



Town of Barnstable
Zoning Board of Appeals
Minutes
April 25, 2012

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

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

Introduction of Board Members – Members introduce themselves.

Approval of minutes from February 8, 2012 and February 22, 2012

Motion is made by William Newton and seconded by Brian Florence to approve the minutes as submitted.

Vote:

All in favor.

At 7:02 PM, Laura Shufelt calls the Atlantic Iyanough Realty, Inc., appeal and reads it into the record:

7:00 PM

Appeal No. 2012-023

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.

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

Attorney Michael Ford is representing the applicant. Also with him tonight are Attorney Jeff Ford, Christina Moreau from Agnoli Sign Company and Bill O'Brien who is representing Atlantis Iyanough Realty. Attorney Ford gives a background about the newly designed Stop & Shop which is to be approximately over 68000 square feet and is almost 12 acres in size. This development is a redevelopment and to replace Colonial Candle, Mid Cape Tennis Club, Shirdan's County Kitchen and West Marine. There were signs for every building. This was approved in 2008 by Cape Cod Commission as a Development of Regional Impact (DRI). The building itself is being constructed in the Business zone, allowed as-of-right under the Town of Barnstable ordinances subject to Site Plan Review. The store on the site is 320 feet wide as it faces the new access road that cuts through the site

from Route 132 to Attucks Lane. The closest point of the store which, as you would be looking at it, would be the right front corner, is 400 feet from the traveled way known as Route 132 and 300 feet from the right-of-way. On the Attucks Lane side the closest side of the store is 220 feet. The store itself is set back from the access road approximately 280 feet.

There will be a public easement, which is a requirement of the DRI, that bisects the site. In addition, what they are seeking is allowed a total of 400 square feet of signage per business. Stop & Shop would have one sign on this building and that sign, as indicated in the staff report, is permitted, as-of-right, for 70 feet. What they are seeking is a variance for 52 additional square feet of signage and instead of three foot high letters, they would make them four foot high letters. He indicates that the sign will help break up that massing of the building and that many towns allow the stores to show the different departments such as florist, etc., to break it up but Barnstable does not. Secondly, is the second pylon. They have a permit for a pylon on route 132 which is 30 square feet. What they are asking for is for the same size pylon of 30 square feet on the Attucks Lane side. The CCC decision is a conservation restriction in perpetuity. The Barnstable bylaw permits 100 square feet per business. If Stop & Shop had multiple buildings there would be multiple signs. Variance conditions offered are:

First, unique to this parcel, this site in the Business zone, he would suggest there isn't another lot that is fronted on 3 sides like this and would suggest that it is unique. The location of the building was a long negotiation to set the building as far back from the public ways so as not to be visible and to be able to meet the performance standards of the CCC and the Town of Barnstable. Also, there is going to be an acre of landscaping. The Town of Barnstable will be the holder of the conservation restriction. The hardship is that they can only have a pylon on one side and the building is set back so far that the allowed sign is too small. Having the pylon at either entrance is a convenience to the public because it is set so far back. He doesn't think it is a detriment. He would suggest there is no detriment since it is so far from the access roads. The visual environment here is being enhanced by the redevelopment project. He doesn't see where the visual environment would be negatively affected. Also, the pylon fits in with the public safety and doesn't think if this was granted it would nullify the intent of the bylaw.

Questions from the board: George Zevitas asks to reiterate the financial hardship. Attorney Ford indicates that they think that for the store to be properly marketed they need a pylon at both entrances and because it is required to be set back so far, they would suggest that it is a hardship to have a small sign.

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition.:

Attorney John Kenney represents First Hyannis Realty, LLC, Tarkinow Group which is the site of BJ's. Attorney Kenney indicates that he is concerned about the size of the sign on Attucks Lane. He indicates that he had applied for a Special Permit for the reduction in parking requirements regarding BJ's expansion which is on hold due to litigation filed by Atlantis Iyanough Realty, LLC., and wants to bring forward their basis of their complaint field in court. They state that the BJ's expansion will have significant detriment on Atlantis' property in the form of increased traffic and congestion, decreased safety, substantial impairment of access and diminution of property value. They come before you to ask for a pylon sign which in an area where they alleging in another matter that there are traffic and safety issues. It is this position that the second pylon sign is going to attract additional traffic and that drawing more people to this entrance will be a problem for his client. They oppose the second pylon sign and they have to consider public safety issue.

Laura Shufelt indicates that she has concerns with the second pylon sign in the history of Attucks Lane and would seem unnecessary.

Attorney Ford responds to Attorney Kenney's comments. He indicates that he is correct that there is an appeal as Attorney Kenney indicates and that his understanding is that it was taken as BJ's was allowed to have an additional 20000 square feet without the requirements to build any traffic signal. He doesn't believe that the second pylon sign would be dangerous to public safety, traffic and convenience.

The board discusses signs on other Stop & Shops, etc. The board discusses to continue this for a review of sign variances in the area and perspectives from Route 132, etc.

Attorney Ford asks for a continuance in order to work out other plans.

Motion is made by Craig Larson and seconded by Alex Rodolakis to continue this to May 9 at 7:00 PM

Vote:

All in favor.

CONTINUED TO MAY 9, 2012 at 7:00 PM

At 7:43, Laura calls the Ader appeal and reads it into the record:

7:00 PM	Appeal No. 2012-024	Sanford Ader and Linda S. Ader
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Sanford Ader and Linda S. Ader have applied for a Special Permit pursuant to Section 240-92(B) Nonconforming buildings or structures used as single or two-family residences or, in the alternative, Section 240-93(B) Nonconforming buildings or structures not used as single- or two-family residences. The Applicants seek a Special Permit to demolish and rebuild an existing cottage on the same footprint, with the addition of a small platform required by the building code. The property is located at 280 Harbor Point Road, Barnstable MA as shown on Assessor's Map 352 as Parcel 035-00P. It is in the RF-1 Zoning District.

Members assigned tonight: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt.

Attorney Ben Losordo is representing the applicants. He gives a brief history of the area, indicates that this is a condo area, and that this cottage is on Harbor Point Road and is in poor condition. Attorney Losordo indicates that the Aders have just purchased the property and would like to replace the existing structure using the same footprint. He indicates that the problem, in this case, is that this is not considered a single family use and therefore a special permit is required to do what they want to do. The only change they are making, as they are not expanding, is to add a small 10'X14' platform to the back of the structure on which to step onto from the slider. Attorney Losordo indicates that this will not be a detriment to the neighborhood. He indicates that this has received approval from the condo association, historic and conservation boards.

Laura Shufelt indicates that the board has received a letter from the Managing Board of Cape Cod Village Association approving this and a letter from Ann Canedy, an abutter, who is also in favor of this.

Craig Larson as it relates to standing and if they have exclusive use easement on this site or should the condo association be applying for the permits. Attorney Losordo indicates that is why they submitted that letter as there is a slight expansion because of the deck in the back. He indicates that there is an exclusive use area. Craig Larson asks Elizabeth Jenkins if he has reviewed the condo documents. Elizabeth Jenkins indicates that she has reviewed them and has a letter from the condo association indicating that they are not objecting. Laura Shufelt would feel more comfortable approving this special permit under the first section as a single family because, in her mind, if they don't approve it as a single family then the condo association should be applying for this relief. Brian Florence would agree and indicates that cottages are considered single family dwellings and court cases relating to that and would feel more comfortable approving it as a single-family dwelling..

Laura Shufelt asks if there is anyone here from the public who would like to speak either in favor or in opposition. No one speaks.

Laura asks Attorney Losordo if they have reviewed the staff report conditions and if they are agreeable. Attorney Losordo indicates that they have read the conditions and are okay with them.

William Newton makes findings:

Regarding 2012-024 to demolish and rebuild a cottage in a condo development under Section 240-92B, the applicants are: Sanford Ader and Linda S. Ader and the property is located at 280 Harbor Point Road, Barnstable MA as shown on Assessor's Map 352 as Parcel 035-00P. It is in the RF-1 Zoning District.

1. **The Applicants, Sanford and Linda Ader, seek a Special Permit to demolish and rebuild an existing cottage on the same footprint with the same gross floor area. The structure does not conform to the 30 foot front setback required in the RF-1 Zoning District. The cottage is proposed to be reconstructed 17.5 feet from Harbor Point Road.**
2. **The subject property is located at 280 Harbor Point Road, Barnstable MA as shown on Assessor's Map 352 as Parcel 035-00P. The property is in the RF-1 Zoning District.**
3. **The subject unit is part of the Cape Cod Village Condominium development. The unit is located on a single assessed parcel with 21 other cottages. The condominium parcel contains at least one acre of upland.**
4. **The Cape Cod Village Condominium Association has endorsed the reconstruction of the cottage, as evidenced by a letter dated March 30, 2012.**
5. **The proposed demolition and reconstruction will not result in an intensification or addition to any pre-existing nonconformity.**
6. **The subject cottage is located entirely on upland and is located outside of the floodplain, within a FEMA Flood Zone "C". The cottage set back at least 35 feet from the nearest wetland, in accordance with §240-8(G).**
7. **The application falls within a category specifically excepted in the ordinance for a grant of a special permit:**

§ 240-92(B) – Nonconforming buildings or structures used as single- and two-family residences. The proposed construction will not be substantially more detrimental to the neighborhood than the existing structure.

8. **Site Plan Review is not required for the proposed reconstruction.**
9. **After an evaluation of all the evidence presented, the proposal fulfills the spirit and intent of the Zoning Ordinance and would not represent a substantial detriment to the public good or the neighborhood affected. The reconstruction is proposed as a result of the deteriorated condition of the existing structure and the new construction is designed to imitate the size and appearance of the original structure.**

Vote:

AYE: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt.

NAY: None

Based on the findings, William Newton makes a motion to grant the relief being requested with the following conditions:

1. **Special Permit 2012-024 is granted to Sanford and Linda Ader to demolish and reconstruct a cottage 17.5 feet from Harbor Point Road.**
2. **The cottage shall be substantially reconstructed on the same footprint and with substantially the same square footage as the existing structure.**
3. **The cottage shall be constructed in substantial conformance with the elevations entitled "Proposed Rebuilding of the Ader Cottage, 280 Harbor Point Road, Cummaquid" dated January 21, 2012.**

4. *The decision shall be recorded at the Barnstable County Registry of Deeds and copies of the recorded decision shall be submitted to the Zoning Board of Appeals Office and the Building Division prior to issuance building permit. The rights authorized by this special permit must be exercised within two years, unless extended.*

Seconded by Brian Florence

Vote:

AYE: William Newton, Craig Larson, Alex Rodolakis, Brian Florence, Laura Shufelt.

NAY: None

GRANTED WITH CONDITIONS

THE REQUEST IN THE ALTERNATIVE IS NOT REQUIRED.

Open: Chair's Discussion

Laura Shufelt indicates that there is a training session for 40B's at the Cape Cod Commission and members are welcome to attend but need to call the commission in order to attend.

Laura also indicates that they are seeking members for the Zoning Board.

Motion is made by Brian Florence and seconded by Alex Rodolakis to adjourn.

Vote:

All in favor.

Release of Executive Session Minutes - None

Upcoming Meetings:

May	9 & 23
June	27
July	11 & 25
August	8 & 22
September	12 & 26
October	10 & 24
November	14
December	12