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***MEMBERS***

**JAMES F. McGRAIL, Esq., CHAIR**

**J. GREGORY JACOBSEN, VICE CHAIR**

**SCOTT M. STEEVES**

**E. PATRICK MAGUIRE, LEED AP**

**JASON L. MAMMONE, P.E.**

***ASSOCIATE MEMBERS***

**JESSICA L. PORTER**

**JARED F. NOKES, J.D.**



**TOWN OF DEDHAM**

**ZONING BOARD OF APPEALS**

**DECISION**

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| **Applicant:** | **Ella’s Gas of Dedham, Inc.** |
| **Property Address:** | **22 Bridge Street, Dedham, MA** |
| **Property Owner:** | Elie on Bridge Street, LLC |
| **Property Owner Address:** | 97 New Haven Street, West Roxbury, MA 02132 |
| **Agent/Agent Address:** | Peter A. Zahka II, Esq., 12 School Street, Dedham, MA |
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| **Legal Notice:** | The applicant seeks to be allowed a waiver from the Town of Dedham Sign Code for internal LED illumination on both sides of the free-standing sign, side yard setback of 3’6” instead of the required 5’, total height of free-standing sign of 20’ instead of the allowed 8,’ and free-standing sign area of 37.5 square feet instead of the allowed 20 square feet |
| **Section of Zoning Bylaw:** | *Town of Dedham Sign Code, Section 237-4, 237-19, 237-29, and 237-30* |
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| **Zoning District, Map and Lot:** | General Business, 14/51 |
| **Date of Application:** | November 18, 2016 |
| **Date of Public Hearing:** | January 18, 2017 |
| **Date of Decision:** | January 18, 2017 |
| **Vote:** |  |
| **Voting Members:** | James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP,® Jason L. Mammone, P.E. |
|  |  |
| **Date Filed with Town Clerk:** | **February 7, 2017** |

The Zoning Board of Appeals (“ZBA”) of the Town of Dedham, Massachusetts held a public hearing on Wednesday, January 18, 2017, at 7:00 p.m. in the Town Office Building, 26 Bryant Street, Dedham, MA. Present were members of the ZBA, Chairman James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, and Jason L. Mammone, P.E.

The hearings were duly advertised in accordance with the requirements of MGL Chapter 40A, Section 11. Legal ads were placed for two consecutive weeks in *The Dedham Times*. In addition, abutters within 300 feet of the property in question received notification of the hearings, and notification regarding each hearing was sent to the neighboring towns (Boston, Needham, Canton, and Westwood). Copies of all plans referred to in this decision and a detailed record of the Zoning Board of Appeals proceedings are filed in the Dedham Planning Department.

At 7:20 p.m., the Chairman called for the hearing on the appeal of Ella’s Gas of Dedham, Inc., to be allowed such relief or waivers from the Town of Dedham Sign Code as necessary or required to allow an internally illuminated (LED) free-standing sign with an area of 37.5 square feet instead of a maximum of 20 square feet, a height of 20 feet instead of the maximum 8 feet, and a setback of approximately 3.5 feet instead of the required 5 feet. The property is located at 22 Bridge Street, Dedham, MA, and is located in the General Business zoning district. *Town of Dedham Sign Code, Section 237-4, 237-19, 237-29, and 237-30*

The Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant were Elie Lakkis and Bob Thompson of Jim Did It Signs & Awnings, 10 Draper Street, #11, Woburn, MA 01801. The Applicant had previously submitted a site plan, photographs of the Subject Property, and recordings of the proposed sign. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

The Applicant owns and operates a gasoline service station at the real estate known and numbered as 22 Bridge Street, Dedham, MA. The Subject Property is shown on Dedham Assessors’ Map 14, Lot 51. The Subject Property has a land area of approximately 10,909 square feet of land and has approximately 135 feet of frontage on Bridge Street. The Subject Property is currently occupied by a gasoline service station with a canopy and two (2) fueling dispensers. While the exact date when the Subject Property was first utilized as a gasoline service station in unclear, a gasoline service station has operated at the Subject Property since sometime prior to 1952. According to the Zoning Map for the Town of Dedham, the Subject Property is located in the General Business (GB) Zoning District.

The Applicant desires to install a free-standing sign on the pole/pylon that currently exists on the Subject Property. This pole/pylon has historically been used for a free standing sign for a gasoline service station at the Subject Property. Table 1 of the Dedham Sign Code provides that a free standing pole/pylon is permitted in the General Business (GB) District. Table 2 of the Dedham Sign Code requires provides that free standing signs in the General Business District shall have a maximum area of twenty (20) square feet, a maximum height of eight (8) feet, and a minimum side setback of five (5) feet. Section 237-18 E. of the Dedham Sign Code provides that internally illuminated signs are not permitted in the General Business (GB) Zoning District. Accordingly, the Applicant seeks relief from this provision of the Dedham Sign Code to allow for an internally illuminated (LED) free standing sign with an area of 37.5 square feet, with a height of twenty (20) feet, and which is 3.5 feet from the side line.

The ZBA is authorized and empowered to grant relief or waivers from the provisions of the Dedham Sign Code pursuant to Sections 237-29 and 237-30 of the Dedham Sign Code. This provision sets forth both procedural and substantive requirements for the grant of such waivers. The Applicant indicates that it has satisfied these requirements.

The Applicant submitted a full application relating to the proposed sign to the Design Review Advisory Board (DRAB) and the Applicant met with DRAB on December 7, 2016. At this meeting, DRAB voted to approve the application with respect to this sign (with the exception of the internal illumination for the upper portion of the proposed sign) and issued a letter dated December 8, 2016, indicating the same. As further required by the Dedham Sign Code, the Applicant also provided DRAB with a copy of its application to the ZBA.

Said Section 237-30 provides that the ZBA may grant waivers from the Dedham Sign Code upon a finding that either (a) literal compliance with the provisions . . . is not practical or is unfeasible or (b) that such waivers are recommended by DRAB. In all cases, the ZBA must also find that that desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Sign Code.

As indicated above, the Applicant’s sign application (with the exception of some of the internal illumination) was approved by DRAB. In addition, the Applicant submits that literal compliance with the size, height and side set back requirements is not practical or is unfeasible. Furthermore, the “desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogatory from the intent or purpose of the by-law.” As noted above, the pole/pylon is pre-existing and has been utilized previously for a gasoline service station sign. Relocating the sign is not practical due to potential impact on the parking and travel throughout the lot. It is submitted that requested relief or waivers will allow the sign to be better seen by the traveling public and will assist in travelers locating the business. It is noted that all surrounding properties have internally illuminated signs of the same or greater area and height as proposed by the Applicant. It is also submitted that the requested relief or waivers are consistent with the purposes of the Dedham Sign Code as set forth in Section 1 of the Sign Code.

The Applicant noted that DRAB recommended that the proposed sign be externally illuminated on the top and internally illuminated on the digital pricing. While the Applicant indicated his preference for the entire sign to be internally illuminated, he stated that he would abide by the decision of the ZBA. After much discussion and a review of photographs of other signs in the area, it was felt that a fully illuminated sign was more appropriate.

Planning Board Member Robert Aldous, 63 Pine Street, appeared at the hearing and was supportive of the requested relief. Mr. Aldous stated that the proposed signage is needed to alert the public that there is a gasoline station at the Subject Property. No one appeared in opposition to the application.

Upon motion being duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA further voted unanimously (5-0) to grant the requested waivers from the provisions of the Dedham Sign Code to allow an internally illuminated (LED) free standing sign with an area of 37.5 square feet (instead of maximum 20 square feet), a height of 20 feet (instead of maximum 8 feet), and a setback of approximately 3.5 feet (instead of required 5 feet) at 22 Bridge Street. In granting this waiver, the ZBA finds (1) that the Applicant has satisfied the procedural requirements set forth in the Dedham Sign Code, (2) that the sign application was (partially) recommended by DRAB, (3) that literal compliance with the wall height provisions in the Dedham Sign Code is not practical at this location, and (4) that the same 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. Said approval is conditioned upon the Applicant enclosing/boxing or otherwise covering the existing pole/pylon to improve the appearance of the same.

Dated: January 18, 2017

Attest, by the Zoning Board of Appeals: James F. McGrail  **J**ames F. McGrail, Esq., Chairman

**J**. Gregory Jacobsen

J. Gregory Jacobsen, Vice Chairman

Scott M. Steeves

Scott M. Steeves

E. Patrick Maguire

E. Patrick Maguire, LEED AP

Jason L. Mammone Jason L. Mammone, P.E.

Attest, by the Administrative Assistant:

Susan N. Webster

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