

TOWN OF DEDHAM
COMMONWEALTH OF MASSACHUSETTS

ZONING BOARD OF APPEALS



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Jason L. Mammone, P.E.

Associate Members

Jared F. Nokes, J.D.

Susan Webster
Administrative Assistant
swebster@dedham-ma.gov

DECISION

Applicant	Horse Thieves Tavern
Property Address	574-585 High Street, Dedham, MA
Property Owner/Address	Washington High, LLC, P.O. Box 1288, Dedham, MA
Zoning District	Central Business
Map and Lot	92/65
Application Date	February 28, 2018
Representative	Mollie Moran, AIA, 64 Dwight Street, Dedham, MA

Legal Notice The applicant seeks to be allowed a waiver from the Town of Dedham Sign Code for installation of a 126 square foot wall mural which, together with existing and proposed signage, will exceed the one square foot per linear foot that is allowed; and to be allowed a waiver from the Town of Dedham Sign Code for installation of window graphics with approximately 33% window coverage, exceeding the 25% allowed in the Town of Dedham Sign Code.

Section of Sign Code *Town of Dedham Sign Code Table 2, Signs and Dimensions*

Date of Public Hearing March 21, 2018, April 18, 2018, May 16, 2018
Voting Members J. Gregory Jacobsen, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E., Jared F. Nokes, J.D., Jessica L. Porter (March 21, 2018, and April 18, 2018)

Date Filed with Town Clerk May 23, 2018

The Zoning Board of Appeals ("ZBA") of the Town of Dedham, Massachusetts, held public hearings on Wednesday, March 21, 2018, April 18, 2018, and May 16, 2018, in the Town Office Building, 26 Bryant Street, Dedham, Massachusetts. Present were members of the

ZBA, J. Gregory Jacobsen, Vice Chair, Scott M. Steeves, E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®, Jason L. Mammone, P.E., and Jared F. Nokes, J.D. James F. McGrail, Esq., recused himself from hearing the above-noted petition due to a professional relationship with the Applicant. Associate Member Jared F. Nokes, J.D., was appointed to sit in his stead.

The hearings for this meeting of the ZBA were duly advertised in *The Dedham Times* on March 2, 2018, and March 9, 2018, in accordance with the requirements of Massachusetts General Law, Chapter 40A, Section 11, and the Town of Dedham Zoning Bylaw. In addition, notices of the hearings were sent to abutters within 300 feet of the property in question on March 6, 2018. Notification of each hearing was sent to the abutting towns of 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 Town of Dedham Planning Department.

March 21, 2018

At 7:00 p.m., the Chair called for the hearing on the petition of Horse Thieves Tavern to be allowed a waiver from the Town of Dedham Sign Code for a waiver from the Town of Dedham Sign Code for installation of a 126 foot wall mural which, together with existing and proposed signage, will exceed the one square foot per linear foot that is allowed a waiver from the Town of Dedham Sign Code for installation of window graphics with approximately 33% window coverage, exceeding the 25% allowed in the Town of Dedham Sign Code. The property is located at 574-585 High Street, Dedham, Massachusetts, and is located in the Central Business zoning district. *Town of Dedham Sign Code Table 2, Signs and Dimensions*

The Applicant was represented by Mollie Moran, AIA, 64 Dwight Street, Dedham, MA. The minutes from the hearing are the primary source of evidence and are incorporated herein by reference.

On February 28, 2018, the Applicant submitted an application that included:

1. Zoning Board of Appeals application
2. Photograph of existing building
3. Rendering of proposed signage including wall mural

The subject property is known and numbered as 574-585 High Street, Dedham, Massachusetts, and is shown on Dedham Assessor's Map 92, Lot 65. The certified plot plan indicates

that the Subject Property contains 5,162 square feet of land and has 65.76 feet of frontage on High Street and 88.6 feet of frontage on Washington Street. According to the Town of Dedham Zoning Map, the Subject Property is located in the Central Business zoning district. Currently, the property is occupied by commercial businesses. According to the records maintained by the Dedham Board of Assessors, the building was constructed in 1924.

The Town of Dedham Zoning Board of Appeals is authorized and empowered to grant relief or waivers from the provisions of the Town of Dedham Sign Code pursuant to Sections 237-29 and 237-30. This provision sets forth both procedural and substantive requirements for the granting of such waivers. The Applicant respectfully submits 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 met with that Board on March 14, 2018. At that meeting, the DRAB voted to recommend the application, which is attached to this decision, and issued a letter dated March 19, 2018, indicating the same. As further required by the Town of Dedham Sign Code, the Applicant also provided DRAB with a copy of its application to the ZBA.

As indicated, the Applicant's sign was recommended by the Design Review Advisory Board. In addition, the Applicant submits that literal compliance ... 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 derogating from the intent or purpose of the by-law." It is also submitted that the requested relief or waivers are consistent with the purposes of the Town of Dedham Sign Code as set forth in Section 1 of the Sign Code.

At the hearing on March 21, 2018, Ms. Moran said, with regard to the window graphic, that she spoke with Fred Johnson, the Assistant Building Inspector, who told her that she needed to come to the ZBA regarding the window graphics, which are frosted panels with reverse lettering. He interpreted it as the full height of the frosting, while she interprets that the lettering is like that on an awning. She then spoke with Building Commissioner Kenneth Cimeno, who agreed that it is just the outline around the letters. He said she did not need a variance for this, but she could come to the Board for it anyway. She said the words would probably change in the future. She asked that Mr. Cimeno's comment be incorporated into the decision, i.e., "determination that it is not required per Building Commissioner Kenneth Cimeno, and that they

are allowed to do anything within the frosted lettering that does not exceed 25% of the allowed amount.” The frosting will only go up five feet from the street. There is a two-foot stone base *unintelligible – something on the microphone*. The idea is that people can see in from the outside at five feet to see what is happening, but when they are sitting in the restaurant, they cannot be seen. There is very little signage and lighting, feeling that the lighting in the restaurant will do it all. The frosting does not block the light. Ms. Porter noted that the Dedham Square guidelines promote as much transparency as possible.

Ms. Moran then discussed the mural. When the Sign Code was first done, the idea for Dedham Square to be *unintelligible*. It was determined to limit signage to one square foot per linear foot of frontage. This was to encourage people to use sign bands or minimal lettering on an awning. In this case, it is a two-story building. They are fine in terms of not exceeding 25% of wall coverage, but they exceed the one linear square foot per linear foot for the mural. The mural is proposed for the area that has been stuccoed. This area was originally going to be brick with windows, but they thought it would be fun to put a mural on the corner in front of the bus stop. There is no commercial message to the mural, but it is still interpreted as a sign. It is because the building is so tall, it is still within the square footage of allowable wall coverage. Mr. Cimeno interprets it as a graphic that is from the Society for the Apprehension of Horse Thieves. On the other side of the wall, inside the restaurant, will be a mural of customers drinking. Ms. Porter said that when the Oakdale Square mural was painted, they were told that if there are no words, it is not considered a sign. Mr. Jacobsen disagreed, saying it is still a sign. Ms. Moran said it is art, and there is and will not be any commercial message.

Mr. Mammone asked Ms. Moran how many square feet they are over. She said they have 70 square feet. She said the DRAB application no longer calculates the full wall area. The total on Washington Street has to add in other businesses, i.e., the cigar shop awnings and other “small things.” She said the additional signage beyond this is the 2.2 square feet of the window band and the two awnings (the cigar shop and the name of the other awning saying “Associates Building.”) She said this may be another 10 square feet at the most. She did not know the exact number.

Mr. Steeves said he did not know how the Board could vote on the waiver without an accurate figure. Mr. Mammone also wanted to know if the mural was approved by DRAB, as he would want to see it in writing if they did. Ms. Moran said that DRAB asked for assurance that the

mural was going to be the same as the lithograph image. The artist has a different style, and they were concerned about that. She reassured them that he would follow the lithograph. Mrs. Webster will obtain that information for the next meeting (NOTE: Mrs. Webster e-mailed the members of DRAB to determine if they had voted on the mural. The chair responded as follows: "Based on our letter, the motion was to approve the application with listed recommendations. My belief was that the mural was part of the application and therefore approved as part of the passed motion." The Board will be furnished with this e-mail for the next meeting).

Mr. Steeves moved to table the application until the next meeting on April 18, 2018, so that accurate numbers could be obtained. He advised her to go back to Mr. Cimeno to straighten it out. Mr. Mammone seconded the motion. The vote to do so was unanimous at 5-0. Mr. Nokes said the motion should reference *unintelligible*.

April 18, 2018

This is continuation from the hearing on March 21, 2018, began at 7:00 p.m. Ms. Moran returned with more information on two signs as requested by the Board. *Please note that the recording equipment was not functioning properly and some parts of conversation could not be heard.*

The first is the applied lettering on the windows. She spoke with Building Commissioner Kenneth Cimeno multiple times, and he was supposed to get a letter to Administrative Assistant Susan Webster. Mrs. Webster did provide Ms. Moran with the minutes from the DRAB meeting. This referenced the fact that they were aware that Mr. Cimeno does not consider this kind of lettering as signage. She mentioned Oscar's, which is another restaurant in Dedham Square that came before the Zoning Board of Appeals for frosting on the windows. The Board ruled that it was not signage. *Ms. Moran was difficult to hear because she spoke very softly.* Mr. Cimeno was supposed to speak with Assistant Building Inspector Fred Johnson about this. *Ms. Porter spoke, but could not be heard.* Ms. Moran said that the owner of Horse Thieves Tavern may not put words on the frosting. The purpose of the frosting is to put up a barrier at about five feet so that passersby cannot look into the restaurant. She said the restaurant is not a fast food place. It is a higher level of dining, and there are seats around the windows. They do not want a fishbowl effect. Ms. Moran said that if the Board approves the signage as presented and for some reason there is a challenge to it, or if the Board does not approve it, they would withdraw the petition.

Ms. Porter said that in terms of the window frosting, the Dedham Square design guidelines are in process. Ms. Moran said that people can still see the lighting and the activity from the street, but people walking by would not see in. *Again, she was very difficult to hear.* Ms. Porter said the guidelines say that activity should be shown. Ms. Moran said she cannot tell when they are open because of it. Mr. Steeves said the he did not like the frosted glass at Oscar's. He preferred it to be more open. Ms. Porter said people should see the vibrancy and activity. Ms. Moran said that the frosting on the Horse Thieves Tavern would less; the opacity is the same as Oscar's, but there is two feet of granite at the base and two-and-a-half feet of frosting above that plus the transom windows.

Mr. Steeves asked about the mural, and Ms. Moran said that is a separate issue. Mr. Mammone asked what the Board is being asked to approve. Ms. Moran said she is seeking approval for the signage as shown, which would include a six inch band of letters. If it was the entire window, a waiver would be required. By Mr. Cimeno's interpretation, it does not require a waiver. She will obtain Mr. Cimeno's interpretation for the Board at the next meeting. If he gives an interpretation that a waiver is needed, she will need to return or change her proposal.

Ms. Moran described the mural. *Again, she was very difficult to hear.* She said that the definition of a sign is to convey information to the public. She said there is no commercial message on the mural. Paul Corey of the Design Review Advisory Board said it is a sign, and she wants to clarify this. The mural will be painted like a lithograph. She said that DRAB approved the mural. The menu board is not included in this. She has not discussed the mural or the need for a waiver with Mr. Cimeno, but said that DRAB considered it a sign. She said she would not push that with him.

Mr. McGrail, speaking as a citizen, said that the mural in Oakdale has been there for a while. At some point after the fact, the Building Department told them they needed to come before the Zoning Board of Appeals because it was considered a sign. He wondered if it was because there were words on it. He compared the Horse Thieves mural with the Oakdale Square mural. Originally, no one asked about approval of the latter. *Mr. McGrail was difficult to hear because he was a distance away from the microphones.* Ms. Moran said she did not want to come back for this. *Mr. McGrail's comment could not be heard.* He spoke about doing it as a matter of right. He said that Oakdale Square seems to be the guide for murals. He said there are no words on the Horse Thieves mural. Ms. Moran said the wording in the Sign Code is so vague, and a better

definition should be written. *Again, Mr. McGrail could not be heard.* He asked Ms. Moran if she went to the Building Department for a determination on whether the mural is a sign. She did, and Mr. Cimeno deemed it a sign. Mr. McGrail noted that there is a mural at the Mother Brook Arts and Community Center, and asked if the ZBA had approved it (it did not). *He again could not be heard properly.* He said he did not think it is prudent for the ZBA to set a precedent on the mural. *He could not be heard properly. Extensive discussion took place in this regard, much of which could not be understood because of people talking at once or talking out of the reach of the microphones.*

Mr. Jacobsen will discuss this with Mr. Cimeno to get a sense of what he thinks. If he makes a determination that the mural is a sign, not art, the Board needs this in writing. The only question DRAB had about the mural was about the artist and whether he would paint the mural as presented. They were reassured that he would. Mr. Mammone said that if the mural is considered a sign and it requires a waiver, the Board would need to know the amount of relief for the square footage that is required. Ms. Moran said that they have 70 feet of frontage, and Mr. Mammone asked her to submit the exact amount.

Mr. Steeves moved to table this petition until May 16, 2018, seconded by Ms. Porter. The vote to approve was unanimous at 5-0.

May 16, 2018

This is continuation from the hearing on March 21, 2018, and April 18, 2018, began at 7:00 p.m. Ms. Moran spoke with Building Commissioner Kenneth Cimeno regarding the proposed window graphics. These are the reverse image, in that the writing is clear glass and the background is translucent frosting. Mr. Cimeno determined that the size of the window sign would be the smallest rectangle that can incorporate all the graphics. The translucent portion of the window graphics beyond the rectangle would not be part of the area of the sign. Ms. Moran withdrew her application for a waiver from the Town of Dedham Sign Code for installation of window graphics with approximately 33% window coverage, exceeding the 25% allowed in the Town of Dedham Sign Code. The material used is translucent, not opaque, and the coverings would be used just for privacy, not to shield the sun.

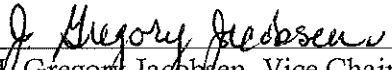
Mr. Cimeno said that the mural is considered a sign because the same graphic is used on the Applicant's website and Facebook page, and communicates association with the business. Ms.

Moran said she is asking for an additional 83 square feet for the mural. She said that there is 70 linear feet of frontage on the property. *Due to faulty recording equipment, the rest of this hearing could not be understood.*

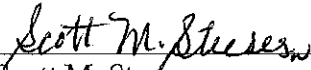
Upon a motion duly made by Scott M. Steeves and seconded by Jared F. Nokes, J.D., the Zoning Board of Appeals voted unanimously, 5-0, to allow a waiver from the Town of Dedham Sign Code for installation of a 126 square foot wall mural which, with other signage, will exceed the allowed 1 square foot per linear foot at 153 feet.

Date: May 16, 2018


Attest by the Zoning Board of Appeals:




Gregory Jacobsen, Vice Chair



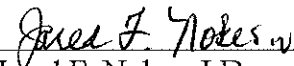
Scott M. Steeves



E. Patrick Maguire, MLA, RLA, CLARB, LEED AP®



Jason L. Mammone, P.E.



Jared F. Nokes, J.D.

Attest by the Administrative Assistant:



Susan N. Webster