

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

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2013 SEP 23 PM 2 07  
CITY CLERK'S OFFICE  
GARDNER MA

NAME: The Stop and Shop Supermarket Company, LLC  
ADDRESS: 1385 Hancock Street, Quincy, MA 02169

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

**242 West Broadway**

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

**BOOK 26522 PAGE 199**

ON APPLICATION DATED May 8, 2013 FOR A **Special Permit** TO:  
Operate and construct a self-service fuel station at 242 West Broadway (current street number) (Parcel ID # R17-16-10), Gardner, MA. (Denied a building permit by the Building Commissioner because it does not comply with Section 4, Use Regulations, 415 Table of Uses, Description of Use #40 Motor Vehicle Light Service in Commercial 2 Zoning District of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its September 9, 2013 meeting voted to not grant a Special Permit to Stop & Shop Supermarket, Co. LLC. to operate and construct a self-service fuel station at 242 West Broadway (current street number) (Parcel ID # R17-16-10), Gardner, MA.

The application for Special Permit was filed with the office of the City Clerk on May 8, 2013.

Public Hearing held on June 18, 2013. A site visit was held on July 8, 2013.

The Applicant proposed the construction of a self-service fueling station with future convenience store at 242 West Broadway, the present site of a restaurant. The existing building would be razed and new facility would have been constructed as a gas station with an area reserved as a future convenience store. The Station would be service by 2 underground fuel storage tanks meeting current fuel storage requirements. A canopy would be constructed over the fuel pumps to provide shelter for customers utilizing the station.

The property in question is bounded by Dyer Street to the west, West Broadway to the north, a residential multi-family property to the east and commercial plaza to the south.

At the Public Hearing, the Applicants and their representatives addressed the nine conditions outlined in Section 1182 of the Ordinance and are summarized below:

The Applicant asserted that the proposal is compatible with the use in the neighborhood. The area is zoned Commercial 2. The neighborhood is mixed use commercial to the west and south and residential to the east.

The Applicant asserted that the proposal would provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements. The Applicant presented a truck delivery route traffic study to determine feasibility of fuel deliveries utilizing Dyer Street as the preferred route for truck deliveries. Additionally, marginal sight distance issues resulting from the location of the proposed driveway entrances was addressed.

The project provided parking associated with the operation of the proposed use, including area for delivery truck deliveries.

The project proposed adequate facilities for sewerage, refuse and waste products and surface drainage. The Applicant asserted that the project would not constitute a nuisance due to air or water pollution, erosion, flood, noise, odor, dust, vibrations, lights, or visually offensive structures or site features. Fuel Delivery was expected to take place during normal working hours.

The Applicant asserted that the project would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians.

The Applicant asserted that the project is in harmony with the general purpose and intent of the Ordinance. West of Dyer Street there is an auto parts store, and self-service fueling station with convenience store. To the south of this property are a muffler repair shop and the commercial shopping plaza.

The Applicant asserts that the change in use from a restaurant to a fuel station is generally consistent with the commercial use of the area and the master [sic] plans with the city.

By a vote of the Board, the Special Permit is not granted. The Special Permit denial by the Board was based on the fact that sufficient information and evidence was not submitted that assured the proposal would provide convenient and safe vehicular movement within the site and adjacent streets/area. The Board was also concerned with the use of Dyer Street; its intersection with Timpany Blvd.; its grade especially in the winter and the sight distance for traffic exiting onto West Broadway. The Board was informed that the sight distance fell below standards and it was to be mitigated by the installation of signage. This information was not considered to be of sufficient mitigation to resolve the issue.

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 23rd DAY OF September, 2013

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

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 SEPTEMBER 23, 2013 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.

OCTOBER 15, 2013  
Dated

Alan L. Agnelli  
Alan L. Agnelli, City Clerk

