



TOWN OF YARMOUTH
BOARD OF APPEALS
DECISION

FILED WITH TOWN CLERK: January 26, 2017
PETITION NO: #4679
HEARING DATE: January 12, 2017
PETITIONER: Steven Sewell d/b/a Cape & Islands KIA
PROPERTY: 760 Route 28, South Yarmouth, MA
Map & Parcel: 0033.36.1; Zoning District: B2
Book/Page: 17954/96

MEMBERS PRESENT AND VOTING: Steve DeYoung, Chairman, Sean Igoe, Bryant Palmer and Richard Neitz.

Notice of the hearing has been given by sending notice thereof to the Petitioner and all those owners of property as required by law, and to the public by posting notice of the hearing and publishing in *The Register*, the hearing opened and held on the date stated above.

The Petitioner, Steve Sewell, doing business as Cape & Islands KIA, 760 Route 28, West Yarmouth, MA appeared along with Teddy Zambelis and each did a fine job in presenting the merits of the Petition. The subject property is located in the Zoning District B2. The relief sought by the Petitioner was twofold, the first being for a Special Permit relating to an attached sign and pursuant to Bylaw §303.13 and the second being for a Variance with regard to a freestanding sign to be located at the front of the property where such signs have previously been placed.

The property was previously a Mitsubishi dealership which has since relocated to another portion of town. The Petitioner, having acquired the KIA dealership, was also required to purchase signs advertising its prior location. These signs were of a significant cost to the Petitioner.

The existing attached sign is 41 square feet and the request is to allow its replacement with a sign that will be 27.5 square feet overall. Relief is necessary due to the height of the new sign which will be 3.3 feet tall as opposed to the 2 feet allowed by the bylaws. Concerning this sign, the Board agreed with the Petitioner that the distance of the building to which the sign will be attached was so far from the road that relief was reasonable merely so the sign could be visible from the streetscape. Each member of the Board agreed that granting of relief for a Special Permit to permit the proposed sign as represented by both the Petitioner and renderings provided to the Board could be granted without creating any undue nuisance, hazard or congestion and without creating any substantial harm to the established or future character of the neighborhood or town. Mr. Igoe made a Motion, seconded by Mr. Neitz to grant the Special Permit as prayed for by the Petitioner.

The proposed freestanding sign was required to be purchased by the Petitioner at substantial cost to him (\$38,000). Of note, the prior dealership had a freestanding sign measuring 61.2 feet and with a height of 12 feet. [Though there was no evidence that this sign was permitted, it had been standing at that location since the creation of the dealership. Moreover, the prior sign was itself a replacement of a freestanding sign that had been located at that same spot for many years.] The proposed sign to replace that of the prior dealership would reduce the size to 54.86 square feet and reduce the height significantly to 9 feet.

Recognizing both the reduction in the size of the sign and the substantial cost to the Petitioner to acquire the mandated sign, the Board concurred that the literal enforcement of the provisions of this bylaw would result in a substantial economic/financial hardship to the Petitioner; further, that this hardship was owing to circumstances relating to the shape and topography of the land and structures and especially affecting this land and structure but not generally affecting the Zoning District overall. Lastly, the Board concurred that this relief could be granted without resulting in substantial detriment to the public good nor nullifying or substantially derogating from the intent and purpose of the bylaws. Mr. Igoe moved and Mr. Neitz seconded to grant the requested Variance without condition. On this Motion, so seconded, the Board voted unanimously in favor.

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, the Special Permit shall lapse if a substantial use thereof has not begun within 24 months. (See bylaw §103.2.5, MGL c40A §9) Unless otherwise provided herein, a Variance shall lapse if the rights authorized herein are not exercised within 12 months. (See MGL c40A§10). This Decision must be filed with the Barnstable County Registry of Deeds, Route 6A, Barnstable.

Steven DeYoung, Chairman