

2018 DEC 21 A 9 44

**BOARD OF APPEALS CASE NO. S18-08**

**PETITION OF RICHARD SMITH and DOMINIQUE RENEE REALTY TRUST**

**DATE OF DECISION: DECEMBER 11, 2018**

**1. Application**

This document is the second DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) acting as the Sign Appeals Board on the Appeal of RICHARD SMITH and DOMINIQUE RENEE REALTY TRUST (hereinafter the Appellant), for property located at 665 COCHITUATE RD (hereinafter the Site). This Decision is in response to an APPEAL of the Building Commissioner's determination that the painting on the side of the building constitutes an unauthorized and nonconforming sign (hereinafter the Application).

**2. Appellants**

Richard Smith  
665 Cochituate Rd  
Framingham, MA 01701

**Property Owner**

Dominique Renee Realty Trust c/o Ericon Limited  
665 Cochituate Rd  
Framingham, MA 01701

**3. Location**

Property is located at 665 Cochituate Rd and is identified by Assessors' Parcel ID 084-77-2163-000 (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 December 11, 2018 the Board voted to DENY the APPEAL and UPHOLD the Building Commissioner's decision 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 September 6, 2018 pursuant to the City 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 October 9, 2018 at 8:00 P.M. in the Ablondi Room of the Memorial Building. The case was subsequently continued to November 13 and December 11 at which point a decision was made. An extension of decision deadline to December 12, 2018 was mutually agreed upon between the Appellant and ZBA. Board Members Ted Cosgrove, Joe Norton, Rick McKenna and Alternate Stephen Meltzer were present throughout the proceedings. To dispel any appearance of potential conflict of interest, and as required by G.L.c.268A, section 23 (b) (3), Mr. Norton read into the record a disclosure form. The minutes of the public hearing and submissions on which this Decision is

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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 Appellant was before the Board to appeal two determinations of the Building Commissioner. The first issue was related to window signage in excess of the area allowed; that issue was resolved in the Board's decision dated October 9, 2018. At the same meeting, Mr. Richard Smith explained the second issue, which was the existence of a non-permitted painting on the side of the building. The Building Commissioner determined that the painting depicting a large balloon was identical to the Remax (real estate) logo, minus the Remax lettering, and that it served to identify a business in the building. Mr. Smith disputed this determination. Members of the Board agreed that it identified the Remax business and was therefore considered a nonconforming "sign" within the definition of the Sign Bylaw. Mr. Smith requested that the hearing be continued to allow him to present an alternative mural that would make the association with Remax less obvious. The Board granted the request for continuance to November 13.

Mr. Smith subsequently requested that the hearing be continued to December 11, 2018. At the November 13 meeting, there was no discussion. At the December 11 hearing, the Appellant was absent without explanation. The Board moved to deny the petition.

## **6. Exhibits**

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

- 6.1 Final notice issued by the Building Department informing the Appellant of non-compliant/unpermitted signage dated July 31, 2018.
- 6.2 Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 14, 2018.
- 6.3 Filing fee in the amount of \$250.00.
- 6.4 Building Department comments sent via email on September 17, 2018.
- 6.5 Notice of Magistrate's Hearing on Compliant Application dated August 23, 2018.
- 6.6 Correspondence from the Appellant to the Building Department refuting the non-compliant signage, dated August 9, 2018, and including sections of the Sign Bylaw.
- 6.7 Two sets of correspondence via email between the Appellant, the Building Department, and the ZBA office dated most recently August 23, 2018 and September 14, 2018.
- 6.8 Packet of photos of existing signage with handwritten measurements, received with the application.
- 6.9 Site plan with handwritten notes displaying location of signage on site, received with the application.
- 6.10 Sketch plan of proposed mural with additional balloon paintings prepared by Nancy Handy and dated 11-18.



## 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:

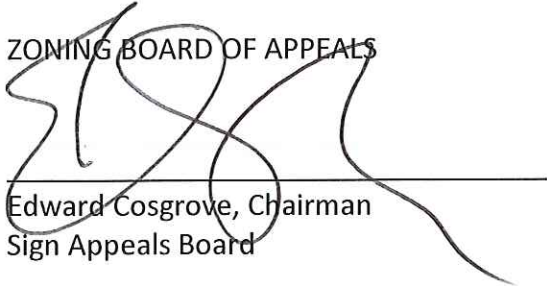
- 7.1 The property is located within the Light Manufacturing (M-1) and Regional Center Overlay (RC) zoning districts.
- 7.2 On July 31, 2018 the Building Department sent a 4<sup>th</sup> and final notice to the Appellant informing them of their non-compliant/unpermitted signage under §1.10.2, §1.6.15, §1.3.1, and §1.9.14 (b) of the Sign Bylaw.
- 7.3 On September 14, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of Appealing the determination of the Building Official.
- 7.4 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on September 24 and October 1, 2018, and mailed to all parties-in-interest, as defined by G.L. c. 40A, §11.
- 7.5 The Board issued a separate decision for the Temescal Wellness signage on October 9, 2018. This decision concerns the painted balloon on the side of the building. The Appellant requested a continuance to the November 13 meeting and subsequently to the December 11 meeting. He did not appear at the December 11 meeting, despite receiving notice of the meeting date.
- 7.6 The Building Department issued multiple notices alerting the Appellant that the balloon painted on the side of the building was considered a sign, since it was nearly identical to the Remax logo and served to identify a tenant in the building. The violation notice was issued because the Appellant failed to apply for a sign permit (1.3.1), it would be considered a non-conforming wall sign (1.10.2), and it would be considered a prohibited sign because it was painted directly on the building surface (1.6.15).
- 7.7 The Board entertained the Appellant's request to devise a new mural design that would result in it not being considered signage. On November 12, 2018, the Appellant submitted to Board staff via email a new sketch (Exhibit 6.10). This sketch retains the large balloon having the same colors and design of the Remax logo; however, several other smaller balloons were added with different colors but having the same tricolor pattern.
- 7.8 As the Appellant was absent without explanation, and in view of the proposed sketch, the Board move to DENY the Appeal and UPHOLD the Building Commissioner's determination that the balloon represented a non-permitted sign.

**8. Appeals**

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

ZONING BOARD OF APPEALS

By:

  
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Edward Cosgrove, Chairman  
Sign Appeals Board