



City of Marlborough Zoning Board of Appeals

140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768 Facsimile (508) 460-3747

ZBA Case #1443-2016
Name: Jeffrey Glew, Manager
Location: 794-796 Boston Post Rd. East

Date: November 9, 2016

Zoning Board of Appeals Notice of Decision

The Zoning Board of Appeals, acting under the Zoning Ordinance of the City of Marlborough and the Zoning Enabling Act of the Commonwealth of Massachusetts, after a public hearing held at the Marlborough City Hall, 140 Main St. on September 27, 2016 with a continuation date of October 25, 2016.

Petition: Proposed parking lot changes. A minimum landscaped strip in a non-residential zone is required to be a minimum of 15 ft. with an addition setback of 5.35 ft. due to the existing frontage being greater than 100 ft. for a total required landscaping strip of 20.35 ft. in width. A small triangular section does not meet this section of the zoning by laws. Section 650-47.

After due consideration to the subject matter of the petition, the Board voted 5-0 to (GRANT) a variance, on the ground that a literal enforcement of the Ordinance would involve substantial hardship to the petitioner and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Ordinance.

The Board finds:

- Having an existing structure on the lot, makes it difficult to reconfigure the parking lot for additional parking.
- To conform to the City's landscaping and screening code would be difficult at one corner of the lot, because of the odd front lot line.
- The wetlands to the rear of property makes it difficult to expand parking at the rear.
- The slope of the lot at the rear makes it difficult to expand parking at the rear.
- The odd shape of the front lot line makes it difficult to square off the parking lot at the frontage area, thus cutting into the State owned land by 1.5 ft. at one corner vs. the required minimum required 21 ft. landscape strip.
- Vehicle and pedestrian safety will be significantly enhanced with the proposed reconfiguration of the parking lot.

Therefore, the Board **voted** with Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Robert Levine, and Thomas Pope (5-0) voting in the affirmative to grant a variance on the following terms and conditions:

1. The applicants will provide adequate lighting at the entrance to their lot off of Boston Post Rd.
2. Approved plans presented entitled: The applicant provided a plan entitled: "Preliminary Site Plan, #794-#796 Boston Post Rd. East, Marlborough, MA Prepared by: Bruce Saluk of Bruce Saluk & Associates, Inc. Dated: Rev. 9/6/2016 (in Board's file)
3. No Building Permits can be issued until such time as the applicant presents to the Building Inspector evidence that said variance with its restrictions and has been filed with the Registry of Deeds or Land Court as applicable.

End

The Board of Appeals also calls to the attention of the owner or applicant that General Laws, Chapter 40A, Section II (last paragraph) provides that no variance or special permit, or any extension, modification or renewal thereof, shall take effect until a copy of the decision bearing the certification of the city clerk that twenty days have elapsed after the decision has been filed in the office of the city clerk and no appeal has been filed or that, if such appeal has been filed, that it has been dismissed or denied, is recorded in the Registry of Deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The fee for such recording or registering shall be paid by the owner or applicant.

If the rights authorized by a variance are not exercised within one (1) year of the date of grant of such variance, such rights shall lapse; provided however, that the permit granting authority in its discretion and upon written application by the grantee of such rights may extend the time for exercise of such rights for a period not to exceed six (6) months; and provided, further, that the application for such extension is filed with such permit granting authority prior to the expiration of such one year period.

Respectfully submitted,


Paul Giunta – Chairman *es*
Zoning Board of Appeals

Submitted to the City Clerk's office on November 9, 2016.



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Zoning Board of Appeals Record

The Zoning Board of Appeals, acting under the Marlborough Zoning Ordinance and General Laws, Chapter 40A, as amended, a meeting was held on September 27, 2016 with a continuation date of October 25, 2016.

Board Members present were: Paul Giunta – Chairman, Theodore Scott, Thomas Pope, Ralph Loftin, and Robert Levine.

Proceedings:

1. **Date of Appeal: Sept. 7, 2016**
2. **Name and Address of Applicant:** Jeffrey Glew, Manager, 796 BPR, LLC – represented by Atty. Sandra Austin, 40 Mechanic St. Suite 305, Marlborough, MA 01752
3. Administrative body from whose decision or order of appeal was taken: Building Dept.
4. Appeal filed with: Zoning Board of Appeals and City Clerks' Office.
5. **Nature & Basis of Appeal:** Proposed parking lot changes. A minimum landscaped strip in a nonresidential zone is required to be a minimum of 15 ft. with an addition setback of 5.35 ft. due to the existing frontage being greater than 100 ft. for a total required landscaping strip of 20.35 ft. in width. A small triangular section does not meet this section of the zoning by laws. Section 650-47.
6. **Section of the Zoning Ordinance involved:** Section 650-47
7. Notice was sent by Certificate of Mailing to parties in interest, including the petitioner, abutters, owners of land directly opposite on any public or private street or way, owners of land within 300 feet of the property lines, including owners of land in another municipality, all as they appear on the most recent applicable tax lists.

8. Original documents are on file with the Board of Appeals and the City Clerks' Office.

9. **Findings:**

1F. The property is located in Zoning District Business, being Map 61, Parcels 29 and 29A of the Assessors' maps.

The 2 lots in question have the following features:

- #794 (Lot 29) Boston Post Road East - contains 34,484 sq. ft. with a structure.
- #796 (Lot 29A) Boston Post Road East – contains 33,033 sq. ft. with a structure.
- These 2 lots are rectangular in shape with an irregular front lot line.
- The topography of the lots slopes considerably to the rear.
- At the rear of these two lots are an additional 28 parking spaces
- At the front there are 32 parking spaces
- At the rear of these two lots are wetlands.
- At the rear of #794 Boston Post Rd. East and to the rear of the two lots in question, is a city's sewer and access easement.
- The front lot lines to these 2 lots in question abut greenspace owned by Mass. Highway and beyond that is the street.
- There is free passage from the 2 lots in question, into #814 Boston Post Rd. East. (this will be blocked with landscaping if a variance is granted.)
- The 2 lots in question has over 200 ft. of frontage, so that requires 21 ft. between the lot line and right of way line.

2F. The abutting lots are of various shapes and sizes. The lots abutting the lots in question, have wetlands located at the rear of their lots.

3F. The applicants were represented by Atty. Sandra Austin, 40 Mechanic St., Marlborough, MA. and Bruce Saluk of Bruce Saluk & Associates. The owners of the 2 lots in question are Dave McKay and Jeffrey Glew.

4F. **Proposal:** Seeks a variance from the Marlborough Zoning Ordinance §650 (47), the landscaping and screening requirement at the front of the parcels, so as to make parking, pedestrian, vehicular traffic and circulation improvements to its lot. The improvements, while increasing the landscaping area on one end of the parking lot (minimum required 21 ft.) and create a decrease in the landscaping area on the other end of its parking lot (proposed 1.5 ft.) Existing sidewalk in front of the stores will remain. They will add a new

concrete sidewalk which will push forward existing parking spaces. They would like to square off the parking lot at the front, which will increase parking spaces from 32 to 34 (includes 2 handicapped spaces). There are currently 28 parking spaces in the back. The entrance from 782 Boston Post Rd. into 794-796 Boston Post Rd. will be eliminated. There will be new landscaping between #782 and #794-796 Boston Post Rd. Also new landscaping in front of the stores and at the front lot line.

5F. The applicant provided a plan entitled: "Preliminary Site Plan, #794-#796 Boston Post Rd. East, Marlborough, MA - Prepared by: Bruce Saluk of Bruce Saluk & Associates, Inc." Dated: Rev. 9/6/2016 (in Board's file)

6F. The applicant provided a list of proposed plantings. (in Board's file)

7F. **Hardship** as stated by applicant:

- Safety issues in entering and exiting out of the lots in question. Also safety for the general public within the plaza.
- Additional landscaping with new pavement at the front of the stores and also new plantings at the front lot line will enhance the appearance of the plaza.
- The proposal will provide a better flow of traffic in and out of the site. Cars will be forced to slow down as they enter the plaza from Boston Post Rd.
- The applicants are trying to make the buildings more viable.
- The variance request is minor, improvements to the site are visual and the character of the site will be maintained.
(Section 650-47A)
- The shape of the lots, being rectangular with an irregular front lot line.
- The dimensions of the property require that the parking lots be changed for safety reasons. The hardship is based on the dimensions of the property, as opposed to lot coverage or something else.
- The shape of the lot and the location of the existing buildings limits their ability to improve the appearance of the 2 lots in question.
- Atty. Austin stated the requested variance is dimensionally based.

8F. Ted Scott, a Board Member, stated that the "existing" set back to the parking lot on the right side is 18 ft. and the proposed set back is to

be 1.5 ft. This is not a minor deviation. There is no assurance the abutting grass strip owned by the State will remain as green space. The State may decide to do something with that strip of land.

Bruce Saluk stated that the State strip of land is abandoned. He felt it was not probable the State will come in to do something with that strip of land.

It was suggested by the Board that maybe the applicant should try to purchase the State strip of land. The attorney stated they have not considered that option, because it would be a lengthy process. The Board wanted assurance that the State will not do anything with that strip of land.

9F. The Board suggested that the applicant “Withdraw Without Prejudice” giving the applicant some time to do some research in contacting the State to see if they have plans for this strip of land. The Applicants stated that the State usually reserves a shoulder adjacent to their roadway. The Board stated they would like to see some literature of how the State operates concerning state owned land in similar situations as this petition before the Board.

10F. Paul Giunta, Board Member, stated he can see the safety aspect of the proposal and the improvements will enhance the site. He also suggested they try to purchase the strip of land from the State.

11F. Ralph Loftin, Board Member, stated he agrees the proposal is attractive and will improve safety. He also stated that “hardship” means that the property can’t be used as it is zoned for unless a variance is granted, which is not the case here. There must be other ways that “safety” can be addressed on these 2 lots. It is not the role of the Board to grant variances to enhance the front of this property. The Board is bound by the definition of a “hardship”.

12F. No one spoke in opposition.

13F. Speaking in favor:

- Ms. Kortel – 782 Boston Post Rd.
 - She is favor of eliminating the entrance between her lot and the lots in question.
 - The petition will be an improvement to their lots and to the surrounding lots.

- The improvements will be an asset to the east side of the city, which seems to have a difficult time in attracting businesses.

14F. In the audience was also Ms. Kortel's real estate advisor, Stan Gordon.

15F. The owners stated they purchased the property approximately 7 months ago. At that time, they had 4 vacant store fronts. Currently there are 5 tenants on the site. Parking was a problem when they purchased the lots.

16F. The Board asked the applicant if they would like to continue the public hearing in order for them to contact the State to ask their intentions on their strip of land. A Board Member requested a few case laws that "dimensional" issues are a criteria for a variance. Atty. Austin agreed to research case laws and to contact the State. With the consent of the applicants, the hearing was continued to October 25, 2016.

A motion was made by Ralph Loftin, seconded by Theodore Scott to continue the public hearing to Oct. 25th, 2016 at 7:30 PM. The Board voted 5-0 to continue the hearing to October 25, 2016.

17F. **October 25, 2016** – the hearing was continued with the reading of the legal ad.

18F. Present this evening were: Paul Giunta-Chairman, Theodore Scott, Ralph Loftin, Robert Levine, and Thomas Pope. (Thomas Golden recused himself from sitting on this case)

19F. Also present were Atty. Austin (representing applicants) and Bruce Saluk of Bruce Saluk and Associates, the owners of the 2 lots in question, Dave McKay and Jeffrey Glew.

20F. At tonight's meeting, the following were submitted and are in Board's file:

- A packet from Atty. Austin entitled: Memorandum of Law, RE: 796 Boston Post Rd. Memorandum of Law in Support of variance from §650 Article 47 for a decrease in frontage landscape strip requirement, dated Oct. 18, 2016.
- A presentation made by Bruce Saluk with supporting maps and documentation.

21F. From the September 27th meeting, the Board asked the applicant to contact the State to ask their intentions on their strip of land. Also, a Board Member requested a few case laws that “dimensional” issues are a criteria for a variance. The results are the following:

- **Bruce Saluk’s** presentation of the past history of Boston Post Rd. was very informative. With all the research presented, the Board felt comfortable that the State will not do anything to their strip of land on Boston Post Rd. (like widening of Rte. 20) Mr. Saluk also stated that according to the Mass Highway Project Development & Design Guide – 2006, (in Board’s file) stating in part “Ideally, streets in three-leg and four-leg intersections cross at right angles are nearly so...However, skewed approaches are a regular feature of intersection design. When skew angles are less than 60 degrees (which was the case of the former design back in 1932) the designer should evaluate intersection modifications to reduce the skew”. In this case, the State pulled back to a 90° toward the Halfway Café (towards the east on Rte. 20) shown on the 1996 road design.

The applicants have been maintaining the abutting State land.

- Atty. Austin presented to the Board some case laws and explained some of the case laws in detail which will support her client’s requests for a variance. She also stated that trying to purchase a piece of land from the State takes many years and very time consuming.

22F. Atty. Austin stated the following:

- Her clients are trying to create an area that is pleasing to the eye and also improve the safety issues on the lot for pedestrians and cars.
- Shape of the lot is uniquely and awkwardly shaped.
- Due to the topography and an existing building on site, there is no other area on the lot to locate additional parking for the businesses located in these lots.

23F. A Board Member, Paul Giunta, commented that in doing an on-site visit, it was difficult to find the entrance to the plaza in the evening. He recommended to the applicants to add or improve the lighting at the entrance to the plaza.

24F. Speaking in favor:

- Thomas Golden (Board Member) – he recused himself from sitting on this case because, he is currently doing renovation work at the plaza. Mr. Golden stated that the parking lot is dangerous at times. There are lots of cars in and out of the plaza. There is also a church located in this plaza area which generates a tremendous amount of traffic. The plans presented would certainly improve the site aesthetically and on safety.

25F. No one spoke in opposition to the petition.

26F. **Hardship** as stated by the applicant:

- Ralph Loftin, Board Member stated that in Atty. Austin's packet...she mentioned that the "hardship in this variance request is two-fold". Mr. Loftin stated he sees mentioned "safety" as a hardship and asked what is the other "hardship". Atty. Austin stated the other hardship is "financial".
- Atty. Austin stated the "safety" hardship is in the vehicular traffic as it comes in off the very busy Boston Post Rd. East (Rte. 20) into the parking lot, as well as movement within the parking lot as drivers try to negotiate the undefined open area as well as the entrance to the site itself and to the adjacent owner's site.
- Atty. Austin also stated that "financial" is the other hardship. The Board asked the applicant to inquire to the State the possibility of purchasing a portion of the State owned right of way along the frontage of the property in order to avoid the necessity of a variance. The ability to do so is extremely speculative, time and cost prohibitive to accomplish. All expenses related to the disposal of land by the State are born by the proponent (applicant).
- If the city's ordinance is strictly applied, their petition cannot be implemented because the shape of the front of the lot is uniquely irregular causing an increase in the shortage of the frontage planting area which interferes with the parking requirements.

27F. With no other testimony taken or received, the public hearing was closed.



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Applicant: 796 BPR, LLC (Jeffrey Glew Manager)

Location: 796 Boston Post Rd. East

VOTE OF THE BOARD
Signature Sheet

In Favor

In Opposition

Paul Giunta

Paul Giunta

Theodore Scott

Theodore Scott

Ralph Loftin

Ralph Loftin

Thomas Golden

Thomas Golden

Thomas Pope

Thomas Pope

Robert Levine

Robert Levine