



Setti D. Warren
Mayor

City of Newton, Massachusetts
Department of Planning and Development
1000 Commonwealth Avenue Newton, Massachusetts 02459

Telephone
(617) 796-1120
Telefax
(617) 796-1142
TDD/TTY
(617) 796-1089
www.newtonma.gov

James Freas
Acting Director

ZONING REVIEW MEMORANDUM

Date: December 3, 2014

To: John Lojek, Commissioner of Inspectional Services

From: Jane Santosuosso, Chief Zoning Code Official
Alexandra Ananth, Chief Planner for Current Planning

Cc: Stephen J. Buchbinder, Attorney for the applicant
BNTT, Inc, Applicant
James Freas, Acting Director of Planning and Development
Ouida Young, Associate City Solicitor

RE: Request to amend Board Orders #278-07, 11-93 and #278-07 to extend a nonconforming gas station, to extend the self-service gas sales and to modify existing signage

RECEIVED
Newton City Clerk
2014 DEC -5 AM 10:39
David A. Olson, CMC
Newton, MA 02459

Applicant: BNTT, Inc	
Site: 979 Watertown Street	SBL: 31016 0015
Zoning: BU1	Lot Area: 17,376 square feet
Current use: Autobody service and gas sales	Proposed use: Self-serve gas sales and convenience store

BACKGROUND:

The property at 979 Watertown Street is comprised of 17,376 square feet, and is improved with an automotive service center with gas sales. The existing service station has been in use since 1920, when it was constructed with a building permit, prior to the enactment of zoning in Newton. Gas and service stations uses are not permitted by right or by special permit in the Business 1 District, thus the uses are nonconforming.

The applicant received a special permit Board Order #278-07 in 2007 to allow for "expanded snack sales" on the property, accessory to the gas sales and service station. The applicant now proposes to terminate the nonconforming auto service and repair uses on site and to expand snack sales, utilizing the space taken by the service bays as a convenience store. The snack sales were permitted as accessory to the nonconforming uses, and were treated as an expansion of a nonconforming uses, though retail use is allowed by right in the district. As the snack sales were originally permitted as accessory to the nonconforming uses, it has been determined that an amendment to Board Order

#278-07 is required to alter the premises to allow expansion of the snack sales. This expansion terminates the nonconforming automotive service use, and replaces it with a use that is otherwise by right within the district.

The applicant is also requesting to convert its only remaining full service gasoline pump to a self-service pump. This conversion is an expansion of the nonconforming gasoline sales and requires an amendment to Board Order #11-93, which authorized the conversion of the other pumps from full- to self-serve.

The applicant finally seeks to modify the signage approved by Board Order #278-07. The Board Order approved a free-standing sign, two wall signs and two canopy signs. The proposed signs are consistent with those approved in 2007, and were approved by the Urban Design Commission in October 2014. The UDC advised the applicant to seek a consistency ruling from Commissioner John Lojek, and was advised that he would issue it. As the applicant began the special permit process prior to receiving the letter of consistency from the Commissioner, the applicant has elected to include the approval of the proposed sign modification as part of the relief sought from the Board with this application.

The following review is based on plans and materials submitted to date as noted below.

- Zoning Review Application, prepared Stephen J. Buchbinder, Attorney, dated 11/25/2014
- City of Newton Building Permit, dated 12/20/1920
- Board Order #502-64(1), dated 9/14/1963
- Board Order #394-70(2), dated 12/21/1970
- Board Order #677-73(3), dated 11/19/1973
- Board Order #11-93(4), dated 12/20/1993
- Board Order #278-07(5), dated 11/19/2007
- Exhibit 1 – History of the Site, undated
- Exhibit 2 – Parking calculation, undated
- Existing Conditions Site Plan, prepared by Ayoub Engineering, dated 11/17/2006, revised 11/24/2014
- Existing Floor Plan, prepared by Ayoub Engineering, dated 11/24/2014
- Site Improvement Plan, prepared by Ayoub Engineering, dated 11/24/2014, revised 11/25/2014
- Proposed Floor Plan, prepared by Ayoub Engineering, dated 7/9/2014, revised 7/15/2014, 10/27/2014, 11/24/2014
- Site Signage Plan, prepared by Ayoub Engineering, dated 9/29/2014, revised 10/22/2014, 10/28/2014, 11/24/2014

ADMINISTRATIVE DETERMINATIONS:

1. There currently exists on site an auto service station and both self- and full-serve gas sales, which are legal nonconforming uses dating back to the issuance of the building permit in 1920 and Board Order #11-93(4) authorizing self-service gas pumps.
2. In December 1970, a condition of Board Order #394-70 required that no business be conducted on site other than that of gas sales and a service station. Board Order #278-07 allowed for expanded snack sales as an extension of the existing nonconforming gas sales and service station in 2007. The abandonment of the auto service use, and alteration of the service bays to retail use as a convenience store, requires an amendment to the special permit pursuant to Section 30-21(b).

3. Board Order #11-93 authorized self-service gas pumps on the premises, maintaining one pump for full-service use. As the gas sales on site are nonconforming, a special permit is required pursuant to Section 30-21(b) for a change from one nonconforming use to another, and amend the existing special permit by eliminating the full-service pump and replacing it with a self-service pump.
4. The conversion of the building to retail use only changes the parking requirements to those found in Section 30-19(d)(10), which apply to retail uses. Retail uses require one stall per each 300 square feet of gross floor area, and one stall per each three employees on the busiest shift. The applicant proposes to use 1,852 square feet for retail use with three employees working at the busiest shift, requiring a total of eight stalls. The applicant is providing 12 stalls on site, with one handicapped stall, and thus meets the parking requirement of the Ordinance.
5. Section 30-19(h)(3)(b) requires maneuvering aisles to have a minimum of 20 feet in width for two-way traffic. The existing aisles are less than the required 20 feet at the canopy for the pumps, but are in a configuration approved on plans in previous Board Orders. A special permit per Section 30-19(m) is required to legitimize the existing condition.
6. Section 30-19(h)(4)b) states that the maximum width of entrance and exit driveways shall be 25 feet. There are three existing driveways, all of which exceed the maximum of 25 feet. Condition #3 of Board Order #677-73 requires that the curb cut on Eden Avenue be reduced to 30 feet in width, and condition #2 of Board Order #11-93(4) requires that "the 50' wide curb cut be reduced to 42' width". To the extent that the third curb cut exceeds 25 feet, or that the existing curb cuts addressed by the previous Board Orders are not in accordance with these conditions, a special permit is required to legitimize the pre-existing nonconforming driveway widths per Section 30-19(m).
7. Each of the prior Board Orders address landscaping and screening for the site. To the extent that the site no longer complies with the conditions of the previous board orders, or the provisions of Section 30-19(i)(1), a special permit is required to waive such requirements per Section 30-19(m).
8. Each of the prior Board Orders condition lighting on the site so as to prevent light spillage onto neighboring properties, aside from a fixture mentioned in Condition 5 of Board Order #11-93 on the northeast side of the building. Section 30-19(j)(1)a) and b) require that lighting maintain a minimum intensity of one foot candle, and be arranged and shielded so as to prevent glare onto neighboring streets and properties. To the extent that the site does not comply with the conditions of the previous board orders, or the provisions of Section 30-19(j)(1)a) and b), a special permit is required pursuant to Section 30-19(m) to waive such conditions.
9. Board Orders #11-93(4) and #278-07 approved signage for the site, including a free-standing sign, two wall signs and two canopy signs. The proposed free-standing sign has an area that is approximately two square feet smaller than the existing free-standing sign. The two existing wall signs on the building shown as "Snack Shop" and "Service Center" will be replaced by a single wall sign showing "In Town Market". The proposed canopy signs are proposed to be approximately two square feet larger than the existing canopy signs. The applicant seeks to amend the special permits and approve the proposed sign package pursuant to Section 30-20(l) of the Ordinance.

10. See "Zoning Relief Summary" below:

Zoning Relief Required		
<i>Ordinance</i>	<i>Required Relief</i>	<i>Action Required</i>
§30-21(b)	To allow an extension of nonconforming auto service and gas sales use, to allow for gas sales and retail	S.P. per §30-24
§30-21(b)	To allow an extension of nonconforming self-service gas sales	S.P. per §30-24
§30-19(h)(3), §30-19(m)	To waive the dimensional requirements for maneuvering aisles	S.P. per §30-24
§30-19(h)(4)b §30-19(m)	To waive maximum driveway width	S.P. per §30-24
§30-19(i)(1), §30-19(m)	To waive landscaping and screening requirements	S.P. per §30-24
§30-19(j)(1)a and b), 30-19(m)	To waive lighting requirements	S.P. per §30-24
§30-20(l)	To approve the proposed sign package	S.P. per §30-24