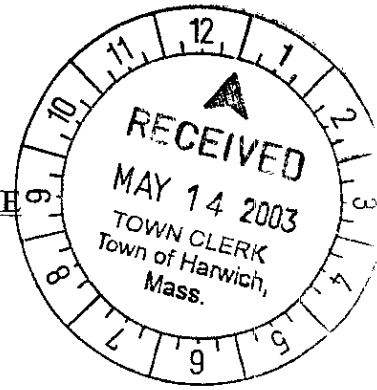


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DECISION OF THE ZONING BOARD OF APPEALS OF THE
TOWN OF HARWICH, MASSACHUSETTS

O F F I C I A L O F F I C I A L
C O P Y C O P Y

Petition No. 03-24

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Hearing Date: April 30, 2003

Petitioner: O F F I C I A L O F F I C I A L
Tedeschi Realty Corporation, c/o Attorney Patrick Butler, Nutter, McClennen,
& Fish, LLP, PO Box 1630, 1513 Iyannah Road, Hyannis, MA 02601

Owner: Tedeschi Realty Corporation, 14 Howard Street, Rockland, MA 02370

Application: Application for variances from Section VII, Sign Regulations, Paragraph 7, Signs in Commercial Highway and Industrial Zoning Districts, and in the alternative, Paragraph 8, Shopping Centers and Plazas in Commercial Zones to allow for the construction of a ground sign higher than allowed under paragraphs 7(B) and wall signs with a greater area and in greater quantity than as permitted under paragraph 7(C) & (D), or in the alternative, under paragraph 8(B) of the Zoning Bylaws.

Property: The subject property is located at 18 Sisson Road, Harwich and is shown on Assessor's Map 21 as Parcel P-1 in the C-H-1 zoning district.

Background

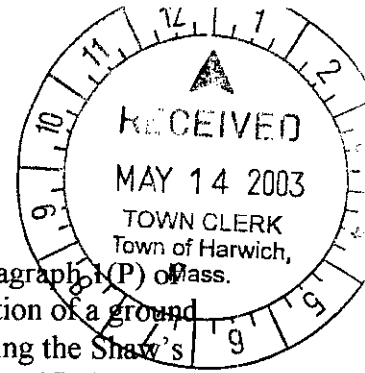
The applicant in the appeal is in the process of redeveloping the approximately 9.53 acre parcel by constructing an approximately 61,000 square foot shopping center plaza containing a Shaw's Supermarket, which includes therein a pharmacy, and an attached dry cleaning establishment (hereafter the "Project"). The locus was previously developed with a Star Market. The site is located at 18 Sisson Road in Harwich in close proximity to the intersection of Route 28 and Sisson Road. The site is within the C-H-1 zoning district as designated on the Harwich Zoning Map.

The applicant obtained a Development of Regional Impact ("DRI") permit from the Cape Cod Commission for the redevelopment on August 8, 2002. On November 19, 2002, the Cape Cod Commission issued a Preliminary Certificate of Compliance for the Project. One of the DRI conditions, T1, requires the applicant to close Rockland Trust Co.'s entrance on Route 28 and to allow for shared driveway access through the Project site. Accordingly, the applicant proposes placement of Rockland Trust's signage on the proposed ground sign. On September 24, 2002, the Town of Harwich Planning Board issued Major Site Plan Approval for the Project. The applicant has begun the construction of the Project and seeks variance relief from the Zoning Board to allow for signage in greater quantity and larger than allowed under zoning.

The applicant has applied for variance relief under two alternative paragraphs 7 and 8 of Section VII, Sign Regulations, of the Zoning Bylaws, contingent upon whether the Project is

A TRUE COPY, ATTEST:
Debra A. Houghton
TOWN CLERK OF
HARWICH, MASS.

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classified as a "Shopping Center - Shopping Plaza" as that term is defined in Paragraph 1(P) of Section VII of the Zoning Bylaws. In particular, the applicant proposes construction of a ground sign located at the main site driveway of approximately 13 feet in height identifying the Shaw's Supermarket, Rockland Trust, and dry cleaning establishment. If the Project is classified as a Shopping Center under the Zoning Bylaws, then the proposed ground sign conforms to the Zoning Bylaws and no relief is required therefrom. However, if relief is granted pursuant to paragraph 7, Signs in Commercial Highway and Industrial Zoning Districts, then variance relief is required from the 12 foot height limitation in subsection (B).

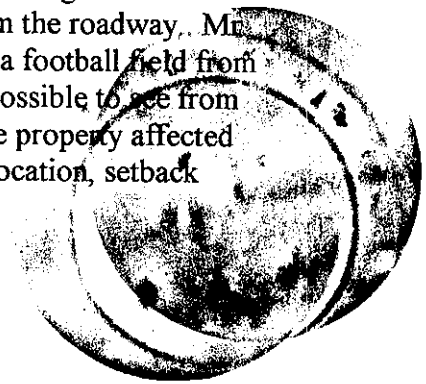
In addition, the applicant proposes placement of two "Shaw's" wall signs together with four (4) additional descriptive directional wall signs identifying departments/services within the supermarket. Further, the Project includes a wall sign identifying the separate dry cleaning establishment, which will conform to the Zoning Bylaws. The proposed wall signage for the supermarket exceeds the quantity and area limitations under paragraph 7(C) and (D) or, in the alternative, if the Project is classified as a Shopping Center, paragraph 8(B) of Section VII of the Zoning Bylaws.

Procedural and Hearing Summary

This appeal was filed with the Building Department on March 14, 2003 and with the Office of the Town Clerk on March 17, 2003. A public hearing before the Zoning Board of Appeals was duly advertised in the Harwich Oracle on April 16, 2003 and April 23, 2003, and notices were sent to all abutters in accordance with Massachusetts General Laws, Chapter 40A. The hearing was opened on April 30, 2003 at which time the Board granted the variance petition.

Board members deciding on the petition were John Ferreira, Chris Hemeon, George Cavanaugh, William Jussila and Katie Grenier and Attorney Patrick Butler from Nutter McClennen & Fish LLP, in Hyannis represented the applicant. At the hearing, Mr. Butler submitted a new package of sign plans prepared by Poyant Sign Company for the Project. Mr. Butler indicated that the site would be occupied by a Shaw's Supermarket and a dry cleaning establishment as evidence that the Project qualified as a Shopping Center pursuant to Paragraph 1(P) of the Sign Regulations. In addition, he stated that the Project and site fulfilled the other requirements of that definition in that Project was retail, that the site was in excess of 2 acres and contained on-site infrastructure, including parking, landscaping, and loading and maneuvering facilities. Accordingly, Mr. Butler indicated that although the applicant had applied for variance relief under both paragraphs 7 and 8 of the Sign Regulations, that because the Project qualified as a Shopping Center, the application should be reviewed pursuant to paragraph 8.

Mr. Butler presented evidence that the shape of the site and its pre-existing structures were unique, particularly since the prior Star Market was set so far back from the roadway. Mr. Butler indicated that the Project will be setback approximately the length of a football field from the roadway, which would therefore make conforming signage virtually impossible to see from the roadway. In addition, Mr. Butler indicated the wetlands to the rear of the property affected the soil conditions and required that the building be placed in the proposed location, setback



from the street. Lastly, Mr. Butler said that the large berm which was required by the Cape Cod Commission decision created a unique topographic condition which would prevent conforming signage from being visible. Several findings in the Cape Cod Commission DRI decision confirmed that the Project will have limited visibility. C O P Y

Further, Mr. Butler presented evidence that limiting the applicant to the minimal amount of signage as allowed under the bylaw would result in substantial hardship, including loss of name recognition and, possibly, attendant loss of business as well as loss of architectural design benefits. In addition Mr. Butler said that a literal enforcement of the bylaws would result in signage that would appear too small and inappropriate based upon the size and architecture of the building.

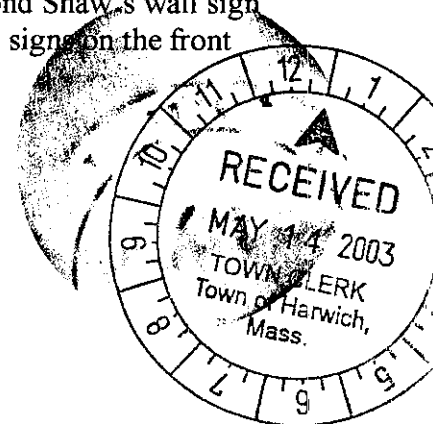
Lastly, Mr. Butler showed photographs of other commercial properties' signage in Harwich which are also in excess of that allowed under zoning, as evidence that enlarged signage is not inconsistent with large commercial structures or commercial zoning districts.

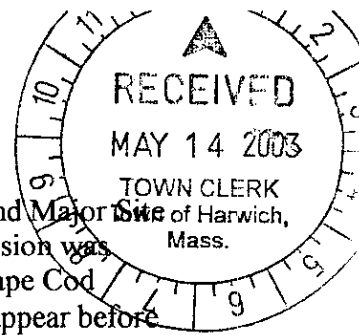
The hearing was open for comments from Town Officials and the general public who wished to speak in favor or in opposition to the application. Angelo LaMontina, Chair of the Harwich Planning Board, spoke in opposition to the application. The Board also noted that letters of support were received from the Council on Aging, Elder Services of Cape and the Islands, Inc., and from the President of the Harwich Chamber of Commerce.

Findings and Decision

After the hearing, the Board made the following findings:

1. Due to the multiple uses, including a supermarket, pharmacy, and dry cleaning establishment, together with the size of the site and Project infrastructure, as well as the entrance for Rockland Trust, the Project qualifies as a Shopping Center as that term is defined in Section VII, Sign Regulations, Paragraph 1(P) of the Zoning Bylaws. Accordingly, the applicant's request that the project be reviewed pursuant to paragraph 8 of the sign regulations in the Zoning Bylaws is appropriate.
2. The proposed ground sign conforms to the requirements of paragraph 8 of the Sign Regulations. Accordingly no relief is necessary for the construction and placement of the proposed ground sign.
3. The applicant needs variance relief from Paragraph 8(B) as follows: the primary Shaws sign is approximately 60.25 square feet which is in excess of the 32 square foot limitation; and relief is required to allow for the placement of a second Shaw's wall sign on the side elevation, together with 4 department/informational wall signs on the front elevation.
4. The site is located within the C-H-1 zoning district.





5. The Project has received DRI approval from the Cape Cod Commission and Major Site Plan Approval from the Harwich Planning Board. A copy of the DRI decision was submitted of the record. Throughout the permitting process before the Cape Cod Commission and the Planning Board, the applicant indicated its intent to appear before this Board to request a variance for the proposed signage program.
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6. The proposed sign will be halo lit, which is consistent with the Zoning Bylaws, and which conforms to the Cape Cod Commission Technical Bulletin on Exterior Lighting. The Building Commissioner has deemed this as not constituting internal illumination.
7. The proposed signage will not adversely affect the neighborhood as the site is located in a commercial highway district.
8. There are unique conditions relating to soil, shape and topography on this site which create a hardship to the applicant. These conditions include the existence of the wetland which affects the soil conditions and, concomitantly, the placement of the structure and the upgraded, innovative septic system. In addition the large berm along Sisson Road, which was required as a condition of approval from the Cape Cod Commission creates a unique topographic affecting the visibility of the signage. Further, the redevelopment nature of the site and the previous disturbance associated with the former Star Market limits the applicant's ability to situate the structure on the site.
9. The Board finds that owing to the aforementioned unique site circumstances, the structure, as proposed and as being constructed, approximately 340 feet back from Sisson Road, represents the optimal location on the site for the Project. The Board further finds that the project as redeveloped in accordance with the Cape Cod Commission DRI decision and in accordance with the Town of Harwich Zoning Bylaws Sign Regulations would not be properly or sufficiently identifiable with signs in strict accordance with the Harwich Zoning Bylaws. The Board finds that a literal enforcement of the Sign Regulations would result in a substantial hardship to the applicant.
10. The Board finds that the large setback from Route 28, together with the landscape berm, and the large massing of the Project create a hardship for the applicant and would result in an inaccurate image for the Project if the Sign Regulations were enforced.
11. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the spirit and intent of the Harwich Zoning Bylaws. The proposed signage is consistent with and appropriate for the size of the Project and will not appear overly large on the structure. In fact, the signage has been designed to enhance and aesthetically break-up the massing of the structure. The proposed lighting of the signs is consistent with the Zoning Bylaws and will not negatively impact the neighborhood. Moreover, the Project is located in a commercial zoning district, in close proximity to Route 28, and accordingly, the signage is consistent with the atmosphere of the neighborhood. Finally, the proposed signage will assist patrons in easily identifying the Supermarket and orienting them to the store's entrance and departments.

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Based on the finding of facts, the Board voted as follows to grant the variances as requested for the wall signs with the condition that they be constructed in accordance with elevation plan presented to the Board entitled "Shaws Harwich" prepared by Poyant Signs Incorporated, revised on 4/29/03.

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IN FAVR: George Cavanaugh, Katie Grenier, Chris Hemeon, John Ferreira, William Jussila
OPPOSED: None

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Ordered

Variance petition 03-24 is granted. This decision must be recorded at the Registry of Deeds for it to be in effect.

Signed this _____ day of May, 2003.

Harwich Zoning Board of Appeals

William Jussila
William Jussila, Chairman

I, Annita Doucette, Clerk of the Town of Harwich, Barnstable County, Massachusetts, hereby certify that twenty (20) days have elapsed since the Zoning Board of Appeals filed this decision and that no appeal of the decision has been filed in the office of the Town Clerk.

Signed and sealed this 15th day of May, 2003, under the pains and penalties of perjury.

Annita Doucette
Annita Doucette, Town Clerk
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