

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

RECEIVED

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NAME: New England Power Company, dba National Grid
c/o Bess B. Gorman
National Grid USA Service Company, Inc.

CITY CLERK'S OFFICE
GARDNER MA

ADDRESS: 40 Sylvan Road
Waltham, MA 02451

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

301 Park Street (aka 130 Crystal Lake Drive)

Parcel ID #M27-5-14, M27-5-6, M27-5-5, M27-15-29

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

BOOK 2162 PAGE 277

ON APPLICATION DATED August 28, 2013 FOR A **Special Permit** TO:

Demolition of a pre-existing, non-conforming structure on a pre-existing, non-conforming lot and relocation of the new structure not on the original footprint at 301 Park Street (aka 130 Crystal Lake Drive), Gardner, MA. Parcel ID M27-5-14 (M27-5-6, M27-5-5, M27-15-29). Denied a building permit by the Building Commissioner as per Section 4, Use Regulations, 420 Nonconforming Uses and Structures, 423.3 Reconstruction after Catastrophe or Demolition, as requiring a Special Permit before demolition in Rural Residential 2 Zoning District of the Gardner Zoning Ordinance.

The Gardner Zoning Board of Appeals at its December 31, 2013 meeting voted unanimously to grant with conditions a Special Permit to New England Power Company dba National Grid for demolition a pre-existing, non-conforming structure on a pre-existing, non-conforming lot and relocation of the new structure not on the original footprint at 301 Park Street (aka 130 Crystal Lake Drive), Gardner, MA.

The application for Special Permit was filed with the office of the City Clerk on August 28, 2013.

Public Hearing held on September 17, 2013 and October 22, 2013. A site visit was held on September 23, 2013.

The Applicant, New England Power Company dba National Grid filed a timely appeal with the Commonwealth of Massachusetts Land Court appealing certain conditions set forth in the Special Permit dated December 31, 2013. Upon motion of New England Power Company dba National Grid and the City of Gardner the matter was remanded to the Zoning Board of Appeals by Order of Commonwealth of Massachusetts Land Court, Docket Number 14 MISC 481375 – New England Power Company, doing business as National Grid v. Zoning Board of the City of Gardner, et al. (RBF) on March 18, 2014 in order to consider certain amendments to this Special Permit. All amended conditions are labeled as such. All other conditions and findings remain as originally decided.

A Public Hearing to consider the proposed Amendments to this Special Permit was held on Tuesday, April 15, 2014.

On Monday, April 28, 2014, a public meeting was held to render a decision on the proposed Amendments during which the members of the Gardner Zoning Board of Appeals voted unanimously to approve the proposed Amendments.

The Applicant, New England Power dba National Grid, has identified the need to construct a new substation to replace the aging Park Street Substation, which was constructed in the 1920's. The Park Street Station is located on the

shores of the Crystal Lake Reservoir, Gardner's primary drinking water supply. The property, at the time the application was filed, was owned by the City of Gardner and was part of land associated with the adjacent Crystal Lake Cemetery.

The existing property consists of a 2 story maintenance building, a temporary storage trailer, 2 concrete pads, approximately 4,385 SF of bituminous pavement and a gravel driveway. The proposed work would demolish the existing structures on the property and construct a 24' by 60' six feeder 13.8 kV metal clad switch gear building/control house with two 69/13.8 kV transformers and associated foundations and appurtenant underground conduits between equipment. The substation would be surrounded by six (6) foot tall fence topped with barbed wire.

The substation is to be located to the rear of 297 Park Street with driveway access from Park Street. The existing overhead high tension wires from the new substation southerly to the existing station adjacent to the Greenwood Pool on the Shore of Crystal Lake are to be removed. Power from the new substation is to be run up Park Street underground to the distribution network.

This site was chosen as a viable location for a substation due to its proximity to existing infrastructure. When pressed by the Board if other locations had been explored, the Applicant indicated that, yes, other locations had been evaluated and deemed technically infeasible due to proximity to the existing grid and other factors.

To facilitate placement of the substation, the project necessitates demolition of the existing maintenance shed and construction of a new building (control/switch gear building) in a different location which requires a Special Permit.

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 proposal is compatible with the use in the neighborhood. The area is zoned Rural Residential I. The Electric Utility has a statutory obligation to provide safe and reliable electric service to its customers, including the residents and business of Gardner. The proposed relocation of the substation away from the shores of the City's primary drinking water supply is desirable. The proposed location did meet with opposition from abutters related to concerns about alleged adverse effects of property values, visual and aesthetic concerns, noise, and electromagnetic force concerns.

The Applicant stated in their application New England Power is "committed to mitigating potential adverse visual impacts from the Substation". The Board, as a condition for the granting of this this Special Permit will hold New England Power to this statement.

To address the potential for noise from the substation, an audible survey was completed. Noise from the substation was estimated to be below ambient noise levels at the property line.

The Board was told that the Electromagnetic Force impacts are expected to be less than the existing overhead high tension lines that currently traverse the rear of abutting properties.

With regard to abutter property values, the Board was provided with no written or comparable evidence pro or con therefore offers no opinion.

The proposal will provide convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets, properties and improvements. Aside from the initial construction of the facility, the project does not require vehicular movement within the site aside from infrequent operations and maintenance visits. The substation is an unmanned facility and will maintain parking only for the occasional maintenance vehicle. The area will be secured with a perimeter fence.

The substation will be an unmanned facility and will maintain parking only for the occasional maintenance vehicle. No other parking requirements are required.

The project as proposed will contain adequate facilities for sewerage, refuse and waste products and surface drainage. The substation will have adequate and appropriate facilities and utilities for its proper operation. It will not create an additional demand on any public utilities or services because it is unmanned. The substation will not generate sewerage, refuse or other waste products, or create any measurable additional surface and groundwater runoff from the site. The substation and driveway were specifically designed to avoid creating additional runoff. A General Order of Conditions has been issued by the Gardner Conservation Commission.

The Applicant indicated and the Board generally concurs that the proposal will not constitute a nuisance due to air or water pollution, erosion, flood, noise, odor, dust, vibrations, lights, or visually offensive structures or site features. The Board recognizes that noise from the construction phase will exist. As the substation abuts a residential neighborhood, as a condition for the granting of this Special Permit, the board sets hours for construction. The landscaping plan that the Applicant has presented will, the Board believes, greatly mitigate the visual impact of the substation to the abutters. As a condition to the granting of this Special Permit, the Board will assess the landscaping effectiveness.

The project shall not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians. The Board recognized that during construction, construction vehicle traffic and noise will impact abutters. Once completed, the substation will be enclosed within a protective fence to keep trespassers out of the station.

The construction of the substation would have no significant impact on City services, tax base or employment opportunities. It will neither create nor have a detrimental effect.

The construction of an electrical substation shall be in harmony with the general purpose and intent of the Ordinance as this is considered an essential service within the Ordinance. Additionally, the removal of a substation constructed in the 1920's and located on the shore of the City's primary drinking water supply should be a priority. Several years ago, there was a leak of a transformer at the substation which resulted in contaminated soils impacting the reservoir and resulting in a hazardous waste cleanup issue. This minor leak was a harbinger of a potentially much larger hazard that exists.

The Construction or upgrade of an electric substation to provide dependable and reliable electrical service should be part of the City's Master Plan.

A Special Permit for the demolition of the existing Maintenance Shed is granted with the following precedent Special Permit conditions issued for the construction of the essential services substation construction:

- New England Power (National Grid) shall obtain clear title to city-owned property prior to issuance of permit by Building Commissioner.
- Amended Condition: Hours of Construction:
 - Monday-Friday 7AM-5PM
 - Any work outside these hours must be previously approved by the Building Commissioner.
 - No work on Sat, Sun, Holidays without prior approval of Building Commissioner
- Control Building to be painted complimentary color and maintained as such.
- Drainage swale – reestablish and maintain swale from detention basin outlet to culvert under old rail bed to provide positive drainage
- Amended Condition: The Company shall construct a vegetative barrier on the south side of the access drive that provides adequate screening (within the parameters allowed in the Gardner Conservation Commission Order of Condition) to residents of Park Street in accordance with the Company's Landscape Plan. The Board will conduct a review of the screening provided post-construction and may require the Company to install additional screening to further mitigate visual impacts.
- ZBA to inspect final landscaping and other screening techniques at completion and reserves the right to require additional screening for cemetery and Park Street abutters; including but not limited to additional plantings, raising or enlarging of embankments and berms or other features.
- New England Power (National Grid) to supply landscaping maintenance plan to Building Commissioner for approval. Plan to include frequency of cutting and all facets of maintenance.
- Amended Condition: Once the new substation has been energized, tested, capable of serving load and cutovers have occurred allowing the existing substation to be de-energized("Cutover Date"), New England Power d/b/a National Grid (the "Company") shall commence removal of existing above-ground infrastructure that is to be discontinued, including the substation, wires and poles from the access driveway southerly to the Crystal Lake substation. The Company will prioritize the removal of the transmission structures outside of the substation that run along Crystal Lake and the backyards of residences and will have those removed within 12 months of the Cutover Date. The Company will have all the remaining aboveground infrastructure removed within 24 months from the Cutover date, with the exception of the one foundation for the structure in Crystal Lake that is adjacent to the dike which will remain in place. The Company shall require that its construction contractor responsible for removal provide a performance bond to the Company in the event that the Contractor does not remove the existing above-ground infrastructure in accordance with the timeframes set forth herein.

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 AMENDED DECISION HAS THIS DAY BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK, CITY OF GARDNER:

CERTIFIED THIS 30th DAY OF April, 2014

Randall W. Heglin *Michael D. Gerry* *Anthony J. Asmal*
Randall W. Heglin, Chairman Pro Tem Michael D. Gerry, Clerk Anthony J. Asmal, Third Member

I, Alan L. Agnelli, City Clerk, City of Gardner, hereby certify the attached amended 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