

Zoning Board of Appeals Minutes, 07/19/2017

Zoning Board of Appeals Minutes July 19, 2017 Land Use Meeting Room

Members in Attendance: Chair Ethan Berg, (EB); Shawn Leary Considine, (SLC); Robert Fuster Jr. (RFjr); Cliff Snyder, (CS); Albert Harper, (AH)

Absent with notification: Ned Douglas, (ND); Robert Fuster, (RF)

Staff present: Peggy Ammendola, Land Use Clerk, (PA); Gwen Miller, Land Use Director/Town Planner, (GM). Also present was Building Commissioner BJ Church.

Steve Morrison, (My Four Daughters LLC), 25 Pittsfield Rd., Map 17 Parcel 37, Special Permit and or Variance 7.2.9 to install a sign, additional directional signs and "Open" sign. Originally scheduled for July 5, 2017, but due to a lack of a quorum, this hearing was rescheduled to July 19, 2017.

History:

August 17, 2016, the ZBA heard the presentation of Mr. Morrison for a Special Permit and or Variance under Sections 5.2.4, 5.2.6 & 5.2.0. He was requesting a permit to place a free-standing commercial business sign with LED time and temperature indication within 6 feet from Pittsfield Road (Route 7).

The decision of the Board approved a 10 foot setback from Pittsfield Road but agreed that an internally lit sign would not be appropriate. Mr. Morrison presented that the sign would be made of carved wood and be held up by two wooden 6X6 posts. A Special Permit was granted with the following conditions:

- 1) There will be no internal illumination; external illumination only using the mushroom lights; will comply with the Town's light ordinance and LED lights will not be used.
- 2) The material be wood
- 3) Two wooden posts which is to be consistent with engineering and the building code

June 7, 2017, as a result of a report from the Zoning Enforcement Officer, BJ Church, there was an informal hearing regarding Mr. Morrison's sign location and composition. Ms. Church said that the sign had been placed on Mass Highway's property, not on Mr. Morrison's. Mr. Morrison responded that the sign was placed 10 feet from the curb believing that was what the Board had agreed to, but that he would like to move the sign back onto his property by a distance of 5 feet. RFjr responded that the Special Permit provided that the sign could be placed back 10 feet from his property line. So to change that Mr. Morrison would have to come back to the ZBA to request a modification. RFjr also pointed out that the sign that was erected was partly made of aluminum, and the ZBA allowed a wood sign.

Ms. Morrison accepted responsibility for not seeking a building permit for the sign. She thought that when the ZBA granted the Special Permit, it superseded a building permit. She also explained that in the minutes of their hearing, it is stated that the sign could be 10 feet from the curb. The Board stated that the representation at the hearing was that the subject property line went to the curb and that it is up to the petitioner to know where their property lines are. Ms. Morrison said that they are trying to work things out and make it right.

SLC advised the Morrisons that they would need to file a petition with the Town Clerk for a modification. There would be another public hearing which again requires advertising. The time from filing to the time of the hearing is no less than 5 weeks usually, depending on the next available meeting date.

The Zoning Enforcement Officer fined Mr. Morrison for the violation. The sign was taken down because of the location.

End of history.

Presenting the application at tonight's hearing was Steve Morrison and his daughter, Ashley Morrison.

Mr. Morrison reviewed the events since being given a Special Permit in late 2016. He said that he has paid the fine and defended his use of the materials other than had been approved at that time. He stated that he had investigated and he believes that most signs that are along this commercial stretch of Routes. 7 & 20 are in violation of the sign bylaw.

RFjr pointed out that Mr. Morrison had agreed to a sign made of wood and that agreement is binding.

Ms. Morrison said that this was not an intentional violation. The materials used were recommended by Pixley Sign Company. A letter from Craig Pixley included in the application described the composition of the materials used and its superiority over wood.

RFjr also stated that it concerned him that as a contractor Mr. Morrison should understand the permitting process. Mr. Morrison explained that he hadn't ever dealt with the ZBA and its permitting process. He felt that Building Inspector Jeff Clemons had singled him out. SLC agreed with RFjr's concern and didn't understand how Mr. Morrison would not know where his property line was. Ms. Morrison said that she was responsible for the missteps

AH stated that in his opinion the composition of the material used in the sign is de minimis.

Mr. Morrison said that he wanted to place his sign at grade level with the street curb. Like Allegrone on Pittsfield Road, he wants to have a planter in which his sign would be installed. His proposal is to build a mound that will be bordered with Goshen stone. Ms. Morrison said that the bylaw allows a sign to be 20 feet in height, but they are not looking to go that high.

A Certified Letter to Mr. Morrison from MassDOT dated May 26, 2017 informed Mr. Morrison that his sign was on state property and therefore would have to be removed.

Ms. Church related that during the process of dealing with the violation she and her department were disrespected by Mr. Morrison. He refused to abide and this is why she issued a fine.

Ms. Church also appealed to the Board to look at the sign bylaw and make adjustments or stick to what the bylaw says. She said that she and Jeff Clemons, Building Inspector, are spending more time on sign violations than inspections.

AH stated that he has observed signs along the corridor to the town line and suspects that most every sign is up against the state property line. He has asked GM to look into what is the width of the state setback. GM said that she has a request in to MassDOT for the information, but didn't have it in time for this meeting. SLC said that when Routes 7&20 were widened, there was an issue with the setbacks and business owners came before the Board to justify the location of their signs. GM said that there is a 35 foot setback, but a property owner could request a special permit or variance for less of a setback. It is the property owner's responsibility to know where their property lines are.

The proposal is to build a mound that would be roughly 2 to 2.5 feet in height. This will become a planter that will be bordered with Goshen stone. Ms. Morrison is not looking to go above 20 feet allowed in bylaw but the sign will be higher than the original 11 foot height due to the mound. Mr. Morrison said that because of the grade of the property, the planter will be tapered away from the street.

Even though Mr. Morrison's application was not requesting a temporary sign, he complained that he had asked for a temporary sign but the building department would not grant him a permit. He said that all along the corridor there were temporary signs. GM explained that temporary signs are for a two week period and the Selectmen were the permit granting authority.

7:50 PM-There was a 5 minute recess.

There was no correspondence and there were no members of the public present.

When the hearing reconvened, CS made a motion to close the public hearing. AH seconded the motion and the Board voted to agree 5-0.

Discussion ensued regarding the petitioner's request.

SLC said that she doesn't really object to the sign itself, but she does not know what the sign will look like when it is raised up and what the support system would look like. With regards to the "Open" sign, she said that a variance would be required. As to the directional signs, SLC said that she would like to see them first before approving and that Mr. Morrison would have to get approval from the state.

AH stated that there is nothing in bylaw about the aesthetics of the base for a sign. He is happy with the sign, but feels that the Board needs to know how high sign will be when placed on the mound. The directional signs are allowed by right but are limited in size (8" by 24") according to the bylaw and the location may be subject to the approval of the state if on the state's property. AH believes that an "Open" sign is a part of conducting a business.

EB made a motion to close the public hearing. RFjr seconded the motion and the Board voted to agree 5-0.

The Board agreed to vote on each item individually.

- RF made a motion to grant the Petitioner's request to install his free-standing sign on his property line. EB seconded the motion and the Board voted to agree 5-0.
- RF made a motion allow the Petitioner to alter the sign material that was agreed to in the previously granted Special Permit. EB seconded the motion and the Board voted to agree 5-0.
- SLC made a motion that the sign be allowed to be situated at a height which would be a maximum of 11 feet from the road grade, such supported on a planter not encroaching on state property and no larger than 4 feet x 8 feet and no more than 2.5 feet in height. AH seconded the motion and the Board voted to agree 4-1. The dissenting vote was cast by CS.

Special Condition: SLC made the motion that the sign would be supported by a planter that would not encroach on state property and would be no larger than 8'X 4' and 2.5' high and be constructed of Goshen stone as presented. EB seconded the motion and the Board voted to agree by a vote of 5-0.

- It was the consensus of the Board to table the Petitioner's request for directional "Entrance" & "Exit" signs as the placement would be on state property.
- Add this: It was the consensus of the Board to deny the request for a free standing flag type "Open" sign. ~Input from the Building Commissioner was that the flags, other than the American flag, were violations.

- RFjr made a motion to approve the request for a free standing “Open” sign as depicted in the application. ~SLC seconded the motion and the Board voted to approve 5-0"

AH asked the Building Commissioner about Section 7.2.6 of the Zoning Bylaw in which in the C-3A zone, a 36 square foot sign with a 12 inch projection is allowed per occupancy. His question concerned “occupancy”. Ms. Church responded that that would be a Certificate of Occupancy. He then asked if the sign is less than 36 square feet if an “Open” sign could be attached. Ms. Church said that she would have to check.

Approve Minutes: June 7, 2017- Approved by consensus.

The meeting was closed at 9:02 PM.

Respectfully submitted,
Peggy Ammendola