



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1450-2018

Date: January 2, 2019

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

(General Laws Chapter 40A, Section 16) Grant of a Variance

To: Colbea Enterprises, LLC (represented by: Elizabeth M. Noonan Esq. of Adler Pollock & Sheehan P.C.)

Address: One Citizens Plaza, 8th Floor

City: Providence, RI 02903

affecting the rights of the owner with respect to land or buildings at:

342 Boston Post Rd. East (Shell Station) Map 59 Parcel 11

And the said Board of Appeals further certifies that the decision attached hereto is a true and correct copy of its decision and of all plans referred to in the decision, have been filed with the City Clerk.

Ralph Loftin – Acting Chairman

Susan Brown - Secretary

Submitted to the City Clerks' office on January 2, 2019.



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1450-2019

Date: January 2, 2019

Name: Colbea Enterprises, LLC

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

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, a public hearing held at the Marlborough City Hall, 140 Main St. on October 31, 2018 with continuation meetings on November 27, 2018 and December 19, 2018.

Members Present: Ralph Loftin – Acting Chairman, Thomas Pope, Thomas Golden and Robert Levine.

Proposal: Colbea Enterprises, LLC proposes to demolish the existing structure and construct a 4000 sq. ft. building with 5 fuel dispensing station (10 pumps) and replace the existing canopy with a new canopy located further back at 342 Boston Post Rd. East. (Map 59 Parcel 11) located in Zoning District Business.

After due consideration to the subject matter of the petition, the Board finds:

- The shape of the lot, which is rectangular, made it difficult for the applicant to find a new layout design for the lot without seeking variances.
- Granting the variances will not nullify or detract from the intent or purpose of the Zoning Ordinance. The improvements to the site will enhance safety in and out of the site. The “use” will remain as a gas station and convenient store as zoned, Business.
- The applicant will tear down what is existing on the site to create a new and improved site taking into consideration traffic circulation, landscape and safety for their customers.
- Granting the variances will not diminish the public welfare or well-being because, the applicant is making a 100% improvement to the site. In doing so, 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. In order to meet all these codes, the site is designed as presented.
- The Board felt the lot conforms to lot area and the side and rear setbacks of the proposed building is conforming. The location of the new proposed canopy will be setback 32.2 ft. from the property line vs. the existing canopy being 9.7 ft. to

the property line, which will be an improvement to the site in terms of safety and traffic and pedestrian flow

Vote: The Board voted on the 3 requested variances 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.

Vote: 4-0 to grant a variance for the proposed 32.3 ft. front yard setback.

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. Vote: 4-0 to grant a variance from the required planting of 1 tree per 20 linear feet of street frontage within the front landscape strip.

3. Section 650-47(E)(1)(b), landscaping requirements - requires a frontage landscaped strip of 25 ft. vs. the propose 10 ft. landscape strip. Vote: 4-0 to grant a variance for a 10 ft. landscape strip.

Restrictions: The variances are granted with the following restrictions:

1. The applicant will comply with the plans presented entitled: Seasons Corner Market, Site Improvement Plans, 342 Boston Post Road East, Prepared for: Colbea Enterprises, LLC, 2050 Plainfield Pike, Cranston, RI. Dated: 2/2/2018, Rev. 5/1/2018. Prepared by: Ayoub Engineering.
2. According to testimony, if the gas station plans to open 24/7, they may need to seek approval from the city in the form of a special permit from the city council.
3. The applicant will continue to work with the city's Site Plan Review Committee to receive a permit for their project.
4. Before a Building Permit can be issued, the applicant must show proof to the Building Dept. that this variance was recorded at the Registry of Deeds.

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,


Zoning Board of Appeals
Ralph Loftin – Acting Chairman

Submitted to the City Clerk's office on January 2, 2019.



City of Marlborough Zoning Board of Appeals

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

ZBA Case # 1450-2018

Date: January 2, 2019

Name: Colbea Enterprises, LLC

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

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 October 31, 2018 with continuation meetings on November 27, 2018 and December 19, 2018.

Board Members present were: Ralph Loftin – Acting Chairman, Thomas Golden, Thomas Pope and Robert Levine.

Proceedings:

1. Date of Appeal: Sept. 24, 2018
2. Name and Address of Applicant: Colbea Enterprises, LLC (represented by Elizabeth M. Noonan Esq. of Adler Pollock & Sheehan P.C.) One Citizens Plaza, 8th Floor, Providence, RI 02903.
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:** 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 variance 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 proposed 10 ft. landscaped strip.
6. Section of the Zoning Ordinance involved: As noted in Item #5.
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.
 - 2F. The lot contains 32,000 sq. ft. of area.
 - 3F. The shape of the lot is rectangular, and topography of the lot is fairly flat.
 - 4F. As noted on their plan, CP-1, the lot in question is located approximately 90 ft. ± from a Retirement Community Residence District (RCR) and residential districts. This lot is surrounded by other business. Other lots in the area vary in shapes and lot areas.
 - 5F. The applicants were represented by the following at the October 31, 2018 meeting:
 - 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
 - 6F. **Plan:** The applicant provided a plan entitled: Seasons Corner Market, Site Improvement Plans, 342 Boston Post Road East,

Prepared for: Colbea Enterprises, LLC, 2050 Plainfield Pike,
Cranston, RI. Dated: 2/2/2018, Rev. 5/1/2018. Prepared by:
Ayoub Engineering.

- 7F. **Exhibits** - List of exhibits received prior to meeting:
1. An executed application form and Exhibit A
 2. Abutters' List certified by Assessor's Office
 3. Denial letter from building dept., dated August 27, 2018
 4. Site Plans, entitle "Seasons Corner Market – Site Improvement Plans" (includes site plan and architectural plans), prepared by Ayoub Engineering, dated Feb. 2, 2018, revised May 1, 2018 and
 5. Certified Plot Plan, prepared by Commonwealth Land Surveyors, dated Sept. 5, 21018.
- 8F. The Board reiterated that there are only 4 members present this evening; to receive approval for the variance requests, the applicant must receive 4 affirmative votes.
- 9F. The hearing was opened on Oct. 31, 2018, with continuation dates of November 27, 2018 and this evening December 19, 2018.
- 10F. The applicant was represented by Nicole M. Verdi, Attorney at Law – Adler Pollock & Sheehan P.C. One Citizen Plaza, 8th Floor, Providence RI 02903-1345 at the November 27, 2018 where they requested a continuation of the public hearing to December 19, 2018.
- 11F. The applicant was represented by the following at the December 19, 2018 meeting:
- Atty. Elizabeth McDonough Noonan, of Adler Pollock & Sheehan p.c., One Citizens Plaza, 8th Floor, Providence, RI 02903-1345.
 - Alan J. Micale, P.E. of Ayoub Engineering, 414 Benefit Street, Pawtucket, RI 02861.
 - Andrew R. Delli Carpini, of Colbea Enterprises, OOC, East Side Enterprises, LLC, 2050 Plainfield Pike, Cranston, RI 02921
- 12F. Atty. Noonan started that her clients are requesting 3 variances this evening. The only other permit they may have to apply for is a "sign" permit.

- 13F. Atty. Noonan stated:
- The existing car wash will be removed.
 - The proposed petition will change the character of the area with a cleaner and more modern look.
 - The design for the lot is governed by the shape and topography of the lot.
 - The proposal will improve the site
 - Safety will be upgraded
 - They are currently working with the Site Plan Review Committee.
- 14F. Alan J. Micale, P.E., of Ayoub Engineering gave an over view of the lot in question:
- Landscaping was taken into consideration when designing the traffic pattern within the lot and of 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. Instead low growing materials will be planted to ensure 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 front yard setback. Existing canopy is 9.7 ft. from the front lot 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.
 - Hours of operation will be opened 24/7.
- 15F. 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, which is the name of the proposed convenient store.
 - The proposed layout will be an improvement to the site as far as efficiency, visibility for the cashier who will be able see all the pumps if a problem arises, no traffic bottle necking as on the existing site, and of course improved safety.
 - They will work with the Site Plan Review Committee.

- They cannot push the proposed store back because, it already meets the rear setback requirement of the 5 ft. When they add all the equipment and utilities to satisfy all city and state codes, the store must be a certain size to accommodate these improvements.
- The proposed new building may act as a sound barrier for the abutting condos.
- The proposed required 13 trees will be planted within the perimeter of the lot. They will work with the Site Plan Review Committee.
- The proposed canopy will meet fire suppression codes.
- The storm water system will be improved
- Removal of 3 old tanks and replacing with 2 new improved tanks.
- Existing car wash will be removed.

16F. 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.
- Question the design of the structures on the site. Maybe there are other designs the applicant can go with.

17F. Robert Levine – Board member

- Asked the applicant if they can go with a smaller store. Answer: With all the new ADA restrictions (aisle spaces in the store, bathroom regulations) the store must be a certain size to accommodate with the new codes.

18F. **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 a 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” for traffic and pedestrians.

- 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.

19F. The Board asked if anyone was present to speak in favor or in opposition to the petition. There were none.

20F. Paul Giunta – 25 Westminster Street, Marlborough, MA - had a few questions. He stated that he was speaking as a private citizen and an abutter to the site; and that he is the chairman of the Zoning Board of Appeals (ZBA). He 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 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.
Answer: Yes
- Mr. Giunta 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.

21F. With no other testimony taken or given the public hearing was closed.

22F. **The Board finds:**

- The lot is rectangular, with the length abutting Boston Post Rd. East
- To rebuild as proposed, the applicant will need 3 variances. This is a non-conforming structure. The improved site will make it 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 a gas station and convenient store as zoned, Business.
- The applicant will tear down what is existing on the site to create a new and improve site taking into consideration traffic circulation, landscape and safety for their customers.
- The applicant is making a 100% improvement to the site. In doing so, 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. In order to meet all these codes, the site is designed as presented.
- 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 is 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, which will be an improvement to the site in terms of safety and traffic and pedestrian flow.

23F. **Vote:** Acting Chairman, Ralph Loftin, cited each variance requested and put it to a vote:

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. Vote: 4-0 to grant variance.

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. Vote: 4-0 to grant variance.

3. Section 650-47(E)(1)(b), landscaping requirements - requires a frontage landscaped strip of 25 ft. vs. the propose 10 ft. landscaped strip. Vote: 4-0 to grant variance.

24F. The hearing was adjourned.



City of Marlborough
Zoning Board of Appeals
140 Main Street
Marlborough, Massachusetts 01752
Tel. (508) 460-3768

ZBA Case # 1450-2018

Applicant: Colbea Enterprises, LLC

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

VOTE OF THE BOARD
Signature Sheet

In Favor

In Opposition

Paul Giunta

Paul Giunta

Ralph Loftin

Ralph Loftin

Ralph Loftin

Thomas Golden

Thomas Golden

Thomas Golden

Thomas Pope

Thomas Pope

Thomas Pope

Robert Levine

Robert Levine

Robert Levine
