

BOARD OF APPEALS CASE NO. S17-11 2018 JAN 23 P 4: 30

PETITION OF DECA REALTY LLC and RAJ PATEL

DATE OF DECISION: JANUARY 9, 2018

1. **Application**

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) acting as the Sign Appeals Board on the Application of DECA REALTY LLC and RAJ PATEL (hereinafter the Applicant), for property located at 438 WAVERLY STREET (hereinafter the Site). This Decision is in response to a Petition for a Variance to the Sign Bylaw for multiple wall signs (hereinafter the Application).

2. **Applicant**

Raj Patel
438 Waverly Street
Framingham, MA 01702

Property Owner

Deca Realty LLC
17 Royal Oaks Way
Leominster, MA 01453

3. **Location**

Property is located at 438 Waverly Street and is identified by Assessors' Parcel ID 135-85-4770-000 (hereinafter the Site).

4. **Board Action**

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on January 9, 2018 the Board voted to GRANT a VARIANCE by a unanimous vote of three (3) members sitting on the Application. The record of the vote is stated as follows:

EDWARD COSGROVE	YES
JOSEPH NORTON	YES
RICK MCKENNA	YES

5. **Proceedings**

The Application was received by the Board on December 6, 2017 pursuant to the Town of Framingham's Sign Bylaw, Article VII of the General Bylaws. A duly-noticed public hearing was held by the Board on the Application on January 9, 2018 at 7:45 P.M. in the Ablondi Room of the Memorial Building. Board Members Edward "Ted" Cosgrove, Joseph Norton, Rick McKenna, and Stephen Meltzer, alternate, were present throughout the proceedings. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

The Applicant, Mr. Raj Patel was present with the Sign Permit Consultant, Mr. Mike Wood of Signarama. Mr. Wood explained that one bracket sign currently exists on the front entrance

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of the building, and that the request was to add a wall sign above the store front window. In addition, he explained that the rear side of the building is currently being used as an access, which entitles the business owner to an additional wall sign. Mr. Patel explained that the rear access faces the parking lot and is primarily used for deliveries, emergencies, and customer access. The proposal was to install wall signs above the front and rear entrances, and keep the existing bracket sign.

Mr. Meltzer questioned the white backer board placed over the front entrance door and suggested removal. Board members agreed. Mr. Norton spoke in favor of keeping Existing Sign #1 (the bracket sign), even though it was nonconforming and possibly prohibited by the Sign Bylaw. Mr. Ottaviani voiced concern regarding two business access points, since the additional rear sign would only be allowed if accessible to customers. Mr. Patel responded that the service desk was oriented to have both doors clearly visible and that there were security cameras at the service desk.

Mr. Cosgrove voiced concern regarding the lack of basis for Variances for the size of the proposed signs. He suggested that the rear entrance and front entrance signs be reduced to comply with the Sign Bylaw and include only the business name. He agreed with Mr. Norton that the bracket sign could remain “as is” preserving some of the character and patina of the area and also agreed that that illumination be based on business hours of operation.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1 Sign Permit Applications filed with the Building Official, denied on November 22, 2017.
- 6.2 Application for Hearing before the Zoning Board of Appeals filed with the Town Clerk on December 15, 2017.
- 6.3 Sign Officer comments dated December 27, 2017.
- 6.4 Planning Board comments dated January 8, 2018.
- 6.5 Photographs submitted with Application dated December 6, 2017 depicting front entrance existing sign #1 and proposed area #2; proposed sign #2; rear entrance current location; and proposed sign #3.
- 6.6 Plan set entitled “Site Plan 438 Waverly Street Framingham, MA” including Site Landscape Plan (LP-1), Existing Conditions Plan (EX-1), Site Layout Plan (L-1), Site Details (D-1), prepared by LandTech, 515 Groton Road, Westford, MA 01886, dated November 8, 2015 and revised 12/2/16, with applicant hand notations indicating location of signs.

Exhibits 6.5 and 6.6 shall hereinafter be referred to as “the Plans”.

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the Central Business (CB) zoning district.
- 7.2 On November 22, 2017, the Building Official denied a sign permit application for two wall signs under §1.10.2.1 (a) of the Sign Bylaw.

- 7.3 On December 15, 2017, the Applicant filed with the Town Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of obtaining Variances from the Sign Bylaw.
- 7.4 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on December 25 and January 1, 2018 and mailed to all parties-in-interest, as defined in §1.12.4.b of the Sign Bylaw.
- 7.5 The Applicant is seeking approval to allow the existing illuminated bracket sign to remain, and for two new wall signs. The Sign Bylaw allows either a bracket sign or a wall sign at the front entrance. Additional wall signs are allowed for additional entrances. One sign is allowed at each entrance. The Applicant is seeking two signs at the front entrance. The applicant explained that he wanted to retain the front bracket sign (Sign #1) because it is historic and it is more visible to travelers along Waverly Street.
- 7.6 Sign #2, the front wall sign, identifies the name of the business. Board members agreed that it would be better if the secondary information "lottery cigarettes and more" were removed and the applicant agreed, and that only the business name was appropriate. The sign face area is compliant at under 30 s.f.
- 7.7 Sign #3, proposed above the rear door, is non-compliant because it is more than 3 feet wide and 8 inches high (1.10.2.2). It must be reduced in size, but is otherwise allowable as long as the door serves as a public entrance.
- 7.8 The Variance standard established by the Town of Framingham's Sign Bylaw, §1.12.2.b is a demanding criterion. A Variance may be granted from the limitations imposed by the Sign Bylaw if it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street, or the topography of the land are such that said Variance may be permitted without being contrary to the public good. The Applicant must demonstrate that compliance with the Bylaw presents a hardship to the Applicant. The hardship must relate exclusively to the specific and unique circumstance of the situation faced by the Applicant, and not apply generally to other land, buildings or structures in the same zoning district.
- 7.9 The Board finds that the nature of the use of the premises is such that a variance may be permitted without being contrary to the public good, and that compliance with the Bylaw would present a hardship to the Applicant. *The Variance is only needed to allow the existing nonconforming bracket sign to remain. The other two signs will be compliant if the rear sign is reduced in size.*
- 7.10 The Board finds that relief from the Sign Bylaw may be granted without substantial detriment to the public good and surrounding properties, and without degradation of the neighborhood's visual environment, or causing a traffic or pedestrian hazard. *The signage would not detract from the visual environment, and they are important for minimizing confusion for drivers who may have limited visibility, helping avoid traffic and pedestrian conflicts. All the signs will only be illuminated during business hours.*
- 7.11 The Board therefore moved to APPROVE the Variance Application, subject to the following condition:

- 7.11.1 The signs shall be located and constructed as shown on the Plans, except as specified below.
- 7.11.2 The signs shall be illuminated only during business hours of operation.
- 7.11.3 Proposed sign #2, the front wall sign, shall advertise only the business name, "Old Station Wine and Spirits", with no secondary advertisements, and shall comply with the Sign Bylaw dimensions.
- 7.11.4 The existing white backer board shall be removed.
- 7.11.5 Proposed sign #3, the rear wall sign, shall comply with dimensional requirements allowed by the Sign Bylaw and only list the business name.

8. Appeals

Appeals, if any, shall be made pursuant to Sign Bylaw, §1.12.6.f. and shall be filed within sixty (60) days after the date of filing this Decision with the Town Clerk.

ZONING BOARD OF APPEALS

By: _____

Edward Cosgrove