City of Marlborough

Zoning Board of Appeals

**Minutes**

December 19, 2018

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

**Zoning Board of Appeals Case # 1450-2018**

**Applicant: Colbea Enterprises, LLC**

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

**Representative Present:**

* Atty. Elizabeth McDonough Noonan, Adler Pollock & Sheehan P.C. One Citizens Plaza, 8th floor, Providence, RI 02903-1345.
* Alan J. Micale, P.E., Ayoub Engineering, 414 Benefit Street, Pawtucket, RI 02861.
* Andrew R. Delli Carpini, Colbea Enterprises, LLC East Side Enterprises, LLC, 2050 Plainfield Pike, 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 Board reiterated that there are only 4 members present this evening. And to receive relief on the variances requested, the applicant must receive 4 affirmative votes.

The hearing was opened on Oct. 31, 2018, with continuation dates of November 27, 2018 and this evening December 19, 2018.

Atty. Noonan started that her clients are requesting 3 variances this evening. And the only other permit they may need to apply for is a “sign” permit.

Atty. Noonan stated:

* The existing car wash will be removed.
* The petition will change the character of the area with a more modern look.
* The design for the lot is governed by the topography of the lot.
* The proposal will improve the site
* Safety will be upgraded
* They are currently working with the Site Plan Review Committee.

Alan J. Micale, P.E., of Ayoub Engineering gave an over view of the lot in question:

* Landscaping:
	+ Landscaping was taken into consideration when designing the traffic pattern within the lot and the pedestrian flow.
	+ Traffic circulation will be improved.
	+ There will be 10 fueling pumps
	+ No trees are proposed for the 10 ft. landscape strip at the front. Low growing material will be planted for better visibility of the pumps from the street.
	+ Front yard setback - The canopy will be set back 32.2 ft. vs. the 50 ft. required for front yard setback. Existing canopy is 9.7 ft from the front property line. (note: there is an old Zoning Board Case 1044-90 for the old canopy).
	+ Storm water system will be upgraded.
	+ The existing underground tanks which are about 29 yrs. old will be replaced.
	+ The gas station will be opened 24/7.

Andrew Delli, of Colbea Enterprises, LLC (Applicant) stated the following:

* He currently and will be operating the improved site.
* He operates approximately 34 Seasons Corner Markets. The name of the proposed convenient store.
* The proposed layout will be an improvement to the site as far as efficiency, visibility that the cashier can see all the pumps, no bottle necking as in the existing site, and of course safety.
* They are amicable if the Zoning Board of Appeals and the city would like some input about where the trees should be planted.
* Cannot push the proposed store back. By the time we add the new equipment, the store has to be a certain size.
* The proposed new building may act as a sound barrier for the condos at the rear.
* Proposing 13 trees to be planted around the perimeter of the lot.
* Fire suppression at the proposed canopy.
* Improve storm water system
* Removal of 3 old tanks and replacing with 2 new improved tanks.
* Existing car wash will be removed.

Ralph Loftin – Board member

* Asked if there will be trees planted in the 10 ft. front landscape strip? City code states 1 tree for every 30 ft. Answer-No. There will be no trees in the 10 ft. front landscaping strip. But, 13 trees will be planted within the perimeter of the lot.
* If there were to be trees in the 10 ft. landscape strip, how many trees would be planted. Answer: 2 or 3 trees would be planted in the front landscape strip. Trees would block the view of the pumps from the street.
* Feels that the design on this existing lot is a self-created hardship. There are other designs the applicant can go with.

Robert Levine – Board member

* Asked the applicant if they can go with a small store. Answer: With all the new ADA restrictions (aisle space in the store, bathroom regulations) the store must be a certain size to accommodate with the new rules.

**HARDSHIP:**

* Atty. Noonan stated – The “use” will remain the same. We are asking for a few variances which will not be a detriment to the public good. The existing car wash will be removed. They will have no drive thru. They have limited area to develop; considering the proposed size and layout of the structures (building and canopy). The improvement to the lot will enhance the “safety” within the lot.
* According to her letter dated November 17, 2018, the hardship is caused by the following:
	+ Shape of the lot as well as the shape and location of the canopy has to do with the safety hazards that would result to people and the property if the canopy was not allowed to be built in the location proposed. Citing Furlong v. Zoning Board of Appeals of Salem.
	+ Also, these variances diminish the risk of an existing harm and prevent even greater risk of harm that would result from complying with the ordinance.
	+ Also, the proposal would diminish the risk of an existing harm as it moved the fueling pumps further from the road. Providing a much safer layout for the tanker truck, pedestrians and vehicles to traverse the site.
	+ And the propose front 10 ft. landscaping strip will prevent the risk of harm of drivers having a difficult time viewing the property that could cause needless rubber necking or “eyes off the road” long gazes.

The Board finds:

* To rebuild as proposed, the applicant will need 3 variances. This is a non-conforming structure. The proposal will make the lot less non-conforming.
* Granting the variances will not nullify or detract from the intent or purpose of the Zoning Ordinance. The “use” will remain as gas station and convenient store as zoned. (Business Zone)
* Bob Levine - They are tearing down what is existing on the site to create a new and improve site with regards to traffic circulation, landscape and safety for their customers.
* Thomas Golden stated in making a 100% improvement to the lot, one must conform to all current city and state codes, i.e. the number of parking spaces required and ADA compliance outside and within the proposed new store. He would be in favor of granting the 3 variances.

The Board reviewed some of the cases Atty. Noonan provided in her December 17, 2018 letter. The Board felt the lot conformed to lot area and the setback of the proposed building was conforming. The location of the new proposed canopy will be setback 32.2 ft. from the property line…vs. the old canopy being 9.7 ft. to the property line.

The Board asked if anyone was present to speak in favor or in opposition to the petition. There were none.

Paul Guinta – 25 Westminster Street, Marlborough, MA - had a few questions. He stated that he is speaking as a private citizen and he is the chairman of the Zoning Board of Appeals. He has recused himself from the matter and is not speaking as a ZBA chairman. Mr. Giunta’s concerns were:

* The purpose of the loading zone on the left side of the pumps? Answer: The applicant stated it is for deliveries. The air pump and vacuum station will be located in this area.
* The proposed store will be 5 ft. from the rear property line. Answer: Yes
* Parking spaces – they will have 24 parking spaces vs. the 25 required.
* Mr. Guinta stated he lives in the condo complex next to the gas station and is involved with the City in the beautification of Rte. 20. His concern was if the State decides to widen Rte. 20 would that affect the 10 ft. landscape strip? Would the State take some of proposed 10 ft. front landscape strip? Answer: This was recognized as a potential problem.
* Mr. Guinta was hoping that if improvements were to be done on Rte. 20, the improvements would be extended to Concord Rd (due to the number of accidents in that location) not just to the bank at the corner of Rte. 20 and Phelps St.

With no other testimony taken or given the public hearing was closed.

Acting Chairman, Ralph Loftin, cited each variance request and put it to a vote. On a vote of 4-0 variances were granted on the 3 requested for relief.

On a motion made by Thomas Pope and seconded by Robert Levine, the public hearing was closed.

Respectfully submitted,

Ralph Loftin

Acting Chairman

Zoning Board of Appeals