



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: November 30, 2012

PETITION NO. #4421 & #4414

HEARING DATE: November 8, 2012

PETITIONER: N & K Holdings, LLC

**PROPERTY: 252 Route 28, West Yarmouth, MA
Map and Lot #:037.151.1 & 152.1;
Zoning District: B2
Book & Page: 22648/258**

MEMBERS PRESENT AND VOTING: Steven DeYoung, Chairman, Sean Igoe, Joseph Sarnosky, Bryant Palmer, John Richards and Robert Howard, Alternate.

It appearing that notice of said hearing has been given by sending notice thereof to the petitioner and all those owners of property deemed by the Board to be affected thereby, and to the public by posting notice of the hearing and published in The Register, the hearing was opened and held on the date stated above.

Procedural History

The Petitioner was well represented by Attorney Charles Sabatt. Initially, the Petitioner filed an application, Petition #4414, for Variances for the site in question which among other items showed two curb cuts on Route 28 as well as one curb cut on Cozy Home Terrace. The plans submitted in Petition #4414 also called for utilization of the existing noncompliant canopy and reusing the existing pump islands containing four gasoline pumps. A hearing on Petition #4414 was opened on October 11, 2012. During that hearing the Board expressed concern with respect to the two curb cuts shown on Route 28. As a consequence, the Petitioner requested additional time within which to explore alternatives and the possibility of reducing the number of curb cuts on Route 28.

The Petitioner in fact revised its plans so that only one curb cut on Route 28 would exist. In connection with a revised plan, the Petitioner again appeared before the Planning Board as a prerequisite to presenting its case before this Board. Additionally, the Petitioner filed this Petition #4421 with its revised plans seeking variance relief as set forth within its petition. A hearing was held on November 8, 2012.

Background

The Petitioner, N&K Holdings, LLC is the owner of the premises at 252 Route 28, West Yarmouth, Massachusetts (Locus), the site of a now closed Getty Gas Station. Locus consists of two parcels, namely Parcel 151.1 and 152.1 shown on Assessors Map 37. The Locus is 21,115 square feet, slightly less than a 1/2 acre. Locus is situated in a B2 Zone where gas stations are permitted.

Giardino's restaurant is located immediately to the west of Locus. Its parking lot abuts the entire westerly lot line of the Locus. On the east, Locus is abutted by Cozy Home Terrace, a street with a mixture of residential and commercial uses. Directly across the street from Locus on Cozy Home Terrace is a seasonal trampoline business.

Currently, there are two buildings situated on the locus including the original gas station building. The original canopy and pump islands also remain on the locus. There is no landscaping on the site to speak of and there are 2 large driveways that access directly onto Route 28. The Petitioner proposes to raze the two existing structures and the pre-existing canopy. The Petitioner's plan calls for the construction of a brand-new building and an entirely new canopy with 3 new pump stations to replace the existing pump islands. The new canopy and pump stations will be oriented so that the traffic will enter the site and park perpendicular to Route 28 as opposed to the current configuration requiring traffic to enter the site and park parallel to Route 28 while using the gas pumps. Additionally, the Petitioner proposes a curb cut on Cozy Home Terrace to be 35 feet wide and a single curb cut on Route 28 to be 30 feet wide. Significantly, the Petitioner proposes to construct a sidewalk from its curb cut on Cozy Home Terrace to Route 28 and along Route 28 to its curb cut located there. In addition to the sale of gasoline, the Petitioner will sell snacks and sundries from within the new proposed building. The Petitioner has filed a detailed landscape plan with the Board.

Relief Requested

The Petitioner seeks four variances. They are as follows:

Section 203.5 – Table of Dimensional Requirements (A) (Side and Front Setbacks)

This Section requires a front yard setback of 30 feet and a side yard setback of 25 feet. However, in order to accommodate the new pump island and canopy the Petitioner seeks to vary these setbacks with a side yard setback of 20 feet on the Westerly side and a front yard setback of 20 feet on the Easterly side (Cozy Home Terrace). As noted above, the Petitioner is reducing the number of pumps from 4 to 3.

Section 301.4.1 – Parking in Front of the Building

In order to provide the required parking which in fact the Petitioner has been able to do, it will nonetheless be necessary to place parking in the front of the proposed new building. Otherwise, the Petitioner will not be able to meet the landscaping requirements for the rear and sides of the new building.

Section 301.4.3 – Driveway Width

The Zoning By-law requires a maximum driveway width of 25 feet. However, in order to accommodate the tanker trucks that will be driving in and out of the site when making deliveries it will be necessary to have an opening on Cozy Home Terrace that is 35 feet in width. Additionally, in order to accommodate traffic from Route 28 and to reduce the number of curb cuts to one the Petitioner seeks a variance to allow a 30 foot wide opening on the route 28 side.

Section 301.4.4 – Landscape Buffers

The Petitioner seeks relief from the requirement that landscaping on side yards must be 10 feet and in front yards must be 20 feet. The Petitioner proposes a buffer of 8 feet wide name to 13 feet and then 14 feet as it rounds the easterly corner and runs along Route 28. Along the westerly lot line, although the buffer is less than required that Petitioner has created a gently curving and attractive buffer from Route 28 along the westerly line. The site conditions and the interests of efficiency of traffic flow on the site necessitates a reduced buffer as shown on the plan along Route 28 and along the sidelines.

Findings

Currently, the Locus is not being used and has been closed for a substantial period of time. The site conditions are deteriorating and the site is an eyesore which, if allowed to continue will be detrimental to the area and to the Town of Yarmouth. The Petitioner intends to make a significant financial investment in the Locus and proposes overall an attractive and desirable project which will greatly improve the immediate area. The Petitioner has cooperated fully with town planning agencies and has made a significant effort to bring the site into compliance to the greatest extent possible. Notably, the Petitioner succeeded in eliminating one of its two original proposed curb cuts on Route 28 by making substantial changes in its plans. Moreover, the proposed new canopy was redesigned with a hip roof so as to soften its visual impact.

There were no negative comments, nor any opposition at the time of hearing. The Planning Board submitted a letter endorsing the Petitioner's most recent plan.

The Board finds that there are various conditions as required by Massachusetts General Laws C. 40A, §10. Owing to the small size of Locus and in particular to its topography consisting of the two outdated and unusable structures in addition to the noncompliant canopy, conditions that affect this site alone, a literal enforcement of the provisions of the zoning bylaw as applicable to Locus would effectively preclude the otherwise good design and layout as proposed by the Petitioner. If the Petitioner is required to meet all such applicable zoning requirements it will create a significant hardship that might in fact prevent Petitioner from updating the site. The 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 bylaw. In point of fact, the granting of this relief will enable the Petitioner to substantially improve and upgrade the site that will be of benefit to the public good.

Vote

Upon Motion duly made by Mr. Richards and seconded by Mr. Igoe, it was voted unanimously to grant the relief requested by the Petitioner and to approve the Petitioner's plans filed with the Zoning Board of Appeals on the condition that the matter be reviewed no later than one year following grant of this Decision to review and assure compliance with implementation of the landscape consistent with the Petitioners landscape plans and representations.

With regard to Petition #4414, in light of the relief granted in Petition #4421, the Petitioner asked that this Petition be withdrawn, without prejudice. Mr. Palmer made a Motion to grant this request, which Motion was seconded by Mr. Richards and voted unanimously in favor by the Board.

No permit shall issue until 20 days from the filing of this decision with the Town Clerk. Appeals from this decision shall be made pursuant to MGL c40A section 17 and must be filed within 20 days after filing of this notice/decision with the Town Clerk. Unless otherwise provided herein, a Variance shall lapse if the rights authorized herein are not excised within 12 months. (See MGL c40A §10)

Steven DeYoung, Chairman