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ZONING BOARD OF APPEALS

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DECISION

Applicant/Owner	Max Puyanic, CEO of ConvenientMD, LLC.
Property Address	983 Providence Highway
Zoning District	RDO
Map and Lot	Map 148, Lot 70
Representative	Peter A. Zahka, 12 School Street, Dedham, MA
Legal Notice	The Zoning Board of Appeals for the Town of Dedham, Massachusetts, will hold a public hearing in the Town Hall Office Building, Lower Conference Room 26 Bryant Street, Dedham, MA at <u>7:00 p.m., Wednesday, June 19, 2019 on the hearing of Convenient MD, LLC of 111 NH Avenue, Portsmouth, NH 03801.</u> The Applicant is requesting such waivers from the provisions of the Dedham Sign Code as required for total sign area on the lot of approximately 752 Square feet, two (2) free-standing signs with a total sign area of approximately 150 Square feet, and wall signs with a height of 32 feet which will be above the lowest point of the roof and which are in excess of 5% of the wall area.
Section of Zoning Bylaw	<i>Town of Dedham Sign Code Sections 237-19, 237-29, 237-30, Table 1, and Table 2.</i>
Date of Application	June 19, 2019
Date of Public Hearing	June 19, 2019
Date of Decision	June 19, 2019
Vote	4-0 Unanimous in favor
Voting Members	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, George Panagopoulos
Date Filed With Town Clerk	July 1, 2019

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts, held public hearings on Wednesday, June 19, 2019, in the Town Office Building, Bryant Street, Dedham, MA. Present were Members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, and Scott M. Steeves. In the absence of other Members, the Chairman appointed Associate Member George Panagopoulos to sit on these hearings. These hearings and meeting of the ZBA were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:20 p.m. the Chairman called for the hearing on the application of ConvenientMD, LLC, to be allowed such waivers from the provisions of the Dedham Sign Code as required for total sign area on the lot of 752 square feet, two (2) free-standing signs with a total sign area of 150 sq. ft., and wall signs with a height of 32 ft., which will be above the lowest point of the roof and which are in excess of 5% of the wall area. The property is located at 983 Providence Highway, Dedham, Massachusetts, in the Research, Development, and Office (RDO) Zoning District. *Town of Dedham Sign Code Sections 237-19, 237-29, 237-30, Table 1, and Table 2.*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of the Applicant was Max Puyanic, CEO of ConvenientMD, LLC. With the Application, Attorney Zahka submitted a certified plot plan and drawings of the proposed building elevations and proposed signs. At the outset of the hearing, Applicant presented a revised “sign package” (discussed further below). The transcript from the hearing is the primary source of evidence and is incorporated herein by reference.

The Subject Property, shown on Dedham Assessors Map 148, Lot 70, contains 57,499 square feet of land and has frontage on Providence Highway and Elm Street totaling in excess of 400 feet. The Subject Property is owned by Avery Oak Realty, LLC, and is leased by Applicant. Located on the Subject Property is a single-story building with approximately 11,268 gross square feet of floor area (previously occupied by Walgreens). Also located at the Subject Property are two (2) free-standing signs: (a) an approximate 50 square foot free-standing sign for Holiday Inn (a business located on an adjacent property) and (b) an approximate 100 square foot free-standing sign formerly used by Walgreens. According to the Dedham Zoning Map, the Subject Property is located in the Research, Development & Office (RDO) Zoning District.

The Dedham Sign Code (Chapter 237 of the Revised By-Laws of the Town of Dedham) sets forth the dimensional and other requirements for signs in the various zoning districts in the Town of Dedham. At the outset it should be noted that Footnote 2 to Table 1 and Footnote 10 to Table 2 of the Sign Code provides that lots in the RDO Zoning District with street frontage on Providence Highway are subject to the more liberal signage regulations for the Highway Business (HB) Zoning District. Section 237-19 of the Dedham Sign Code provides in pertinent part that “lots fronting on two or more streets are allowed the permitted sign area for each street frontage.” However, Footnote 2 to Table 1 also states that only frontage on a major highway may be used in computing the amount of signage allowed under HB regulations.

Applicant states that the above noted provisions of the Dedham Sign Code are conflicting, ambiguous and subject to various interpretations. For example, it is unclear as to whether the signs on the Subject Property are regulated pursuant to the Sign Code provisions for the HB Zoning District or partially by the provisions for the HB Zoning District and partially by the provisions for the RDO Zoning District. Applicant submits it should be regulated solely by the Sign Code provisions applicable to the HB Zoning District. (Applicant reports that it has consulted with the Dedham Building Commissioner who was in agreement that the above provisions are unclear and susceptible to different interpretations.)

Accordingly, the following dimensional requirements may be applicable to signs at the Subject Property (depending upon whether the HB or RDO Zoning District regulations are appropriate):

	HB Zoning District	RDO Zoning District
Maximum Total Sign Area	2 sf per foot of frontage (2 x 200' = 400 sf)	2 sf per foot of frontage (2 x 200' = 400 sf)
Maximum No. of Freestanding Signs	1	1
Maximum Area of Freestanding Signs	100 sf	40 sf
Maximum Height of Freestanding Signs	20 feet	12 feet

Maximum Area of Wall Sign- age	20% of wall area	5% of wall area
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The Subject Property is allowed a total of 800 square feet of sign area (under both the regulations for the RDO and HB Zoning Districts) if based on the total frontage on Providence Highway and Elm Street. Due to the above described ambiguities in the Sign Code, however, Applicant has requested a waiver for a total sign area on the lot of 752 square feet. Also, as noted in the above chart, only one free-standing sign is allowed on a property with a maximum sign area of 100 square feet. There are currently two (2) existing free-standing signs on the Subject Property (one of which relates to the adjacent Holiday Inn and one previously utilized for Walgreens), and Applicant proposes to maintain the same (and utilize the former Walgreens' free-standing sign for its business). Therefore, Applicant has requested relief in order to maintain two (2) free-standing signs with a total area of 150 square feet.¹ In addition, as indicated in the above chart, wall signs in the HB District may have an area of 20% of the wall area, but wall signs in the RDO District may have an area of only 5% of the wall area. Again, due to the described ambiguous language in the Sign Code, Applicant has requested a waiver to allow all wall signs to be in excess of 5% of the wall area (i.e., for wall signs up to 20% of the wall area as allowed in the HB Zoning District).

Relative to the height of wall signs, Chapter 237-19 Section E (Computation of Sign Area and Height) of the Dedham Sign Code provides that, "No wall sign...shall extend higher than the lowest of (i) 25 feet above grade; or (ii) below the second-floor window frame; or (iii) the lowest point of the roof." The walls proposed by Applicant at the Subject Property extend to various elevations. A number of the wall signs will be 32 feet in height and above the lowest portion of (other parts of) the roof. Therefore, waivers have been requested from the height provisions under the Sign Code.

Relative to the relief requested from the provisions of the Dedham Sign Code, Applicant submits that it has satisfied the procedural and substantive criteria and requirements of said Sections 237-29 and 237-30 of the Dedham Sign Code. With respect to the procedural requirements, Applicant submitted appropriate documentation to the Design Review Advisory

¹ The ZBA has previously granted relief from the Dedham Sign Code to allow the two free-standing signs with a total sign area of 150 sf.

Board (DRAB). Prior to this ZBA hearing, Applicant appeared before DRAB to discuss the requested waivers. At that time, DRAB voted to approve and recommend Applicant's request for the waivers from the Dedham Sign Code. A copy of the DRAB letter of recommendation has been provided to the ZBA. It is noteworthy that DRAB further recommended that: (1) The 229.2 square foot wall sign facing Ariadne Road (shown as sign no. 4 in the "sign package") be "scaled down", and (2) that the sign on the angled wall be re-worked. In response, Applicant has reduced the wall sign facing Ariadne Way to 174.2 square feet and has changed the sign on the angled wall to only include the words "Urgent Care". The revised "sign package" submitted by Applicant at this hearing these revisions.

With respect to the substantive requirements, said Section 237-30 provides that the ZBA may grant waivers with a finding (a) that literal compliance... is not practical or is unfeasible or (b) that waivers are recommended by the DRAB. As indicated above, DRAB is recommending such waivers. In addition, since there are already two free-standing signs on the Subject Property (one which is for a business on an adjacent lot) literal compliance with the Sign Code is not practical and is unfeasible. Likewise, the previously described ambiguities in the Sign Code (with regards to a corner lot in the RDO Zoning District with frontage in the HB Zoning District) further make literal compliance unfeasible and not practical. The requested waivers may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Sign Code. Applicant's business is providing medical relief and care to persons who may be travelling a distance and who are in distress. Appropriate signage to allow such persons to locate Applicant will be in the public good. Additionally, the total proposed sign area is appropriate for the site and consistent with previous businesses at the Subject Property. While not necessarily bound by prior decisions, the ZBA acknowledges that some similar waivers have previously been granted for the Subject Property.

No one appeared at the hearing in opposition of this Application.

Upon motion being duly made and seconded, the ZBA voted unanimously (4-0) to grant the requested waivers from the Town of Dedham Sign Code as required for total sign area on the lot of 752 square feet, two (2) free-standing signs with a total sign area of 150 sq. ft., and wall signs with a height of 32 ft., which will be above the lowest point of the roof and which

are in excess of 5% of the wall area, in the Research, Development, and Office (RDO) Zoning District. In granting this relief, the ZBA finds (1) that Applicant has satisfied the procedural requirements set forth in the Dedham Sign Code, (2) that the relief is recommended by DRAB, (3) literal compliance with the Sign Code is not practical or is unfeasible (as described above), and (4) that the waiver may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Sign Code.

Dated: July 1, 2019

James F. McGrail
James F. McGrail, Esq., Chairman

J. Gregory Jacobsen
J. Gregory Jacobsen

Scott M. Steeves
Scott M. Steeves

George Panagopoulos
George Panagopoulos