

Stop & Shop appeals ruling

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EASTHAMPTON - Stop & Shop Supermarket Co. has sued the Planning Board over its decision to reject the company's application for a special permit to build a supermarket complex along Route 10.

The suit, which was filed in Worcester Land Court last week, maintains that the board incorrectly interpreted zoning regulations when it voted 3-2 against the project. As presented to the Planning Board, the plan comprises a 7,400-square-foot supermarket with 4,900 square feet of attached retail space at the rear of the 18-acre property, a separate 12,000-square-foot retail building and a gasoline station at the front of the lot by Route 10.

At the Sept. 28 vote, the board members denying the permit cited zoning laws that call for parking to be located to the side or in back of the building. Noting that the supermarket was in the rear, they said the proposal did not satisfy the requirement.

According to Boston lawyer Kevin P. O'Flaherty, who represents Stop & Shop, the Planning Board could have decided that the project met zoning standards because the gas station is at the front of the lot. The suit cited a letter from City Attorney John H. Fitz-Gibbon to the board suggesting that there was room for interpretation within the law in the case of a project with multiple structures. It also noted that the Planning Board approved another project, Town Line Industrial Sites, that showed parking in front of some buildings in a multi-building development.

Mayor Michael A. Tautznik has already expressed disappointment with the Planning Board decision. Former Planning Board Chairman Jason E. Duda, who voted in the minority, said he was "flabbergasted" by the dissenting votes. Duda resigned following the Stop & Shop vote, but has said his resignation is unrelated to the issue.

Cernak Buick, which is located on nearby Mountain View Street, has opposed another aspect of the project. The Stop & Shop plans calls for a signalized traffic intersection at Mountain View and Route 10 that would enable cars to turn into the Stop & Shop complex more easily. Proponents of the signal have also said it would facilitate development of land beyond the end of Mountain View.

Mark A. Tanner, who represents Cernak, said his client maintains that it and other abutters on Mountain View own the street to its mid-point and that it is not a right of way. Tanner also said the land beyond the end of the street is undevelopable because of this and other issues. He said his client is reviewing its options to see if it can intervene in the Stop & Shop complaint.