



TOWN OF FRAMINGHAM
ZONING BOARD OF APPEALS

150 Concord Street B2
Framingham, MA 01702

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BOARD OF APPEALS CASE NO. 16-41

PETITION OF COLBEA ENTERPRISES LLC

DATE OF DECISION: NOVEMBER 15, 2016

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) on the Application of COLBEA ENTERPRISES, LLC. (hereinafter the Applicant), for property located at 601 OLD CONNECTICUT PATH. This Decision is in response to a Petition for a Variance for a canopy within the front setback as required by the Zoning By-Law (hereinafter the Application).

2. Property Owner and Applicant

Colbea Enterprises, LLC
2050 Plainfield Pike
Cranston, RI 02921

3. Location

Property is located at 601 Old Connecticut Path and identified by Assessors' Parcel ID 072-59-8679-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on November 15, 2016 the Board voted to GRANT the requested VARIANCE by a unanimous vote in favor of the petition of three (3) members sitting on the Application. The record of the vote is stated as follows:

PHILIP R. OTTAVIANI, JR.	YES
SUSAN S. CRAIGHEAD	YES
STEPHEN MELTZER	YES

5. Proceedings

The Application was received by the Board on October 21, 2016 pursuant to MGL, Ch. 40A, §10, and the Framingham Zoning By-Law. The Application was considered by the Board at a duly noticed public hearing of the Board on November 15, 2016 at 7:15 P.M. in the Blumer Community Room of the Memorial Building. Board Members Philip R. Ottaviani, Jr., Susan S. Craighead, Stephen Meltzer, and Alternate Joseph Norton were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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The Applicant was present with his counsel, Paul Galvani, Engineer Alan Micale, and Director of Construction Chris Gerald. Mr. Galvani explained that the Applicant was seeking to remove the existing canopy and dispensing pumps and replace with new ones with a different orientation. He explained that the new orientation will create a better circulation on site. Mr. Micale explained that the proposed updated canopy will be set at the existing canopy setback but due to the front lot lines, it is angled into the site. Ms. Craighead agreed circulation would be improved but voiced concern about entrance and how people navigate into the site. Mr. Micale explained the new orientation would provide a clear display of available pumps along with an open space directing to the car wash. Ms. Craighead asked what rights the Applicant has to use the right of way. Mr. Galvani explained it has been used for decades and clarified it is a local road rather than state. Mr. William Labarge (TMM 16) spoke in favor of the proposal.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1. Application filed with the Building Official for a permit to replace the existing gas pump canopy with a new 26' x 96' canopy within the required front setback, dated October 19, 2016.
- 6.2. Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on October 21, 2016.
- 6.3. Filing fee in the amount of \$500.00.
- 6.4. Planning Board comments dated November 14, 2016.
- 6.5. Photograph depicting the existing gas pump canopy, stamped "Received" by ZBA staff on November 15, 2016.
- 6.6. Site plan entitled "Season's Corner Market" prepared by Ayoub Engineering, 414 Benefit Street, Pawtucket, RI, 02861, dated May 17, 2016.

Exhibit 6.6 shall be hereinafter referred to as the "Plan".

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1. The property is located within the Office and Professional (P) zoning district.
- 7.2. On October 19, 2016, the Building Official denied the Application for a permit to remove the existing canopy and install a new canopy and gasoline dispensing pumps within the required front setback, pursuant to Section IV.E.2 of the Zoning Bylaw.
- 7.3. On October 21, 2016, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining a Variance from the Zoning By-Law.
- 7.4. Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on October 31 and November 7, 2016 and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5. The required front setback in the P zoning district is 30 feet, and the proposed canopy will reach within 1.6 feet of the front property line. The existing canopy has a front setback of

3.6 feet. The reason for the small setback is the parcel itself is set back from the roadway. There is a landscaped buffer between the sidewalk and the gas pump area, and the distance between said buffer and the proposed canopy is 17.8 feet. Functionally, part of the premises is in the public right of way. The property has been used in this way for many years without objection from the Town, which controls this section of Route 126.

7.6. The Variance standard established by the G.L. c. 40A §10 and the Framingham Zoning By-Law is a demanding criterion. The Board must find that owing to circumstances relating to the soil conditions, shape, or topography of such land or structures, which especially affect such land or structures but do not affect generally the zoning district in which it is located, a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. Also, the circumstances under which a Variance may be granted are not unlimited.

7.7. There are circumstances relating to the soil conditions, shape, or topography of the land or structures for which the Variance is being sought. *The parcel is of a unique shape, with the property line set back an unusual distance from the roadway. The functional setback from the roadway to the gas pumps is close to the required 30 feet.*

7.8. Owing to such circumstances, a literal enforcement of the provisions of this By-law would involve substantial hardship, financial or otherwise, to the petitioner. *If required to place the canopy 30 feet from the front property line, the project could not proceed, as there would be no space for the canopy.*

7.9. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the By-Law or from the intent of the district in which the Variance is being sought. *The new canopy will not result in a change in use of the property, and will improve circulation on the site by reorienting the pumps. The Applicant is also proposing to replace the underground fuel tanks. The overall project will result in an improvement to the neighborhood.*

7.10. The Board grants this Variance with the following conditions:

7.10.1. The proposed gas pump canopy shall be located and constructed as shown on the Plan.

7.11. This Decision applies only to the requested Variance. Other approvals or permits required by the By-Law, other governmental boards, agencies or bodies having jurisdiction, shall not be assumed or implied by this Decision.

7.12. If the rights authorized by this Variance are not exercised within one year of the date of grant of such Variance, such rights shall lapse. The Applicant may request an extension to the one year period by submitting a written Application for extension prior to expiration of the one year period. However it is solely within the discretion of the Board to grant such an extension. An extension shall be for a period not to exceed six (6) months. If the Board fails to act on the request for extension within thirty days of the date of the requested extension, all rights authorized by this Variance shall lapse at the expiration of the one year

period. If the Variance lapses, such rights pertaining to the Variance may only be reestablished after notice and a new hearing pursuant to G.L. c. 40A, §10.

7.13. This Decision shall be recorded at (as appropriate) the Middlesex South District Registry of Deeds or District of the Land Court prior to the issuance of a Building Permit. A copy of the recorded or filed Decision certified by the Registry, and notification by the owner of the recording, including recording information, shall be furnished to the Board and the Building Official

7.14. The terms, conditions and provisions of this Decision shall run with the land and shall be binding upon the Applicant, its successors in interest and assigns, and shall be enforceable by the Town of Framingham.

8. Appeals

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, §17 and shall be filed within twenty (20) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: _____

Philip R. Ottaviani, Jr., Chairman