



Town of Barnstable Zoning Board of Appeals



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Board Members:

Brian Florence – Chair Alex Rodolakis – Vice Chair
David A. Hirsch –Regular Member Herbert Bodensiek – Regular Member Robin Young – Associate Member Matthew Levesque – Associate Member
Spencer Aaltonen – Associate Member Jacob Dewey – Associate Member
James Tinsley – Town Council Liaison

Staff Support

Elizabeth Jenkins – Regulatory / Design Review Planner - elizabeth.jenkins@town.barnstable.ma.us
Anna Brigham – Principal Planner – anna.brigham@town.barnstable.ma.us
Carol Puckett – Administrative Assistant – carol.puckett@town.barnstable.ma.us

Minutes

Wednesday, October 26, 2016

Hearing Room – 2nd Floor – 367 Main Street, Hyannis, MA

Brian Florence - Chair	Absent
Alex Rodolakis - Vice Chair	Present
David Hirsch	Present
Herbert Bodensiek	Present
Robin Young	Present
Matthew Levesque	Present
Spencer Aaltonen	Present
Jacob Dewey	Present

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

At 7:04, Alex Rodolakis opens the hearing as a quorum is present.

Call to Order

Introduction of Board Members – *All members present introduce themselves.*

Alex reads the following with no response:

Notice of Recording

Please note that this meeting is recorded and broadcast on Channel 18 an in accordance with MGL Chapter 30A §20. I must inquire whether anyone is taping this meeting and to please make their presence known.

Alex Rodolakis reads the following into the record:

New Business

7:00 PM Appeal No. 2016-034

Sleep Number

Select Comfort Corporation d/b/a Sleep Number has requested a Variance to Section 240-65.C – Signs. The applicant is seeking relief from the maximum square footage allowed for signage in the Highway Business (HB) zoning district. The applicant is proposing two signs: one approximately 24 square feet; and the other approximately 47 square feet. The total square footage of signage proposed exceeds that allowed by the Code based on the square footage of the façade. The property is located at 790 Iyannough Road, Hyannis, MA as shown on Assessor’s Map 311 as Parcel 092. It is located in the Highway Business (HB) and Business (B) zoning districts.

Members assigned: Alex Rodolakis, David Hirsch, Robin Young, Spencer Aaltonen, Jake Dewey

Representative: Doug Franklin from Identity Resources who is the National Signage Provider and Darren Balter - District Manager for Sleep Number for the New England area.

Mr. Franklin hands out photos that they will be referencing (**Exhibit A**). He states that there is hardship because the store is not identified from Route 132, there is extensive landscaping in that area, and that there is no room on the multi tenant sign. Hardship cannot see the signs and missing the turn to come in and are proposing something like what the present tenants in that complex have.

Alex Rodolakis asks for the variance conditions relating to this.

Mr. Franklin states that other variances have been approved in this plaza. Verizon was approved for larger signs and there was a precedent set for that and what they are proposing is a fair compromise. What is on the building is something Sleep Number is not comfortable with. The sign is small and they don't have visibility on the rear.

Jake Dewey asks Mr. Franklin if what Sleep Number has currently is the most signage allowed. Mr. Franklin answers yes. David Hirsh asks if he has approached the landowner and asks about the existing tenant signage in the plaza. Mr. Franklin states that he believes that the tenant sign is a pre-existing, nonconforming sign.

They discuss the other tenants. Elizabeth Jenkins states that she was involved in the signage for Verizon and TMobile and that they are in compliance and that the landlord of this plaza has been approached in the past and asked to develop signage consistent with other shopping centers providing more visibility for their tenants.

Robin Young thinks it is the landlord's responsibility to come before the board to change

Alex Rodolakis asks for public comment. No one speaks.

Alex thinks it is a tenant issue and thinks the landlord should be negotiated with. Alex explains the withdrawal without prejudice option. The applicant asks to withdraw without prejudice.

Motion is made by David Hirsch and seconded by Spencer Aaltonen to allow the applicant to withdraw without prejudice.

Vote:

All in favor

WITHDRAWN WITHOUT PREJUDICE

Alex reads the following into the record:

7:01 PM Appeal No. 2016-037

Norwood

Guy Norwood has applied for a Special Permit pursuant to § 240-131.4 D.(2) – Change, Alteration or Expansion of Conforming or Nonconforming Uses or Structures. The applicant is seeking to replace and raise the existing roof by 4 feet thereby increasing the total height of the dwelling to 19 feet 9 inches. The area of the second floor would be 487 square feet. The property is located at 54 Laurel Avenue, Centerville, MA as shown on Assessor Map 226 as Parcel 089. It is in the Craigville Beach District (CBD) and the Craigville Village (CV) Neighborhood Overlay Zoning Districts.

Members assigned: Alex Rodolakis, David Hirsch, Robin Young, Matt Levesque, Herbert Bodensiek

Representative: Liza Cox, Esq. from Nutter McClennen and Fish. Also with her is Guy Norwood, the applicant.

Attorney Cox explains that this is a unique situation and that it is not often that she disagrees with the staff report but in this instance she does. She states that the interpretation of gross floor area is not correct. She has a PowerPoint presentation. Reviewing and parsing out a definition is not exciting but is important in this instance. Mr. Norwood speaks and gives a brief background of the project. He explains that he put in 4' kneewalls and raised the roof. He got his sign off. He went to a hearing on March 15, 2016 from the Barnstable Historical Commission, got approval and went back to the historic office and thought a permit would be forthcoming in the mail. He completed the exterior work, was upfront with the town in hopes that he could finish the project. On April 24th he received a letter from Building Inspector – Jeff Lauzon indicating that they could not approve the permit until he received further framing detail and then was told that he would need to seek relief from the ZBA. He states that the disagreement between himself and the town is over the definition of gross square footage. He states that the Town informed him that the second floor was nonconforming as livable space and could only be designated as storage space. So, according to the Town, because it is nonconforming space, it is not included in the total gross square footage and by

making the ceiling higher, he has actually increased the square footage and thus exceeded the allowable increase limit. He does not see this as an increase as the gross square footage has not changed. He gives the definition of gross square footage and explains that the second floor has always been used as a sleeping area and that the only difference now is that the walls are higher. He has letters of support and neighbors present here tonight.

Attorney Eliza Cox gives a PowerPoint presentation (Exhibit A). She states that the staff report (Exhibit B) suggests that by raising the roof, it increases the gross floor area. She states that there is not change or increase of the footprint, exterior dimension, and no increase in the number of floors. The volume of the second floor is increased but not regulated under the zoning ordinance. As per Mr. Norwood, as it relates to the second floor, it has been used for a bedroom for 45 years or longer. A prior owner had raised the roof and added a dormer on the second floor and the use has been such since that time. She references the matter of Yankee Milk, Inc., 372 Mass. 353,358 (1977).

She discusses "capable of being used for human occupancy versus human occupancy. She then shows gross floor area (GFA) and refers to a slide entitled "Current MA Building Code". She also suggests that the staff report interpretation is in conflict with other provisions of the zoning ordinance. If staff reports interpretation is accepted then the zoning ordinance's definition of GFA is limited. She discusses the GFA versus habitable space and how it pertains to the building code. She then discusses the slide entitled "Building Code – Ceiling Height".

The board discusses when the work was done on the second floor. Elizabeth Jenkins states that she is unsure when the work occurred because there wasn't a building permit issued. Alex Rodolakis would like to see something from the applicant about it being at least 10 years since the previous work was done. Attorney Cox states that she will have an affidavit from Mr. Norwood forthcoming. Herbert Bodensiek asks at what stage the current work was at before the inspector issued a stop work order. Mr. Norwood explains. Robin Young suggests having the Town Attorney interpret the definitions. Jake Dewey references the assessor's record. Mr. Norwood states that the assessor's record includes the second floor in square footage.

Elizabeth Jenkins states that they would've never indicated to an applicant that they would've received a building permit in the mail and someone should know that they need a permit when doing work and was getting a historic permit in the mail, not a building permit. The interpretation as stated in the staff report was put together with the interpretation of the building commissioner.

Attorney Cox would be willing to put it into writing why the gross floor area is not increasing.

Alex Rodolakis asks for public comment:

Jim Lane, resident of Centerville and President of the Christian Camp Association is in favor of the applicant. He states that this project blends in with the surrounding dwellings and supported DCPC to keep houses in scale. However, he thinks this sounds vindictive. Some builders start the project before a permit is issued and do this as they can at their own peril.

Lee Williams lives in Craigville and is President of the Cottage Owner's Association and is in favor of what Mr. Norwood has done. It was a misunderstanding.

Myra Gooding of 145 Ocean Avenue speaks in support of Mr. Norwood and can't imagine making him tear it down.

Alex will keep public comment open.

Attorney Cox confers with her client briefly. Attorney Cox asks the board for a continuance in order to put into words the review of definitions, and get an affidavit from Mr. Norwood regarding the dwelling in 1975.

Board member David Hirsch asks what for the square footage before and after raising the roof and constructing the kneewalls. Attorney Cox will submit plans. Mr. Hirsch thinks the problem is within the definition Herb Bodensiek asks if there is an as built plan for the raised portion and what the dimensions of that area was of the original dormer. Jake Dewey asks about the heating of the second floor. Mr. Norwood states that there is no heat upstairs and electric heat was added on first floor only. Robin Young asks about other board permits /signoffs. Herb Bodensiek asks for pictures in current state.

Motion to continue to November 9th at 7:00 pm is made by Herbert Bodensiek and seconded by Matt Levesque.

Vote:
All in favor

CONTINUED TO NOVEMBER 9, 2016 at 7:00 PM

Motion to adjourn is made by Spencer Aaltonen and seconded by Robin Young to adjourn.

Vote:
All in favor

Correspondence

Matters Not Reasonably Anticipated by the Chair

Upcoming Meetings

November 9, 2016; December 14, 2016

Adjournment

Please Note: The list of matters are those reasonably anticipated by the chair, which may be discussed at the meeting. Not all items listed may be discussed and other items not listed may also be brought up for discussion to the extent permitted by law. It is possible that if it so votes, the Board may go into executive session. The Board may also act on items in an order other than they appear on this agenda.

* Public files are available for viewing during normal business hours at the Zoning Board of Appeals office located at 200 Main Street, Hyannis, MA