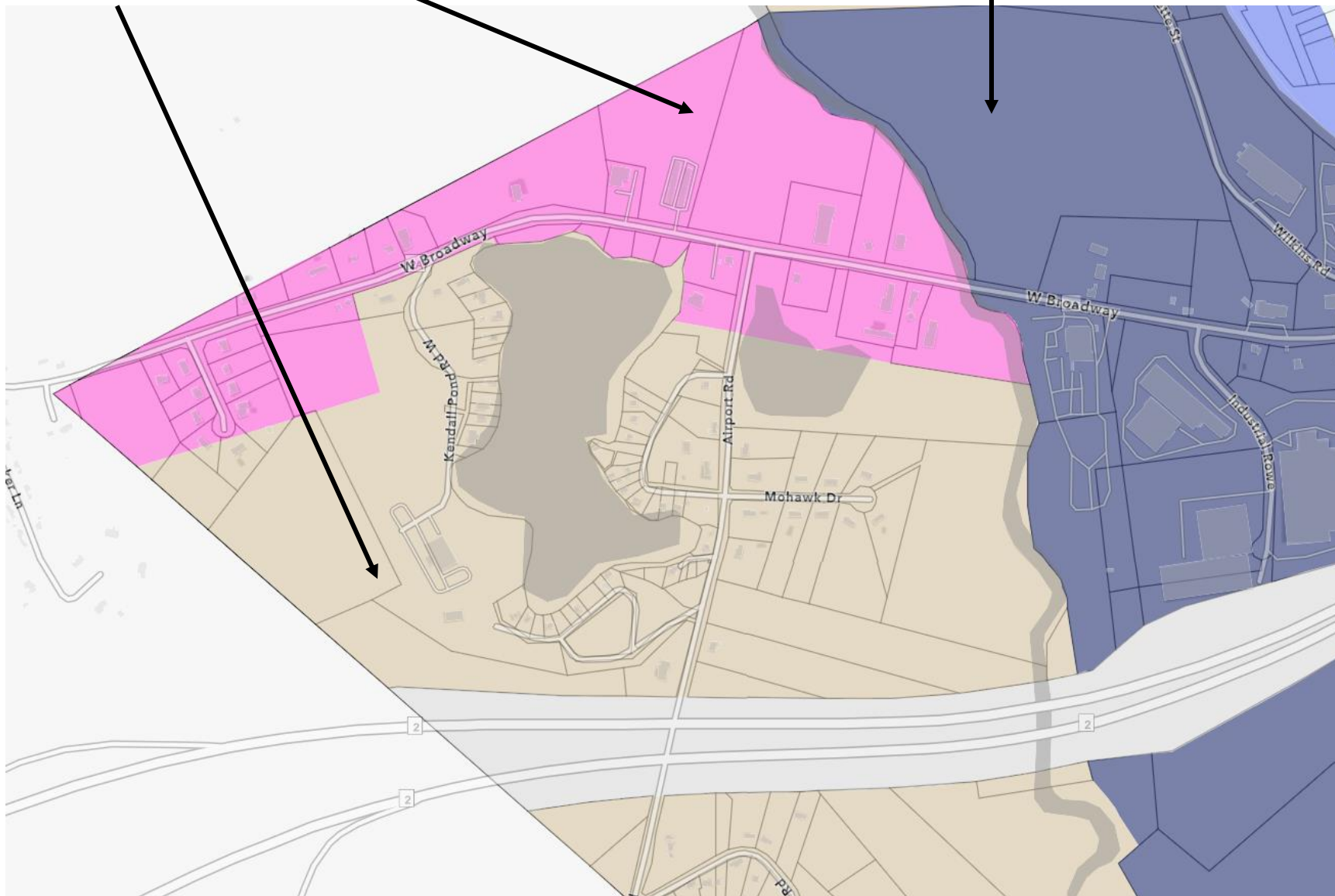
No.	Parcel ID	Use	Property Address	Conformity Pre-Change	Conformity Post Change
1	H-17-72-1	Not Listed	West Broadway	UNKNOWN	UNKNOWN
2	H17-7-1	Vacant-Proposed Multifamily	0 West Broadway	NP	SP
3	H17-12-2	Vacant-Proposed Multifamily	0 West Broadway	NP	SP
4	H17-13-9	Vacant-Proposed Multifamily	0 Airport Road	NP	SP
5	H17-7-8	Single Family	1022 West Broadway	Pre-existing, non-conforming	Conforming
6	H17-7-7	Single Family	9 Deer Hill Road	Variance	Conforming
7	H17-7-6	Single Family	17 Deer Hill Road	Variance	Conforming
8	H17-7-5	Single Family	25 Deer Hill Road	Variance	Conforming
9	H17-12-9	Single Family	33 Deer Hill Road	Variance	Conforming
10	H17-12-4	Single Family	41 Deer Hill Road	Variance	Conforming
11	H17-7-4	Single Family	30 Deer Hill Road	Variance	Conforming
12	H17-7-3	Single Family	22 Deer Hill Road	Variance	Conforming
13	H17-7-2	Single Family	14 Deer Hill Road	Variance	Conforming
14	H17-7-10	Single Family	6 Deer Hill Road	Variance	Conforming
15	H17-3-9	Single Family	985 West Broadway	Pre-existing, non-conforming	Conforming
16	H17-8-13A	Single Family	950 West Broadway	Pre-existing, non-conforming	Conforming
17	H17-8-16	Single Family	957 West Broadway	Pre-existing, non-conforming	Conforming
18	H17-8-13	Single Family	940 West Broadway	Pre-existing, non-conforming	Conforming
19	H17-8-15	Single Family	945 West Broadway	Pre-existing, non-conforming	Conforming
20	H17-3-1	Single Family	935 West Broadway	Pre-existing, non-conforming	Conforming

CURRENT ZONING MAP

COMMERCIAL 2 DISTRICT

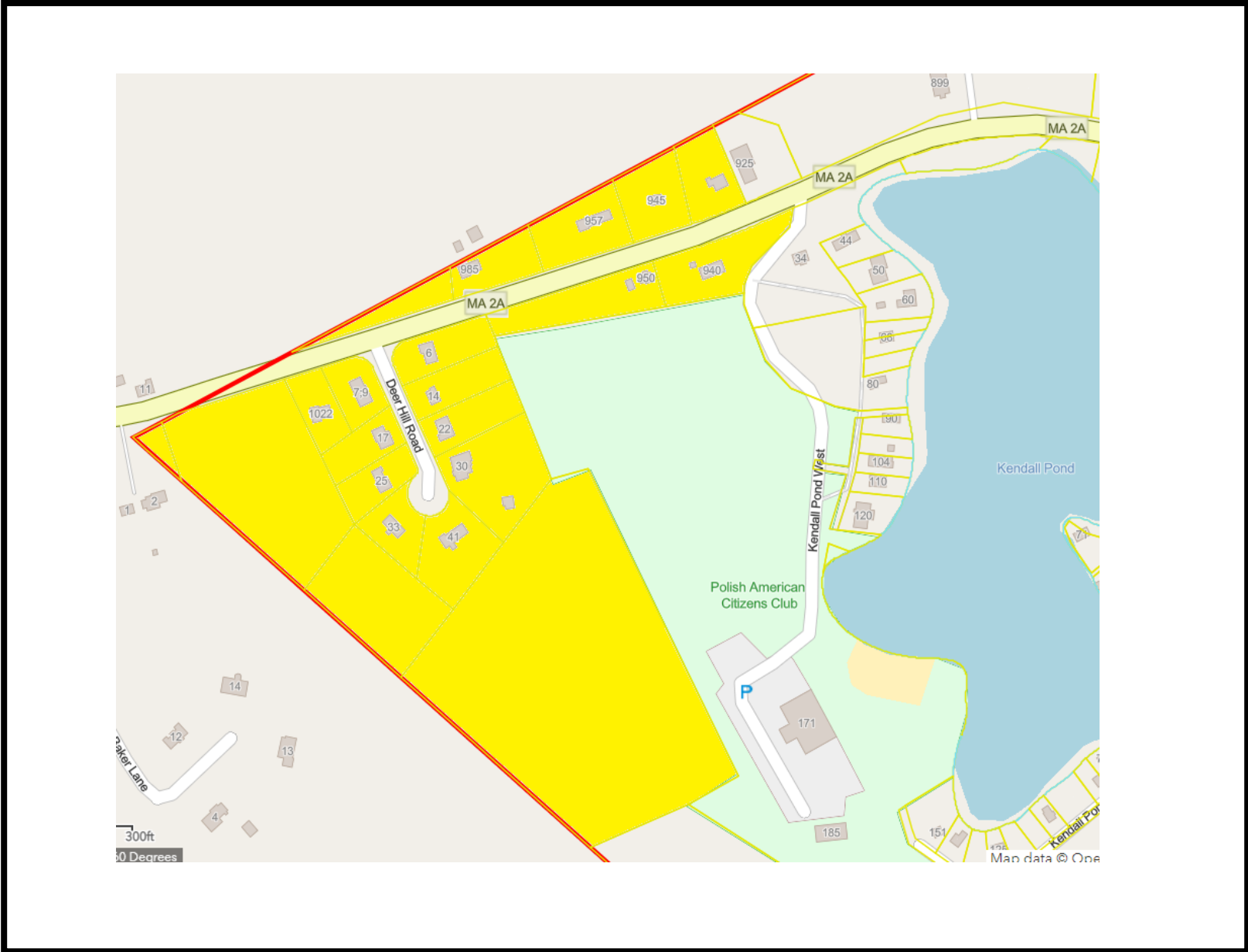
INDUSTRIAL 2 DISTRICT

RURAL RESIDENTIAL 2 DISTRICT

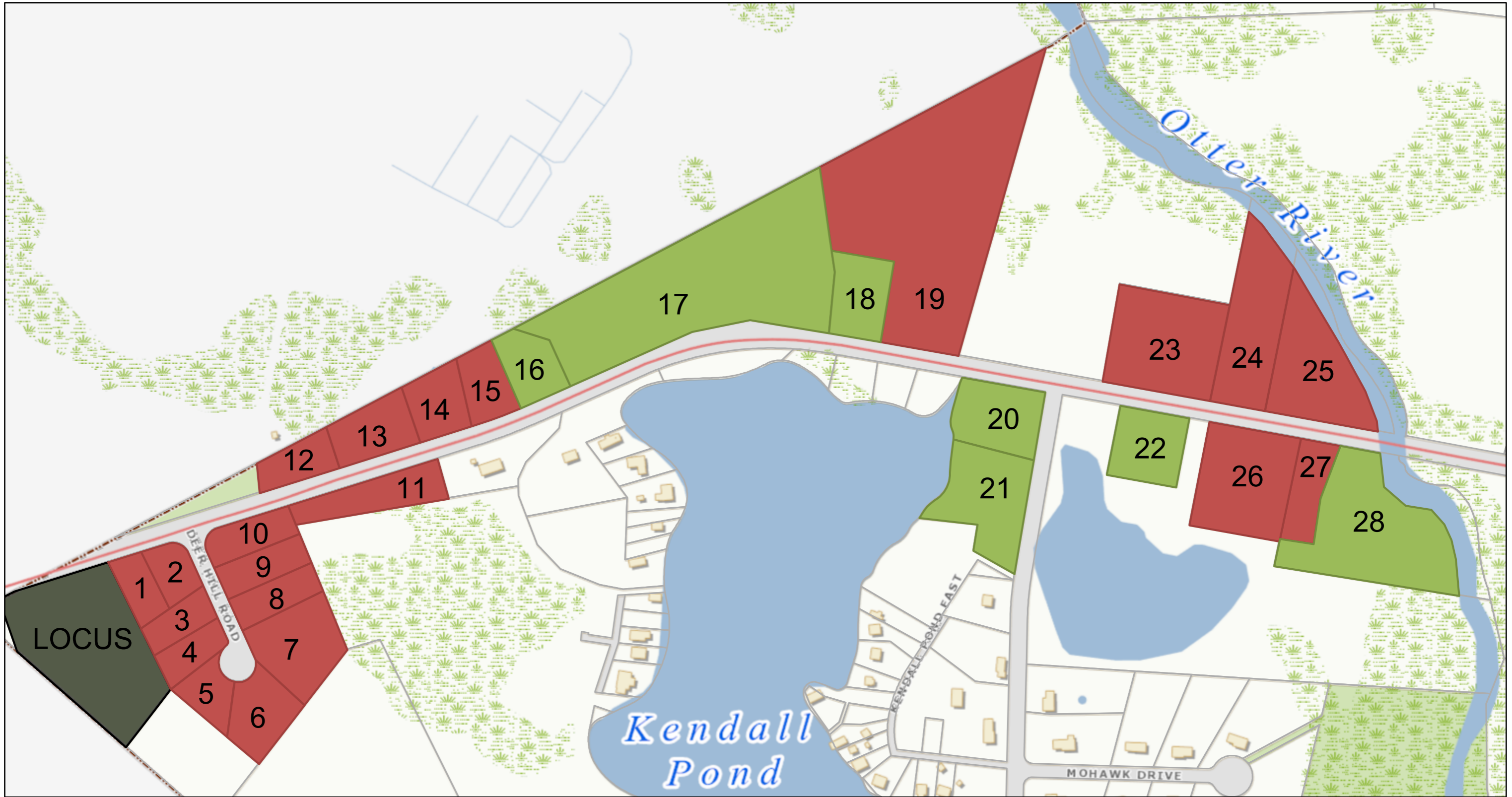


Proposed Zoning Map Amendment

Parcels to be designated as General Residential 3 Zoning District



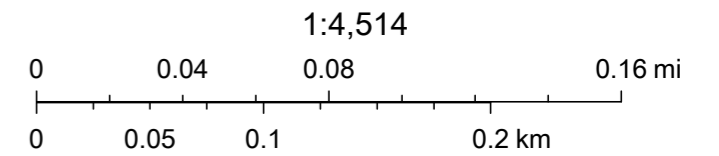
Gardner- Conformity Parcels



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Areas

- Override 1
- Override 2
- Override 3
- Parcels (2020)



City of Gardner GIS

TABLE OF NONCONFORMING USES				
Parcel No.	Address	Owner	Use	Conforming?
1	1022 W. Broadway	Charles Lemos	Single Family	NO
2	9 Deer Hill Road	Bryan & Nicole Keith	Single Family	NO
3	17 Deer Hill Road	Thomas & Dianne Lupaczyk	Single Family	NO
4	25 Deer Hill Road	Linda Daniels	Single Family	NO
5	33 Deer Hill Road	Becky Cooper-Glenz	Single Family	NO
6	41 Deer Hill Road	Cornerstone Church of the Assemblies of God	Rectory	NO
7	30 Deer Hill Road	Jeanne Kia	Single Family	NO
8	22 Deer Hill Road	Louise, Daniel, & Christopher Caissie	Single Family	NO
9	14 Deer Hill Road	Monique Aviles	Single Family	NO
10	6 Deer Hill Road	Thurston Silva	Single Family	NO
11	950 W. Broadway	Deborah G. Leabman Revocable Trust	Single Family	NO
12	985 W. Broadway	Joseph Kiarie	Single Family	NO
13	957 W. Broadway	Barbara & Lee Forgues	Single Family	NO
14	945 W. Broadway	Mark & Susan Harty	Single Family	NO
15	935 W. Broadway	N/A	Single Family?	NO
16	925 W. Broadway	Global Investments 1, Inc.	Office	YES
17	899 W. Broadway	City of Gardner	Animal Control	YES
18	871 W. Broadway	Christine Caron, Trustee	Gym	YES
19	855 W. Broadway	D & A Holdings, Inc.	Self Storage	NO
20	838 W. Broadway	Grove Street Realty Trust	Daycare	YES
21	23 Airport Road	Lithuanian Outing Assoc., Inc.	Fraternal Org.	YES
22	800 W. Broadway	Eric Hill	Auto Repair	YES
23	795 W. Broadway	Anthony Manca, Trustee	Truck Terminal	NO
24	771 W. Broadway	Anthony Manca, Trustee	Warehouse	NO
25	765 W. Broadway	Garrick Contract Carriers, Inc.	Truck Terminal	NO
26	766 W. Broadway	Charles Manca	Warehouse	NO
27	758 W. Broadway	Charles Bachelder	Three Family	NO
28	750 W. Broadway	City Electric Supply Company	Retail < 10,000 SF	YES

ON MAP: GREEN= CONFORMING; RED=NONCONFORMING



August 12, 2022

Joanne Tavano
Privateoversight, LLC
21 B West Hill Dr
Westminster, MA 01473

Re: Traffic Review
West Broadway Condos, Gardner, MA
Fuss & O'Neill Reference No. 20220691.A10

Dear Ms. Tavano,

Fuss & O'Neill, Inc. (F&O) has completed a traffic review for the proposed condominium development on West Broadway in the Town of Gardner, MA. The following sections are a summary of the traffic related findings.

Existing Traffic Conditions

A site visit was conducted on Tuesday, July 27, 2022, to observe the existing traffic conditions in the vicinity of the site. The observation was performed during the anticipated AM peak hours, between 8:15 AM and 9:15 AM. Over the course of this hour 265 vehicles were recorded, with 110 going westbound and 155 going eastbound. Photos 1 and 2 show the existing conditions at the site and depict the existing visibility in both roadway directions from the proposed driveway.



Photo 1: West Broadway at Proposed Driveway (looking east)

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August 12, 2022
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Photo 2: West Broadway at Proposed Driveway (looking west)

Speed data adjacent to the proposed site was gathered using radar. The 85th percentile of speeds during this one-hour interval are 43 mph westbound and 49 mph eastbound with a combined 85th percentile speed of 46 mph. The roadway posted speed limit is 40 mph at the Templeton town line.

Intersection sight distance (ISD) and stopping sight distance (SSD) were measured and evaluated at the proposed site driveway location in accordance with criteria set forth by the American Association of State Highway and Transportation Officials (AASHTO). Intersection sight distance accounts for the perception time and reaction time needed to identify an appropriate gap in oncoming traffic that allows the vehicle to safely turn onto a roadway and accelerate without undue speed differential conflicts with vehicles already on the roadway, measured using a line of sight across the corners of the intersection. The target used for sighting the proposed driveway was placed in the grassed area approximately 16 feet from the shoulder of the road to represent the location of the driver's eye.

Stopping sight distance ensures that vehicles will have sufficient visibility to safely stop for another stopped vehicle on the roadway particularly at an intersection where the situation is likely to occur, measured using a line of sight along the major roadway centerline. Stopping sight distance is generally considered the absolute minimum visibility criteria, while intersection sight distance is recommended where feasible and readily achievable.

The SSD on the westbound approach of West Broadway was measured as being greater than 900 feet. The road follows a near straight trajectory for over 900 feet heading towards the intersection



Joanne Tavano
 August 12, 2022
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with no visual obstructions. The recommended SSD was calculated to be 350 feet based on the prevailing operating speed of 46 mph on a 5% grade. The existing SSD meets the requirement.

The SSD on the eastbound approach of West Broadway was measured as 400 feet. The vertical and horizontal curvature of the roadway impede vision of the intersection. The recommended SSD was calculated to be 295 feet based on the prevailing operating speed of 46 mph on 2% grade. The existing SSD meets the requirement.

The ISD was measured for the westbound approach of West Broadway (looking east from proposed site). An available ISD of 525 feet was measured. The recommended ISD was calculated to be 510 feet based off *Case B1, Left Turn from stop on minor street*, which uses a time gap of 7.5 seconds for passenger cars. The obstruction was trees and vegetation along the south side of West Broadway. The recommended ISD was calculated using the prevailing operating speed of 46 mph. The available distance meets the recommended distance. Table 1 summarizes the sight distance analysis.

The ISD was measured for the eastbound approach of West Broadway (looking west from proposed site driveway). An available ISD of 444 feet was measured. The recommended ISD was calculated to be 440 feet based off *Case B2: Right Turn from stop on Minor Street* which uses a time gap of 6.5 seconds for passenger cars. The obstruction was the vertical curvature of West Broadway heading towards the intersection and the tree line that spans the southern portion of the West Broadway. The recommended ISD was calculated using the prevailing operating speed of 46 mph. The available distance meets the recommended distance. Table 1 summarizes the sight distance analysis.

TABLE 1 SIGHT DISTANCE MEASUREMENTS West Broadway Condominiums - West Broadway, Gardner, MA						
Location	Direction of Travel	Observed Speed	Stopping Sight Distance		Intersection Sight Distance	
			Recommended	Existing	Recommended	Existing
West Broadway at Proposed Driveway						
	Westbound	46 mph	350 ft	> 900 ft	510 ft	525 ft
	Eastbound	46 mph	385 ft	400 ft	440 ft	444 ft

Notes:

Source: American Association of State Highway and Transportation Officials (AASHTO). 2011. *A Policy on Geometric Design of Highways and Streets*



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Safety Analysis

State published vehicle crash history between 2018 and 2021, the most recent verified available years, was analyzed on West Broadway adjacent to the proposed site. Only one crash was reported over the 3-year period, indicating no predominant safety deficiency or concern.

Site Generated Traffic

The expected site generated traffic volume was calculated using existing empirical data from the Institute of Transportation Engineers (ITE) Trip Generation Web-based App. This publication is an industry-accepted resource for determining trip generation.

Trip generation for the proposed development was estimated based on a fully occupied facility. The land use chosen for this analysis is LUC 215: Single-Family Attached Housing as this category most closely matches the proposed use of the site. A total of 43 occupied dwelling units was used based on information from the applicant. Based on ITE Fitted Curve Equations, the proposed development is estimated to produce 25 trips during the weekday morning peak hour and 29 trips will be generated during the weekday afternoon peak hour. All of these trips will be new trips added to adjacent roadways. Table 2 presents the daily and peak hour trip generation estimates.

LUC: 215 - Single-Family Attached Housing (43 housing units)	Enter (vpd)	Exit (vpd)	Total (vpd)
AM Peak Hour of Generator	6	19	25
PM Peak Hour of Generator	18	11	29
Weekday 24-Hour	155	155	310

Recommendations

Fuss & O'Neill recommends installing standard 30"x30" W2-2 intersection advanced warning signs 175' in advance of the site driveway on the eastbound approach to inform drivers of the driveway location.





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Based on the field observations, site trip estimates and results relating to traffic safety, and with implementation of the recommended improvements, it is the professional opinion of Fuss & O'Neill, Inc. that the proposed West Broadway Condos will not have a significant impact to vehicular movements at the proposed driveway nor exacerbate any pre-existing safety concerns.

Sincerely,

Stephen J. Savaria, PE, PTOE
Senior Project Manager