



Town of Barnstable
Zoning Board of Appeals
Minutes
May 9, 2012

Laura Shufelt - Chair	Present
William Newton – Vice Chair	Present
Craig Larson - Clerk	Present
Alex Rodolakis	Present
Brian Florence	Absent
George Zevitas	Present

Also present were Elizabeth Jenkins – Principal Planner and Carol Puckett – Administrative Assistant.

Laura Shufelt opens the hearing at 7:05 PM.

Introduction of Board Members - The board introduce themselves.

Approval of minutes from March 14, 2012 – Motion is made by William Newton and seconded by Alex Rodolakis to approve the minutes as presented.

Vote:

All in favor

At 707 PM, Laura Shufelt calls the Atlantis Iyanough Realty appeal and reads it into the record:

7:00 PM Appeal No. 2012-023 – Cont'd Atlantis Iyanough Realty, LLC

Atlantis Iyanough Realty, LLC (d/b/a Stop & Shop) has applied for a variance from the sign code, Section 240-65, as necessary for freestanding/pylon and wall signs totaling 182 square feet, where a maximum of 100 feet is allowed. The Applicant seeks a second freestanding/pylon sign and a larger wall sign. The property is located at 425 Attucks Lane, Hyannis, MA as shown on Assessor's Map 274 as Parcels 004/B00, 004/H00, 008/B00, 008/H00, 009/B00, 009/H00, 026/B00, 026/H00, 027, 028, 039 and 040/005, 040-006 & 040-007. It is in the Highway Business and Business Zoning Districts.

Continued from April 25, 2012; Members assigned: Laura Shufelt, William Newton, Craig Larson, Alex Rodolakis, George Zevitas

Laura Shufelt indicates that Attorney Jeffrey Ford has submitted a letter requesting a continuance to June 27, 2012.

Motion is made by Laura Shufelt to continue this to June 27th. William Newton indicates that he will not be here on that date. They discuss. Seconded by Alex Rodolakis.

CONTINUED TO JUNE 27, 2012 at 7:00 PM.

7:00 PM

Appeal No. 2012-025 - New

Sarty

Howard L. Sarty, II has petitioned for a Special Permit in accordance with Section 240-92(B) Buildings or structures used as single- or two-family residences. The petitioner is proposing to construct a 12' x 12' attached garage addition that will not encroach into the required setbacks and to add a second story to the main dwelling with a gross floor area of 1,240 square feet. The dwelling does not conform to the 10' side yard setback requirement. The property is located at 22 Studley Road, Hyannis, MA as shown on Assessor's Map 306 as parcel 019. It is in a Residence B Zoning District.

Laura Shufelt indicates that there is a letter submitted from Attorney John Kenney requesting a continuance to May 23, 2012.

Motion is made by Laura Shufelt to continue this to May 23, 2012. George Zevitas asks for the reasoning for the continuance. Attorney Kenney indicates that because one of the members present tonight cannot sit on this appeal and they would have to have an unanimous vote from the remaining four, they have decided to wait for more than four zoning board members. Seconded by Alex Rodolakis

Vote:

All in favor.

CONTINUED TO MAY 23, 2012 at 7:00 PM

At 7:10 PM, Laura calls the AMA Nantucket, Inc., appeals and reads them into the record:

7:05 PM

Appeal No. 2012-026 - New

AMA Nantucket, Inc. d/b/a Marvin Design Gallery

AMA Nantucket, Inc. d/b/a Marvin Design Gallery has appealed the Building Commissioner's decision to deny an application for a sign permit pursuant to Section 240-65 Signs in the HB District and any other applicable sections of Article VII Sign Regulations. The Appellant is seeking a permit for a second sign on the building's entry portico. The proposed sign is 37.5 sq.ft. The Appellant presently has a 30 sq.ft freestanding pole sign. The Appellant is lessee of the subject property, located at 73 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 071. It is in the HB-Highway Business and RB-Residence B Zoning Districts.

Members assigned: George Zevitas, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt.

Attorney John Kenney is here representing the applicant, Walter Spokowski, who is also with him tonight. Attorney Kenney indicates that Mr. Spokowski has invested a lot of money in his business but learned that they couldn't put up another sign and that the sign code is interpreted one way but is not what it says literally. Attorney Kenney indicates that he had sent a letter to Tom Perry - Building Commissioner with his argument and that his position is that the square footage allowance applies to each business as stated in the ordinance and that there is nothing in the ordinance that suggests it has to be a portion based on the frontage of the portion of the building that you occupy. He indicates that Mr. Perry responded to his letter to which he disagreed thus, they filed this timely appeal of his decision. They both agree that Section 240-65 is the applicable section of the zoning ordinance within the sign code that applies. Where they disagree is Section 240-65 A & C. He reads Section 240-65.C. He indicates that in Section 240-65.A & C that it refers to "each business". He refers the board to Section 240-65.D, E, F, G, H, I, J and K and reads them. He doesn't believe that anyone can read Section 240-65.C in any other way other than as how it applies to the total square footage of each business. He then refers to

Section 240-62 and reads part of it which is Exhibit F-2 of his memo. He reads 240-62(E). He indicates that in his instance the building, according to a certification from McDougall Surveying and Associates, that the total frontage is 70.3 feet. He indicates that they way he interprets the sign code is that his client is entitled to 70 feet of signage. They have 30 feet out front and are looking for 37.5 feet of additional signage totaling 67 square feet of signage. Attorney Kenney then reads a letter from the Building Commissioner, Tom Perry, as to the definition or frontage and premises. Attorney Kenney indicates that Black's Law definition of premises is more applicable. He cites Framingham Clinic Inc., vs Zoning Board of Appeals of Framingham, 382 Mass 283, in which the court held that zoning ordinances are to be determined by the ordinary principals of statutory construction, which he indicates that plain language holds. Also, in the Commonwealth vs S.S. Kresge, 267 Mass 145, "the words to be construed are everyday ones and should be interpreted in accordance with common usage".

Attorney Kenney asks the board to overturn the decision of the Building Commissioner and to grant his client the extra signage.

William Newton asks staff how this bylaw about signs has been interpreted with other businesses.

Elizabeth Jenkins indicates that every business can have two signs and can use it in a combination and have flexibility to use that sign allowance. She indicates that the total square footage is talking to the singular business. She indicates that where Attorney Kenney and her differ is that Attorney Kenney thinks this allows them to attribute area of a building that is not leased or occupied by them and add that into a particular business' sign allowance.

The board discusses 240-65 A & C and the interpretation.

Elizabeth Jenkins thinks that the intent of the drafters needs to be taken into account.

Motion is made by William Newton and seconded by George Zevitas to deny the relief being sought for AMA Nantucket, Inc.,

Vote:

Aye: George Zevitas, Craig Larson, William Newton, Laura Shufelt

Nay: Alex Rodolakis

UPHELD THE BUILDING COMMISSIONER

Laura then calls the next appeal:

7:10 PM

Appeal No. 2012-027 – New

AMA Nantucket, Inc. d/b/a Marvin Design Gallery

AMA Nantucket, Inc. d/b/a Marvin Design Gallery has applied for a variance to Section 240-65 Signs in the HB District and any other applicable sections of Article VII Sign Regulations. The Applicant seeks relief for a second sign on the building's entry portico. The proposed sign is 37.5 sq.ft. The Applicant presently has a 30 sq.ft freestanding pole sign. The Applicant is lessee of the subject property, located at 73 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 071. It is in the HB-Highway Business and RB-Residence B Zoning Districts.

Members assigned: George Zevitas, Alex Rodolakis, Craig Larson, William Newton, Laura Shufelt

Attorney Kenney is representing the applicant. Attorney Kenney addresses the three prong test for a variance and indicates that in relation to the shape of the lot, it is trapezoidal and bisected by Route 28 and points it out on the easel. He indicates that the property fronts at an odd angle. The problem is that the applicant's business

is to the rear of the building and is where the portico is located. The shape of the lot coupled with the location, blocks the businesses located out back. They have a freestanding sign out front and no way to identify the business and literal enforcement will create a hardship and financial difficulties and will not be a detriment. Due to the angle of the lot and building the second sign would not be seen by anyone looking for it and would be a directional sign helping them find an entrance way. The sign would also help with fire apparatus if ever needed to locate the business.

Craig Larson would be in favor in granting the sign over the portico as long as the signage on the freestanding sign conforms to the 35 square feet and not 50 square feet.

Attorney Kenney asks to confer with his client. Attorney Kenney needs clarification about what is being proposed. The board discusses. Craig Larson believes that the landlord should be present as it would be that person ho would have to divide the allowable area among the tenants.

The board discusses.

Alex Rodolakis makes findings:

In Appeal No. 2012-027, the applicant is AMA Nantucket, Inc. d/b/a Marvin Design Gallery has applied for a variance to Section 240-65 Signs in the HB district and any other applicable sections of Article VII Sign Regulations. The Applicant seeks relief for a second sign on the building's entry portico. The proposed sign is 37.5 sq.ft. The Applicant presently has a 30 sq.ft freestanding pole sign. The Applicant is lessee of the subject property, located at 73 Falmouth Road, Hyannis, MA as shown on Assessor's Map 311 as Parcel 071. It is in the HB-Highway Business and RB-Residence B Zoning Districts.

Based on the testimony given tonight and no public comment:

- *owing to circumstances related to soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;*
- *a literal enforcement of the provisions of the zoning ordinance would involve substantial hardship, financial or otherwise to the petitioner; and*
- *desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.*
- *The applicant has met all three requirements*

Vote:

AYE: Alex Rodolakis, Craig Larson, Laura Shufelt

NAY: George Zevitas, William Newton

George Zevitas indicates that he votes in the negative as it has not been demonstrated that there is any hardship financial or otherwise, especially to the point as it would nullify or substantially derogate from the intent or purpose of the zoning ordinance.

Craig Larson would like to make an amendment before he votes that presently the freestanding sign is 50 square feet and not 30. Elizabeth Jenkins indicates that it is confirmed that there are permits, one for California Closets/Marvin Design Gallery for the freestanding sign. Craig Larson confirms that there is only one permit. Elizabeth Jenkins indicates that 20 square feet is for California Closets and 30 square feet apportioned for Marvin Design Gallery.

Motion is made by Alex Rodolakis and seconded by Laura Shufelt to grant the relief being sought.

Vote:

AYE; Alex Rodolakis, Craig Larson, Laura Shufelt

NAY: George Zevitas, William Newton

NOT GRANTED

Open: Chair's Discussion - Laura Shufelt indicates that in regards to emails, that IT has established a mailbox for each of the boards and that members should be copying to bzba on all correspondence regarding zoning board issues.

Motion is made by William Newton and seconded by Alex Rodolakis to adjourn

Vote:

All in favor

Meeting adjourned at 8:26 PM