

COMMONWEALTH OF MASSACHUSETTS  
CITY OF GARDNER  
ZONING BOARD OF APPEALS  
DECISION

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CITY CLERK'S OFFICE  
GARDNER MA

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

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:

<u>BOOK</u>	<u>PAGE</u>
23984	317
43203	217
42103	285

ON APPLICATION DATED December 17, 2013 FOR A **Variance** 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 7, #770 Design Requirements for Parking Lots and Facilities, Subsection 771, #3 and #5 and Subsection 772, #3, in Commercial 2 zoning district of the Gardner Zoning Ordinance.)

The Gardner Zoning Board of Appeals at its February 18, 2014 meeting voted unanimously to grant with condition a Variance 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 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.

The Applicant proposes snow storage on the northerly landscaped island adjacent to a 6 foot high fence that is to be replaced as part of this project. There is also snow storage locate to the rare of the property. The Applicant, when questioned by the Board, indicated that accumulated snow storage would be removed if it became a problem for the operation of the store and that the store manager with consultation with upper management would make the appropriate decision. The Board addresses a concern over snow storage on the northerly border closest to abutters as a condition to the granting of this Variance.

In the reconstruction of the property, the Applicant has provided for 14 parking spaces parking spaces. For the spaces along West Broadway, dense yews are proposed to be planted with a height of 3-4 feet which will provide adequate screening of headlights onto West Broadway. The reconstruction also is utilizing existing driveways to access the new store.

The granting of the Variance does not create or aggravate a safety hazard.

The granting of the Variance does derogate from the intent of the Zoning Ordinance in that the proposed snow storage area is on a landscape buffer, but it is separated from the direct abutter by a solid fence and as a condition of granting this Variance addresses the stockpiling of snow in this location.

In the issuance of this Variance, a hardship related to shape, topography or soil conditions of the property is a not applicable in this case. A literal interpretation of the Ordinance would be a detriment to this project. The Applicant is expending significant dollars to improve the property and to also remove a distressed property on West Broadway to overall betterment of the area.

This Variance is granted subject to the following condition:

- 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.

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 26th DAY OF February, 2014

Raymond F. LaFond dx     Randall W. Heglin dx     Michael D. Gerry dx  
 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