City of Marlborough

Zoning Board of Appeals

**Minutes**

October 31, 2018

**Members Present**: Ralph Loftin-Acting Chairman, Thomas Golden, Thomas Pope and Robert Levine

**Zoning Board of Appeals Case # 1450-1018**

**Applicant: Colbea Enterprises, LLC**

**Location: 342 Boston Post Rd. East (Shell Station)**

**Representatives Present:**

* Nicole M. Verdi, Attorney at Law – Adler Pollock & Sheehan P.C. One Citizen Plaza, 8th Floor, Providence RI 02903-1345
* Richard C. DeFusco, R.L.A. – Ayoub Engineering – 414 Benefit St., Pawtucket, RI 02861
* Dennis P. Darveau, Colbea Enterprises, LLC, 7 Starline Way, Cranston, RI 02921

**Petition:** Applicant - Colbea Enterprises, LLC proposes to demolish the existing structure and construct a 4000 sq. ft. building with 5 fuel dispensing station (10 pumps) at 342 Boston Post Rd. East. (Map 59 Parcel 11) located in Zoning District Business. Seeking variances on the propose deviations are as follows:

1. Section 650-41, Table of Lot Area, Yards and Height” a 50 ft. front yard setback is required vs. the proposed 32.3 ft. for the new canopy over the fuel dispensing area.
2. Section 650-47(D)(5)(a), requires the planting of 1 tree per 30 linear feet of street frontage planting within the front landscaped strip, as per 650-47E.
3. Section 650-47(E)(1)(b), landscaping requirements - requires a frontage landscaped strip of 25 ft. vs. the propose 10 ft. landscaped strip.

The hearing was opened with the reading of the legal ad by Thomas Golden. Acting Chairman, Ralph Loftin informed the applicant that there were 4 members present this evening, and to receive approval for requested variances, they must receive 4 affirmative votes.

Atty. Nicole Verdi gave a brief presentation of the lot in question. She stated that the use of the lot will remain as a gas station, located in a Business Zone. The existing car wash will be demolished. The applicant has met with city officials and gone before the Site Plan Review Committee for an informal meeting. Atty. Verdi went thru the Exhibit A within her packet to the Board. Within Exhibit A, it goes thru the criteria for a variance and their explanation of how they meet those criteria. (Exhibit A is in Board’s file)

**Richard DeFusco – Landscape Architect** - Ayoub Engineering stated the following:

* The existing building is 3,000 sq. ft. They are proposing a 4,000 sq. ft. building
* They will be replacing the existing tanks and proposing 5 gas pumps
* They will have new utilities. They are serviced by sewer and water and gas.
* Landscaping – at the front of the lot, there will be a 10 ft. wide vs. 25 ft. required landscape strip at the front. The propose landscaping at the front yard setback will be planted, so not to block visibility of the pumps.
* The location of the proposed sign will be in the same location as the existing sign.
* The proposed canopy is for the protection of customers, the pumps and mate around the pumps. Existing canopy is 9.5 ft. from the front lot line vs. the propose 32 ft. The applicant stated they cannot met the 50 ft. front setback as required.
* Stormwater infiltration will be improved.
* The aisle spaces within the lot are kept at a certain width for better traffic flow.

**Hardship:**

* Cannot place the proposed canopy further back to meet the required 50 ft. front setback because of the propose layout and size of the structures.
* Stormwater system will be improved.
* With the proposed layout of the lot, it will be a convenience for their customers.
* With the constraints of trying to improve or meet the criterias of traffic flow and stormwater management, etc. they could not meet the Front Yard Setback requirements and Landscape requirements.
* Shape of lot and height of lot creates a hardship, because they had to stack structures into the lot. Because of the size and shape of the lot, this prevents them from meeting the city’s zoning requirements with the design they have presented.
* As stated in their Exhibit A…Literal enforcement of the provisions of the City of Marlborough Zoning Ordinance would cause hardship to the Applicant in that Applicant seeks to update its facilities and provide a better (and safer) layout for the surrounding area as well as the convenience store and filling station. Additionally, if relief is not granted, the Applicant will suffer a hardship because due to the stormwater management and soil erosion control needed to ensure this Property complies with all Massachusetts rules and regulations, this layout and landscaping plan is necessary.

The Board kept reiterating what there “hardship” is. The Board stated “hardship” must be soil conditions, shape of the lot or the topography of the lot. The Board felt the applicant had no “hardship” to base their decision on. An inconvenience or financial hardship is not a “hardship”. And just because one cannot build as designed on a plan, does not constitute a hardship. The applicant can currently use the lot as zoned, Business. Without a hardship, the Board cannot make an affirmative ruling.

**Dennis Darveau, Colbea Enterprises** – Director of Construction - stated the following:

1. The lot is shallow, not wide. They can only stack so much considering the depth of the lot.
2. The proposed lay out of the lot will create better circulation throughout the lot for customers and tanker trucks.

Board members asked if they can construct a smaller store? The applicant felt a smaller store is not functional for their needs.

The applicant requested a 5 min. recess in order to talk amongst themselves in the hallway.

There was no one in the audience who spoke in favor or in opposition to the petition.

At the request of the applicants, the public hearing was continued to November 27, 2018 at 7:00 PM

The Board asked the applicant to make sure they do not need a Special Permit because of the increase in the number of cars being served.

On a motion made by Robert Levine, seconded by Thomas Pope, the public hearing was continued to Nov. 27, 2018 at 7:00 PM.

Respectfully submitted,

Ralph Loftin

Acting Chairman