



Enid Starr, Co-Chair
Jesse Geller, Co-Chair
Christopher Hussey

RECEIVED
2012 OCT - 5 AM 10:15
TOWN OF BROOKLINE
PLANNING DEPT.
TOWN OF BROOKLINE
Town of Brookline
Massachusetts

Town Hall, 1st Floor
333 Washington Street
Brookline, MA 02445-6899
(617) 730-2010 Fax (617) 730-2043

Patrick J. Ward, Clerk

TOWN OF BROOKLINE
BOARD OF APPEALS
CASE NO. 2012-0031

Petitioner, Stop & Shop Super Market, Co. LLC, applied to the Building Commissioner for permission to construct a new fuel facility, canopy, kiosk, Restrooms and fuel storage at 137 Harvard Street. The application was denied and an appeal was taken to this Board.

On 9, April 2012, the Board met and determined that the properties affected were those shown on a schedule in accordance with the certification prepared by the Assessors of the Town of Brookline and approved by the Board of Appeals and fixed 30, August 2012, at 7:00p.m. in the Selectmen's Conference Room as the time and place of a hearing on the appeal. Notice of the hearing was mailed to the Petitioners, to their attorney (if any) of record, to the owners of the properties deemed by the Board to be affected as they appeared on the most recent local tax list, to the Planning Board and to all others required by law. Notice of the hearing was published on August 9 and August 16, 2012, in the Brookline Tab, a newspaper published in Brookline. A copy of said notice is as follows:

NOTICE OF HEARING

Pursuant to M.G.L. C. 39, sections 23A & 23B, the Board of Appeals will conduct a public hearing to discuss the following case:

Petitioner: **STOP & SHOP SUPER MARKET, CO, LLC**
Owner: **AHOLD USA**
Location of Premises: **137 HARVARD ST**
Date of Hearing: **August 30, 2012**
Time of Hearing: **07:00 PM**
Place of Hearing: **Selectmen's hearing room, 6th floor**

A public hearing will be held for a variance and/or special permit from:
4.03; Pre-Existing Special Permit Uses, special permit required.
4.07; Table of Use Regulations, Use #25, special permit required.
4.03; Pre-Existing Special Permit Uses, special permit required.
5.09.2a; Design Review, special permit required.
5.09.2f; Design Review, special permit required.
5.43; Exceptions to Yard and Setback Regulations, special permit required.
5.50; Front Yard Requirements, variance required.
5.60; Side Yard Requirements, variance required
5.70; Rear Yard Requirements, variance required
6.08.5.b; Regulations Applying to Gasoline Service Stations. variance required.
8.02.2; Alteration or Extension, special permit required.

Of the Zoning By-Law to construct a new fuel facility, canopy, kiosk. Restrooms and underground fuel storage at 137 Harvard Street.

at **137 HARVARD ST**

Said premise located in a **L-1.0 (local)** business district.

Hearings, once opened, may be continued by the Chair to a date and time certain. No further notice will be mailed to abutters or advertised in the TAB. Questions regarding whether a hearing has been continued, or the date and time of any hearing may be directed to the Zoning Administrator at 617-734-2134 or check meeting calendar at: <http://calendars.town.brookline.ma.us/MasterTownCalendar/?FormID=158>.

The Town of Brookline does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services or activities. Individuals who need auxiliary aids for effective communication in programs and services of the Town of Brookline are invited to make their needs known to the ADA Coordinator, Stephen Bressler, Town of Brookline, 11 Pierce Street, Brookline, MA 02445. Telephone: (617) 730-2330; TDD (617) 730-2327.

Enid Starr
Jesse Geller
Christopher Hussey

At the time and place specified in the notice, this Board held a public hearing. Present at the hearing was Chairman, Jesse Geller and Board Members Jonathan Book and Mark Zuroff. Attorney Diane Gordon, whose business address is 10 Winthrop Square, Boston, presented the case for the petitioner. Also present were representatives of Vanasse Hangen and Brustlin (“VHB”), the design and engineering consultants for the petitioner.

Ms. Gordon described the property as a Stop & Shop gas station located on the easterly side of Harvard Street between Harvard Court and Alton Place. The site is adjacent to 155 Harvard Street, which is the location of the Stop & Shop Supermarket and their parking facilities and in front of 143 Harvard Street, which is the Scrub A Dub car wash. The property contains two gas pumps, three curb cuts and an unused former auto garage. There is also an easement on the property to provide access for the car wash lot as it is a rear lot that does not have any frontage. This section of Harvard Street is primarily comprised of low-rise commercial businesses, including a carwash, nail salon, and pet store, as well as multifamily residential buildings.

Attorney Gordon said her client has received a certificate of non-significance from the Preservation Commission to start the process and allow demolition of the existing structure. She said the catalyst for the entire project was the requirement for the removal of the existing underground fuel tanks. She said the petitioner thought that, while undertaking the tank replacement project, they would like to improve the facility as a whole and make it safer and more attractive. Ms. Gordon said the proposal is for three pumps instead of two, and state of the art, larger capacity storage tanks. She said there will be a full time attendant but the pumps will all be self-serve.

Connor Nagle, civil engineer and Project Manager with VHB, presented a description of the project for the Board. Mr. Nagle said the existing two pump station would be demolished; a new canopy installed and two new storage tanks and three new dispensers would be installed further back from the street. He said the impervious surface, would be improved, as well as new parking spaces installed. He said the vehicle circulation would be improved by removing one curb cut and moving the pumps further back from the street. Mr. Nagle stated that there would be a reduction in and treatment of stormwater runoff from the site.

Bill Taber, Engineer with VHB, presented the ecological aspects of the project for the petitioner. Mr. Taber presented the upgraded safety and environmental factors as proposed for the project. Mr. Taber described the tank upgrades and technology. Board Member Zuroff asked if the facility will allow hand held gas containers to be filled. Mr. Taber said there are procedures in place that will be enforced by the attendant, to fill those types of containers. Chairman Geller ask how much of the new technology is mandated and how much was voluntary. Mr. Taber said the majority is regulation and some of the additional safety measures were added voluntarily.

Pat Dunford, traffic engineer with VHB, presented the traffic study for the petitioner. Mr. Dunford illustrated the expected effect on the current traffic situation and how the design changed to ease any traffic issues. He stated that there is the potential that up to ten to twenty vehicles per hour would be added to the traffic flow due to the additional pumping station but that is well below the capacity that can be handled. He also noted that the increase in the size of the underground storage tanks would reduce the number of required deliveries to the site. Mr. Dunford said that obvious deficiencies were noted at the existing site and, as proposed, with the

self-service and additional pumps, the traffic flow should be much more efficient. Board Member Book asked if the access would be in and out from both curb cuts. Mr. Dunford said yes, but by the positioning of the pumps he expects the traffic flow to enter at the right curb cut (facing the site from the street) and exit from the left curb cut. Board Member Book asked if the pumps were accessible regardless of what entrance someone came in. Mr. Dunford said the pumps would extend to either side of a vehicle. Board Member Zuroff asked if markings were proposed to help with the traffic flow. Mr. Dunford said he believes when it comes to traffic, a minimalist approach is best, but the plan could be modified to accommodate some directional arrows.

Board Member Zuroff asked if there were any issues with run-off or shading. Connor Nagle said a new drain system is proposed and has been approved by the Town Engineering Department. He said he does not believe there are any issues with shading. Board Member Book asked what the hours of operation will be. Attorney Gordon said they will remain the same; closing at nine o'clock. She said typically the gas station closes one hour prior to the market.

The Chairman then asked if anyone in attendance wished to speak in support of the application. No one rose to speak.

The Chairman asked if anyone wished to speak in opposition to the application. Dave Atkins of Needham, MA, property manager of the abutting property at 129 Harvard Street, said he is concerned with the effects of the canopy on the property he manages as well as the possibility of a heightened risk of spills as a result of changing to a self-service facility, any

increase in the size of the signage and potential confusion over ingress and egress. He said Stop & Shop does not maintain their landscaping.

Gerald P. Atkins Sr. of Needham, MA, owner of 127-131 Harvard Street said he has an issue with the size of the lot and the proposed development, noting that the proposal dramatically increases the intensity of the use. He also said he believes there is a problem with the Traffic flow. Mr Atkins said his driveway directly abuts the gas station's driveway, which he believes creates an intense traffic hazard, and which is not allowed by the Town's Zoning By-Law. He said he believes the proposal will take away from the Victorian style of the neighborhood.

Maureen Atkins, of Needham, MA presented a magnetic display illustrating the issues with pedestrian and vehicular traffic. Ms. Atkins is concerned about the future of the gas station and the number of vehicles coming in for discount gas.

The Chairman called on Polly Selkoe, Assistant Director of Regulatory Planning, to present the Planning Board report.

Section 4.03 – Pre-Existing Special Permit Uses – Uses that lawfully existed when the Zoning By-Law was enacted but are classified as requiring a special permit are deemed to have been granted a special permit. However, any application to alter the use or structure requires a special permit. As the applicant is altering the structure, a *special permit* is required under this Section.

Section 4.07 – Table of Uses, Use #25 – Gasoline service stations require a *Special Permit* in L districts. However, the service station was constructed in 1960, which predates the Zoning By-Law, and is considered to have a special permit under *Section 4.03*.

Section 5.09.2.a & f – Design Review: New structures on Harvard Street require a special permit subject to the design review standards listed under *Section 5.09.4(a-l)*. All the conditions have been met, and the most relevant sections of the design review standards are described below:

- a. Preservation of Trees and Landscape – There are some young plantings along the front property line that will likely need to be removed during construction. However, the applicant is adding substantially more landscaped area to the property upon the completion of construction. The applicant is proposing to install a line of shrubs along the front property line to screen the parking, which is required by the Zoning By-Law.
- b. Relation of Buildings to Environment – The new gas station canopy and kiosk are not anticipated to create any detrimental shadowing on neighboring properties.
- c. Relation of Buildings to the Form of the Streetscape and Neighborhood – The new gasoline service station is a modernized version of what currently exists.
- d. Open Space – There currently is no open space on site.
- e. Circulation – The proposal will improve the safety of the circulation on site by closing up one curb cut. In addition, adding an extra pump and widening the circulation lanes should ameliorate the queuing onto Harvard Street the gas station currently experiences at busy times.

Section 5.50 – Front Yard Setback Requirements

Section 6.08.5.b & .6 –Setbacks for Gasoline Service Stations

Dimensional Requirements	Required	Existing	Proposed	Relief
Driveway Setback (south side)	10'	0'	0'	Pre-Existing
Driveway Setback (north side)	10'	0'	0'	Nonconforming

Canopy Setback (alternative)	40'	n/a	Est. 35'	
Canopy Setback (alternative)*	40'	n/a	Est. 35'	Special Permit**

* Although there is no required front yard setback for principal structures in an L-1.0 districts,

Section 6.08.6 requires a 40' front yard setback for gas station canopies.

** Under Section 5.43 of the Zoning By-law, the Board of Appeals may waive dimensional requirements in lieu of a counterbalancing amenity. The applicant is proposing to make improvements to the landscaping, extend an existing guard rail, and make improvements to the drainage on site as counterbalancing amenities.

Section 7.03 – Signs in L, G, I, and O Districts

The Planning Board shall review and approve any signs installed in such districts.

Dimensional Criteria

Type of Sign	Dimensions	Maximum Allowed	Proposed	Finding
Canopy Sign	35 ¼" x 15'9"	155 s.f.	31.3 s.f.	Complies
Freestanding Sign	5'1" x 6'6"	155 s.f.	33 s.f.	Complies
Freestanding Sign Height	-	22'	15'	Complies
Freestanding Sign Setback	-	5'	5'	Complies
Pump Signage (12)	6" x 22", 16" x 22"	155 s.f.	40.3 s.f.	Complies

Design Criteria – Signs

Design Criteria	Finding

a. The sign should serve to define or enhance architectural elements of the building, not obscure or obliterate them.	Yes
b. The sign should identify the name of the business, not advertise brand names.	Yes
c. Signs should be consolidated.	Yes
d. The sign should be designed without superfluous back-facing.	Yes
e. Sign graphics should reflect simplicity, neatness, and minimum wording – not only to improve appearance but to improve legibility.	Yes
f. All nonconforming signs are to be removed, and facade elements, awnings, and other extraneous materials which conceal architectural details should be removed.	n/a
g. Sign colors should be limited in number and should be compatible with the facade.	Yes
h. Sign illumination shall not be of high intensity.	n/a

Section 8.02.2 – Alteration or Extension

A special permit is required to alter a pre-existing non-conforming structure or use.

Ms. Selkoe said the Planning Board is supportive of the alternative proposal. The Planning Board appreciates the efforts of the applicant to voluntarily make improvements to the appearance of the gas station when they replace the underground storage tank rather than leaving the gas station as-is. The Planning Board feels the new gas station and associated landscaping will be a substantial visual improvement to the appearance of the lot, particularly as the proposed parking has been moved to the rear of the lot. In addition, the improved circulation on the site should diminish some of the impacts the gas station currently has during peak business on Harvard

Street. Although the new pump is not anticipated to generate significant traffic impacts, pushing the pumps and payment kiosk further into the site and orienting the pumps perpendicular to the street will reduce the necessity for customers to queue on Harvard Street. In addition, pushing the pumps further into the site allows for additional landscaping in the front yard to screen the gas station. Finally, the Planning Board is supportive of the signage as proposed and appreciates the efforts of the applicant to work with staff to create an acceptable sign program.

Therefore, the Planning Board recommends approval of the revised plans by Vanasse Hangen Brustlin, dated 6/5/2012, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit final elevations and a final site plan indicating the locations of all curb cuts, gas pumps and canopy, payment kiosk, underground gas storage tanks and parking spaces subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan and a plan for landscape maintenance and replacing distressed plant material, when necessary, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit cut sheets for the proposed lamps and illumination details subject to the review and approval of the Assistant Director of Regulatory Planning.

4. There shall be no video or audio advertising devices installed at the gas pumps, payment kiosk or elsewhere on site.

5. Prior to the issuance of a building permit, the applicant shall submit a site circulation plan subject to the review and approval of the Director of Transportation and Engineering.

6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building elevations stamped and signed by a registered engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

The Chairman then called upon Michael Yanovitch, Chief Building Inspector, to deliver the comments of the Building Department. Mr. Yanovitch stated that the Building Department believes this is an obvious improvement over the existing site as well as an improvement over the streetscape in this area. He said he appreciates and respects the abutters concerns, but he also appreciates the work and investigations that the petitioner has conducted. Mr Yanovitch said traffic is the only concern of the Building Department, but, he said, there are Town Departments in place to handle any adverse effects cause by the expansion of the facility. He said the Building Department has no objections to the petitioner's request.

Chairman Geller asked the Board to deliberate. Board Member Zuroff said he believes the proposal is an improvement and understands the abutters' concerns. Board Member Zuroff asked that an additional condition be added to address the traffic flow on the site. Board Member Book had a concern regarding the Board's responsibility under **Section 5.09** of the Zoning By-Law, Design Review, of the Zoning By-Law. Chairman Geller said he feels it is an overall improvement of an existing gas station use. The Board discussed the Design Review issue. Chairman Geller said, in terms of Section 9.05, he said the petitioner has clearly satisfied the requirements. Member Zuroff said he believes that traffic will be improved by the development of the site.

The Board, having deliberated on this matter and having considered the foregoing testimony, concludes that it is desirable to grant Special Permits as requested by the petitioner and that the petitioner has satisfied the requirements necessary for relief under **Sections 4.03, 5.09.2.a and f, 5.43, 6.08.5.b and c, 8.02.2, and 9.05** of the Zoning By-Law and made the following specific findings pursuant to **Section 9.05** of the Zoning By-Law:

- a. The specific site is an appropriate location for such a use, structure, or condition.
- b. The use as developed will not adversely affect the neighborhood.
- c. There will be no nuisance or serious hazard to vehicles or pedestrians.
- d. Adequate and appropriate facilities will be provided for the proper operation of the proposed use.

Accordingly, the Board voted unanimously to grant the requested relief subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final elevations and a final site plan indicating the locations of all curb cuts, gas pumps and canopy, payment kiosk, underground gas storage tanks and parking spaces subject to the review and approval of the Assistant Director of Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit a final landscape plan and a plan for landscape maintenance and replacing distressed plant material, when necessary, subject to the review and approval of the Assistant Director of Regulatory Planning.
3. Prior to the issuance of a building permit, the applicant shall submit cut sheets for the proposed lamps and illumination details subject to the review and approval of the Assistant Director of Regulatory Planning.
4. There shall be no video or audio advertising devices installed at the gas pumps, payment kiosk or elsewhere on site.
5. Prior to the issuance of a building permit, the applicant shall submit a site circulation plan subject to the review and approval of the Director of Transportation and Engineering.
6. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final building

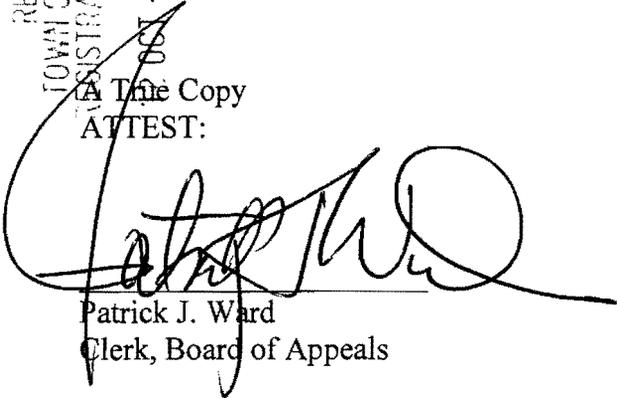
elevations stamped and signed by a registered engineer; and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Unanimous Decision of
The Board of Appeals

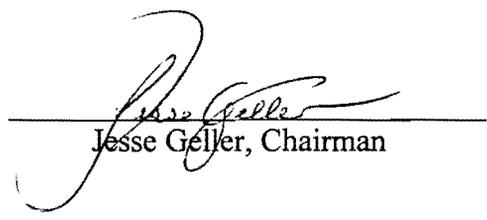
RECEIVED
TOWN OF BROOKLINE
REGISTER OF VOTERS
OCT 11 2012
AM 11:23

Filing Date: October 4, 2012

A True Copy
ATTEST:



Patrick J. Ward
Clerk, Board of Appeals



Jesse Geller, Chairman