

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
**DECISION**

RECEIVED  
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CITY CLERK'S OFFICE  
GARDNER, MA

NAME: Glen Maki  
Specialty Wholesale Supply Co.  
ADDRESS: 101 Linus Allain Avenue  
Gardner, MA 01440

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

**Linus Allain Avenue**  
**Parcel ID W17-10-28**

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS: Book 4473, Page 388.

ON APPLICATION DATED June 9, 2015 for a **SPECIAL PERMIT** to: operate an earth removal operation at Linus Allain Avenue, Gardner, MA, parcel ID W17-10-28, located in the Industrial 2 (IND 2) Zoning District, is denied as it does not comply with Chapter 675-1070, Earth moving and earth alteration of the City Code of Gardner. Section 675, Attachment 1, the Table of Uses, line 28 provides direction to Section 675-1070 which states that the requested use requires a Special Permit issued by the Gardner Zoning Board of Appeals.

The Gardner Zoning Board of Appeals at its October 8, 2015 meeting voted unanimously to grant, with conditions, a Special Permit under Section 1070 to Glen Maki to operate an earth removal operation at Linus Allain Avenue, Gardner, MA.

The Public Hearing was held on July 21, 2015 and continued to the August and September meetings of the Board. A site visit was held on July 25, 2015.

The Applicant proposes to perform earth removal operations on property that is currently vacant. The removal is necessary to prepare the land for the proposed construction of a new building to house a manufacturing facility. The Applicant proposes a long term phased removal of the material from the property. A total of approximately 40,000 cubic yards is proposed to be disturbed on the site with approximately 30,000 cubic yards to be hauled away from the site.

The Applicant was granted a Variance by the Board for the performance of this activity on September 15, 2015. The Variance was for the Applicant to perform the activity for 5 years with a possible extension.

The plan of record for this work is titled "Site Plan of Land in Gardner, Massachusetts, located at Linus Allain Avenue", prepared for Owner and Applicant Specialty Wholesale Supply Corp., dated October 23, 2009 and prepared by S.J. Mullaney Engineering, Inc., Leominster MA (3 sheets) and Drainage Areas Site Plan of Land in Gardner, Massachusetts, located at Linus Allain Avenue", prepared for Owner and Applicant Specialty Wholesale Supply Corp., dated October 23, 2009 and prepared by S.J. Mullaney Engineering, Inc., Leominster MA (2 sheets) (sheet 2 of 2 supplied to the Board).

At the Public Hearing, the applicant addressed the specific criteria for a Special Permit as outlined in Section 675-1170 of the City Code and are as summarized below:

1. The proposed use is compatible with the Industrial 2 use of the neighborhood. The property is currently vacant and contiguous with other property owned by the Applicant. The earth excavation was demonstrated as necessary to alter the terrain of the lot to place a building on the property.
2. The proposed earth excavation provides convenient and safe movement of vehicular traffic from the site. The Applicant indicated that trucks leaving the site would follow a posted hauling route to direct all traffic right from Linus Allain Avenue onto Betty Spring Road to Route 140. There is a gate at the property that will restrict errant access to the property.
3. As all work is to take place within the confines of the private property, with the work involving the clearing of the site for development, adequate space will exist on the site for safe parking and maneuvering of equipment at the site.
4. Adequate facilities for sewerage, refuse, etc. is not applicable to this application as the work is the removal of earthen materials. The Applicant has obtained the necessary permits from the Conservation Commission. Stormwater maintenance issues are addressed in the above referenced plan and in the approved stormwater pollution prevention plan.
5. The proposed earth alteration activity may be a nuisance with regard to noise to abutters, but the zone is Industrial. The hours of work are set in the granting of the Variance.
6. The proposal will not be an inconvenience or hazard to abutters, vehicles or pedestrians. The Board in granting of the Variance required that the Applicant consult with the bus company, and relevant school officials to coordinate hauling times from the site so as not to conflict with those times that the school busses are leaving or returning.
7. Earth alteration is permissible in Industrial 2 District and is in harmony with the Code.
8. Earth alteration to make a property more usable to a property owner whereby making the property buildable will not have a detrimental impact on city services, tax base, or employment opportunities.
9. The improvement and upgrade of one property in an Industrial 2 district should be consistent with the City's Master Plan.

In granting of this Special Permit, the Board considered the three criteria set forth in section 675-1070(D) of the Gardner City Code. The criteria are as follows:

1. The Board considered the place from which the proposed material was to be removed. The work is to make the property buildable for the eventual construction of a building.
2. The Board considered the general character of the neighborhood surrounding the property. The immediate abutters are industrial buildings and the railroad.
3. The Board considered the effect of the removed material on the neighborhood. The Applicant has addressed the hauling route for trucks leaving the site and also required to consultation with the most active abutter (bus company) to coordinate removal activities with the coming and goings of the school busses.

The Special Permit is granted with the following conditions:

- The Board considered the time frame for the removal of the material. The Applicant sought and was granted a Variance to remove the material over a five year period with the option of an extension.
- At the site visit, the Board noted that the topsoil on the property is limited. The landscaping specification of the above referenced plan addresses the placement of topsoil (4" thick) on disturbed areas and when the topsoil is to be placed and seeded with a suitable cover crop and maintained until area is stabilized and approved by the Building Commissioner.
- The site plan indicates applicant will maintain only one entrance onto Linus Allain Avenue.
- Best Management Practices for erosion control to be employed in compliance with the approved referenced plan.
- Site grading and stabilization as indicated on the above referenced plan to be followed so that no gradients of disturbed earth shall be steeper than 2½ horizontal to 1 vertical.
- The final grading of the site to be in compliance with the above referenced plan of record.

- The Applicant to undertake a phased removal as proposed and remediate and stabilize those areas disturbed by the previous removal activities as delineated in the approved referenced plan.
- The hours of operation to be as outlined in a condition of the granting of the Variance. The hours are as follows:

Hours of Operation for hauling

- M-F 7AM to 6PM
- Sat 7AM to noon
- No work on Sundays and legal holidays

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 14<sup>th</sup> DAY OF OCTOBER 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 OCTOBER 14, 2015 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 9, 2015  
Dated

Alan L. Agnelli  
Alan L. Agnelli, City Clerk

