

COMMONWEALTH OF MASSACHUSETTS
CITY OF GARDNER
ZONING BOARD OF APPEALS
DECISION

RECEIVED

NAME: C. Anthony Fruchtl, P.E. for Ayoub Engineering, Inc.
ADDRESS: 414 Benefit Street, Pawtucket, RI 02861

2014 MAR 20 PM 1 04

CITY CLERK'S OFFICE

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

264 Timpany Boulevard
Parcel ID #R17-11-24, R17-11-25, R17-11-26 and R17-12-1

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

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ON APPLICATION DATED December 17, 2013 FOR A Special Permit TO:
Operate/construct a motor vehicle – light service and restaurant with drive through at 264 Timpany Boulevard, Gardner, MA. Parcel ID #R17-11-24, R17-11-25, R17-11-26 and R17-12-1. Denied a building permit by the Building Commissioner because it does not comply with Section 4, #420 Nonconforming Uses and Structures, #423.3 Reconstruction after Catastrophe or Demolition, Subsection c., in Commercial 2 zoning district of the Gardner Zoning Ordinance.

The Gardner Zoning Board of Appeals at its March 13, 2014 meeting voted unanimously to grant with conditions a Special Permit under Section 423.3 to Ayoub Engineering, agent for Nouria Energy Corp, to operate/construct a motor vehicle – light service and restaurant with drive through at 264 Timpany Boulevard, Gardner, MA.

The Public Hearing was held on January 21, 2014. The Board being familiar with the site did not see the need for a site visit.

The Applicant owns and/or operates the existing self-service Shell station located at the intersection of Timpany Boulevard and West Broadway. The Applicant proposes the complete replacement of the facility, to include the razing of the existing building on the property and construction of a new 3,050 square foot building with five fuel pumps and 26'x120' canopy. Also proposed is a drive through window. An existing car wash bay is to be removed. As part of the project, an abutting single family home, that is currently vacant, is to be razed concurrent with the razing of the existing store. The underground storage tanks are proposed to be replaced as part of this project as well. The renovated station is proposed to be operated 24/7. While the new building will not be located exactly where the old building is located, the locations are similar and the new building and site layout is complementary to the site in general.

The convenience store will sell the typical items such as snacks, cold drinks, coffee, and periodicals. It is proposed that it will include a small restaurant counter and window with incorporated drive through service. The project includes 14 parking spaces. The drive through will accommodate a queue of 11 cars. The project includes a screened area for the trash dumpster, improved storm water management facilities to manage on-site drainage.

The Plan of Record is plan entitled "Site Improvement & Building Plans", prepared for Nouria Energy Corporation, prepared by Ayoub Engineering, dated 12/20/2013, latest revision 1/23/2014.

At the Public Hearing, the Applicant addressed the specific criteria for a Special Permit as delineated in section 1182 pf the Ordinance and are as summarized below:

1. The proposed commercial use is compatible with the Commercial 2 use of the neighborhood. The proposal is to replace an existing self-serve fueling station with a renovated and updated station.
2. Design changes to the site including the orientation of the fuel pumps improve the on-site vehicular movement of traffic. The driveway access to the site remains relatively unchanged. The Board through review of the project raised a concern over traffic exiting the site form the southernmost exit onto Timpany Boulevard. The Applicant adequately addressed his concern and the Board affirms this concern in a condition for the granting of this Special Permit.
3. The project includes 14 off street parking spaces which exceeds the amount required by Ordinance. A concern was raised by the Board regarding the loading and unloading of goods delivering stock to the convenience store or restaurant. While no dedicated loading or unloading zone is delineated, adequate areas exist on the site for such deliveries. It is understood that if delivery trucks take up parking spaces, customers will likely go elsewhere. The Board also considered the number of parking spaces and whether indoor seating should be restricted. The Applicant, at this time, did not have a tenant for the restaurant, therefore did not have a commitment for the need for indoor seating. The proposed building is quite small and any seating would be minimal. Adequate queue exists for vehicles awaiting service in the drive-thru. The Board recognizes that if the site is too difficult for customers, the customers will go elsewhere as there are other choices in the area.
4. As this facility is an existing self-serve gas station with convenience store and car wash, the property is already connected to City water and sewer. The storm drain system will see improved runoff as it will be reduced by infiltration basins on-site. Also, currently untreated storm water will after renovation to the station will undergo treatment for oil, grease and sediment prior to discharge to the City's storm water system. There will also be a dumpster on site for refuse that will be appropriately enclosed.
5. Once the construction is complete, no noise, odor, dust, vibration, lighting than what is currently at the site will exist. The Board understands that during construction, noise associated with construction will exist.
6. The proposal will not be an inconvenience to abutters, vehicles, or pedestrians.
7. The continued use of a commercial property and improvement of a commercial property is in harmony with the general purpose and intent of the Ordinance.
8. The reconstruction of the fueling station will not have a detrimental impact on city services, tax base, or employment opportunities.
9. The improvement and upgrade of commercial property in a Commercial 2 district should be consistent with the City's Master Plan.

This Special Permit is granted subject to the following conditions:

- Hours of Construction:
 - M-F 7am – 6pm
 - Sat 8am – 3pm
 - No Work on Sundays & Holidays
 - Work outside of these hours permitted with the prior approval of the Building Commissioner
- The stockpiled snow on the northern boundary line to be removed from the property when the top of the pile exceeds the height of the top of the fence, which shall be kept in good repair.
- All traffic exiting the property from the southernmost driveway onto Timpany Boulevard (Route 68) must right turn only. Signage (R3-2) to be installed and maintained as shown on page C-1 on above reference plan of record.
- All landscaping within line of sight of driveway entrances to be maintained at a height not to exceed 3 feet so as to not impact visibility.
- Granite curbing to be removed/reset as necessary along sidewalk that is to be replaced to provide level and consistent curb line.

14-01-7

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 20th DAY OF March, 2014

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