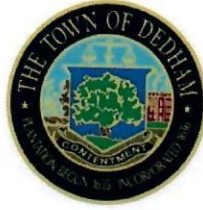


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J. GREGORY JACOBSEN, VICE CHAIR
SCOTT M. STEEVES
E. PATRICK MAGUIRE, LEED AP
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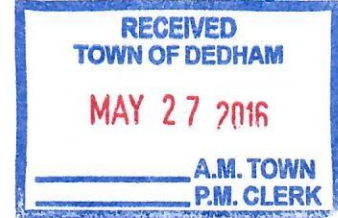
JESSICA L. PORTER
JARED F. NOKES, J.D.



**TOWN OF DEDHAM
ZONING BOARD OF APPEALS
DECISION**

DEDHAM TOWN HALL
26 BRYANT STREET
DEDHAM, MA 02026-4458
PHONE 781-751-9242
FAX 781-751-9225

2016 MAY 27 AM 1:10
ADMINISTRATIVE ASSISTANT
SUSAN WEBSTER
swebster@dedham-ma.gov



Applicant: Apex Property, LLC, 100 Main Street, Pawtucket, RI 02860
Property Address: 320 Washington Street, Dedham, MA
Case #: VAR-04-16-2091
Map/Lot, Zoning District: 93/118, Central Business
Application Date: April 26, 2016
Present and Voting: James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, LEED AP, Jason L. Mammone, P.E.
Representative: Peter A. Zahka II, Esq., 12 School Street, Dedham, MA
Joshua Glass, Apex Property, LLC
Patrick Hurley, owner of Ubreakifix
Legal Notice: To be allowed a waiver from the Town of Dedham Sign Code as noted in the Town of Dedham Charter for wall signs that are above the lowest point of the roof.
Section of Zoning Bylaw: Town of Dedham Sign Code Sections 237.4, 237-19, 237-29, 237-30; Town of Dedham Zoning Bylaw Section 9.2.2 Board of Appeal – Powers
Date Filed with Town Clerk: May 27, 2016

The Zoning Board of Appeals (hereinafter "ZBA") of the Town of Dedham, Massachusetts held public hearings on Wednesday, May 18, 2016, in the Town Office Building, 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 Mammone, P.E. The hearings were duly advertised for this meeting of the ZBA in accordance with the requirements of MGL Chapter 40A, Section 11.

At 7:30 p.m., the Chairman called for the hearing on the petition of Apex Property, LLC, (hereinafter "Applicant") of 100 Main Street, Pawtucket, RI. Applicant seeks to be allowed a waiver from the Town of Dedham Sign Code for wall signs that are above the lowest point of the roof. The Subject Property is located at 320 Washington Street and is in the Central Business (CB) Zoning District. *Dedham Sign Code (Chapter 237 of the Revised of the Town of Dedham) Sections 237-4, 237-19, 237-29, and 237-30.*

Applicant was represented by Peter A. Zahka, II, Esq., 12 School Street, Dedham, MA. Also present on behalf of Applicant was Joshua Glass of the Apex Company and Patrick Hurley of UbreakIFix. With the Application, Attorney Zahka submitted various plot plans of the Subject Property, photographs of the building, and drawings of the proposed signs. At the commencement of the hearing, Attorney Zahka submitted an aerial photograph of the Subject Property and building. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

Applicant is the owner of the Subject Property, which is known and numbered as 320 Washington Street and is shown on Dedham Assessors' Map 93-118. The Subject Property is located at the intersection of (and has frontage on both) Washington Street and Providence Highway, and contains approximately 7,029 square feet of land. The Subject Property is located in the Central Business (CB) Zoning District.

The Subject Property is occupied by a one-story commercial building with a floor area of approximately 2,600 square feet. A portion of the building is currently occupied by Papa John's Pizza. The remainder of the building is to be occupied by UbreakIFix, an electronic repair store. Previously, the building was occupied by a variety of retail/commercial uses including a cell phone store and a camera store.

The tenants/businesses occupying the Subject Property have installed or intend to install wall signs on the Washington Street and Providence Highway sides of the building. Historically, previous tenants in the building have had signs in almost the

same location on the building walls. The signs are below 25 feet in height. However, the building has a so-called parapet wall. As such the roof of the building is below the top of these walls. Accordingly, the signs will be higher than the lowest point of the roof.

Section 237-19.D. of the Dedham Sign Code provides that “no wall sign . . . shall extend higher than the lowest of (i) twenty-five (25) feet above grade; or (ii) below the second floor window frame; or (iii) the lowest point of the roof. As indicated above, the wall signs will be below twenty-five (25) feet in height but due to the parapet will be above the lowest point of the roof. Accordingly, Applicant seeks relief from this provision of the Dedham Sign Code to allow wall signs to be above the lowest point of the roof. It is noteworthy that Papa John’s has already been issued permits for and has erected its signs. However, an issue as to whether a waiver is required for the wall signs was raised when UbreakIFix submitted its application for signs.

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. Applicant indicates that it has satisfied these requirements.

Applicant submitted a full application relating to the proposed UbreakIFix signs to the Design Review Advisory Board (DRAB) and notified DRAB of its intent to seek the waivers that are the subject of this appeal. Subsequently, Applicant met with DRAB on April 6, 2016. At this meeting, DRAB voted to approve the application and issued a letter indicating the same. As further required by the Dedham Sign Code, 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, Applicant's sign application was approved by DRAB. In addition, Applicant submits that literal compliance with the wall height requirement (i.e., below the lowest point of the roof) is not practical. Specifically, Applicant notes that:

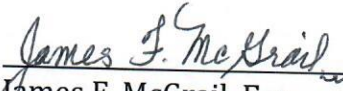
1. Erecting the signs below the lowest point of the roof is not practical since the signs would not be readily visible from Providence Highway given the grade of the surrounding land and roadway.
2. The proposed location of the signs on the building wall is aesthetically and architecturally appropriate for the building and is within the sign band.
3. The prior occupants of the building had wall signs in approximately the same location without any detrimental or negative impact on the surrounding area.

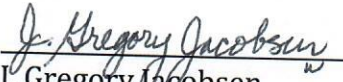
Furthermore, the "desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogatory from the intent or purpose of the by-law". It is submitted that relief or waivers will allow the sign to be better seen by the traveling public and will assist in travelers locating the business. As stated above, signs on the building have historically been located in about the same location on the wall of the building. 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.

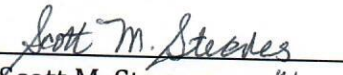
Upon motion being duly made by E. Patrick Maguire, LEED AP and seconded by J. Gregory Jacobsen, the ZBA voted unanimously (5-0) to grant the requested waivers from the provisions of the Dedham Sign Code to allow wall signs which are above the lowest point of the roof of the building. In granting this waiver, the ZBA finds (1) that Applicant has satisfied the procedural requirements set forth in the Dedham Sign Code, (2) that the sign application was approved by DRAB, (3) that literal compliance with the wall height provisions in the Dedham Sign Code is not practical at this building, 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. If a new tenant comes into the building, the previous tenants will need to shrink their signs to accommodate the tenant and fulfill the Sign Code requirements.

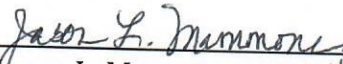
Dated: May 18, 2016


James F. McGrail, Esq.

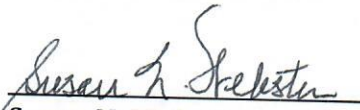

J. Gregory Jacobsen


Scott M. Steeves


E. Patrick Maguire, LEED AP


Jason L. Mammone, P.E.

Attest by the Administrative Assistant


Susan N. Webster

Materials Presented:

- ZBA application