

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
DECISION

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2015 MAR 30 PM 12:40

CITY CLERK'S OFFICE  
GARDNER, MA

NAME: Juliano Fernandes  
ADDRESS: 305 Leominster-Shirley Road  
Lunenburg, MA 01462

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

115 Coburn Avenue  
Parcel ID M22-17-39

IN THE CITY OF GARDNER, THE PREMISES BEING MORE PARTICULARLY DESCRIBED IN A DEED DULY RECORDED IN WORCESTER DISTRICT REGISTRY OF DEEDS: **Book 52818, Page 162.**

ON APPLICATION DATED January 21, 2015 for a SPECIAL PERMIT to: perform earth alterations to create a level graded area at 115 Coburn Avenue, Gardner, MA Parcel ID M22-17-39, located in the Industrial 1 (IND1) Zoning District, is denied as it does not comply with Table of Uses, Description of Use #28 – Earthmoving and alterations, this line refers to Chapter 675, Article 1070: Earthmoving and earth alterations, of the City Code of Gardner. Article 1070 of the Code states that your requested use requires a “Special Permit” (SP) issued by the Gardner Zoning Board of Appeals.

The Gardner Zoning Board of Appeals at its March 17, 2015 meeting voted unanimously to grant, with conditions, a Special Permit under Section 1070 to Juliano Fernandes to perform earth alterations to create a level graded area at 115 Coburn Avenue, Gardner, MA.

The Public Hearing was held on February 17, 2015. A site visit was held on March 7, 2015 at which time the Board members viewed the property and the proposed project.

The Applicant purchased 115 Coburn Avenue for his manufacturing business and to facilitate the materials handling of his finished product and desires to level an area of approximately 12,000 square feet by excavating approximately 450 cubic yards of material between the building and Coburn Avenue. The Applicant stated that no material is being removed from the site. It will be used to provide and improve site contour to complement and improve the efficiency of his business. The excavated material would be relocated to the south of the building to create a level area for additional storage for finished product. The applicant manufactures building panels. A retaining wall between the building and Coburn Avenue has been constructed. A Building Permit had been issued for this work and was subsequently rescinded when it was realized that a Special Permit was required.

The plan of record for this work is titled “Existing Conditions Site Plan, prepared for Nine Green Realty, INC., for land at 115 Coburn Avenue, Gardner, MA, December 19, 2014, Szoc Surveyors, Updated 1/14/2015 to show new retaining wall and proposed grading changes.”

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 1 use of the neighborhood. The property is a factory. The earth excavation was demonstrated as necessary to facilitate to materials handling of the finished building panels.

2. The proposed earth excavation includes areas for both efficient materials handling and proposed 12 parking spaces on the north side of the property. All work is to take place within the confines of the private property.
3. The proposed earth excavation on the north side of the property includes an area for 12 parking spaces. The application is for earth moving and alterations. Once complete, the activity will not require additional parking, therefore is not applicable.
4. Adequate facilities for sewerage, refuse, etc. is not applicable to this application. The Board does have a concern with regard to drainage off of the area to be filled and as a condition of the granting of this Special Permit addresses this concern.
5. The earth alteration activity may be a nuisance with regard to noise to the residential abutters, and the Board addresses this as a condition in the granting of this Special Permit.
6. The proposal will not be an inconvenience or hazard to abutters, vehicles or pedestrians as all the work will be undertaken on the applicant's property.
7. Earth Alteration which is incidental to the grading of a property to make a property usable to its owner should be in harmony with the intent of the Ordinance
8. Earth alteration to make a property more usable to a property owner whereby is making the property more viable as a business 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 1 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. As the work had already been started by the issuance of a Building Permit and later rescission of that Permit, the Board was able to clearly see the limits of the removal. The work is to make the area around the building more usable for processes within the building,
2. The Board considered the general character of the neighborhood surrounding the factory. The immediate abutters are commercial and industrial buildings with residential dwellings being the abutters to the abutters,
3. The Board considered the effect of the removed material on the neighborhood. As the excavation and material is to be redistributed on the applicant's property, there is no effect on the neighborhood. None of the excavated material is to be hauled off-site.

The Special Permit is granted with the following conditions:

- The earth alterations and filling shall be completed within one (1) year from the date of issuance of this Special Permit.
- A siltation fence shall be installed as shown on the referenced plan and approved by the Building Commissioner and City Engineer prior to the commencement of any work approved under this Special Permit.
- While earth excavation, transportation and placement is being undertaken, all appropriate safety protocols shall be followed. All equipment shall have appropriate back-up alarms. All personnel in the work area shall wear appropriate ANSI Class 3 vests and hard hats. Temporary construction tape or other means shall be placed to prevent conflicts between heavy equipment and factory workers. Excavation contractor shall submit work zone safety plan to the Building Commissioner.
- In areas of placed fill, area to be graded so that finish grade no steeper than 2 ½ horizontal to one vertical
- All sloped areas to be stabilized to prevent erosion. This includes areas where fill is placed and slope above retaining wall.

- Areas not used by the applicant for finished product storage and disturbed by construction shall be stabilized by a layer of arable topsoil planted with a suitable groundcover so as to prevent erosion and maintained until the area is stabilized and approved by the Building Commissioner.
- The hours of operation for the earth alteration are as follows:
  - Monday-Friday 7-5
  - Saturday 8-1
  - No Sundays or holidays
- Stockade fence along Coburn Avenue to remain in good repair.

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