

# City of Malden

Massachusetts

Board of Appeal  
110 Pleasant St.  
Malden, Massachusetts 02148

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## BOARD OF APPEAL DECISION

September 19, 2018 Hearing

### Petition of:

Ming's Seafood Restaurant, Inc. seeks a variance of Section 3.35.9.2.2.1, Chapter 3, of the Revised Ordinances of 1991 as Amended of the City of Malden, Sign Design Control Ordinances regulating the appearance, size, placement and/or location of sign/signs on residential, commercial and/or industrial properties, at the property known as and numbered 15-23 Pleasant Street, Malden, MA and also known by City Assessor's Parcel ID # 050-259-916.

### Findings of Fact

Petitioner is a local restaurant seeking a variance of Section 3.35.9.2.2.1, which limits Petitioner to no more than two wall signs in this central business district. Petitioner presently has two wall signs on the upper portion of its building, and wishes to add a new illuminated sign in the vestibule area of the restaurant, which would be the Chinese expression of "Good Fortune." This vestibule area was previously enclosed.

Attorney MacDonald, on behalf of Petitioner, represented that the Board of Appeals should consider variances under the Sign Control Ordinance through a different standard than the criteria of G.L. c. 40A, § 10, and that this proposed sign fit within the intent of this ordinance. In the alternative, Attorney MacDonald represented that Petitioner's building had unique circumstances justifying a variance under the G.L. c. 40A, § 10 criteria. Attorney MacDonald similarly represented that the proposed sign was a personal expression sign under Section 3.35.5.9, making it exempt from the Sign Control Ordinance.

City Councilor Ryan O'Malley spoke in favor of this proposed. No one spoke in opposition. A letter was introduced from City Councilor Debbie DeMaria in support of this proposal.

### Findings of Law

Section 3.35.12 of the City of Malden's Sign Control Ordinance permits the Board of Appeal, by variance, to allow deviation from the sign control requirements.

To grant a variance, the Board must find that (1) owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located, (2) a literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant, and that (3) desirable relief may be granted without substantial detriment to the public good and (4) without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law. G.L. c. 40A, § 10A. “[A] decision of the board of appeals granting a variance cannot stand unless the board specifically finds that each statutory requirement has been met.” *Planning Bd. of Springfield v. Bd. of Appeals of Springfield*, 355 Mass. 460, 462 (1969).

The Board rejects Petitioner’s argument that the criteria of G.L. c. 40A, § 10 does not apply to variance requests for the Sign Control Ordinance. Section 3.35.12 of the Sign Control Ordinance gives the Board authority to grant variances “in accordance with Chapter 12 Section 800.4 of the Revised Ordinances of 1991 as amended.” Section 800.4, in turn, only allows the Board to grant a variance using the G.L. c. 40A, § 10 criteria. Absent a change to the ordinance, this remains the applicable standard for reviewing any variance proposals under the Sign Control Ordinance.

The Board similarly rejects Petitioner’s argument that the proposed sign is a personal expression sign and thereby exempt from the Sign Control Ordinance. Even if the sign does contain a personal expression message, the proposed sign will be illuminated, which is not permissible under the personal expression sign exemption of Section 3.35.5.9.

Nonetheless, a variance of Section 3.35.9.2.2.1 is justified given the unique structure of Petitioner’s restaurant. The location of this proposed sign will be in the restaurant’s vestibule area; a portion of the building that was previously enclosed. Although the sign is visible from outside the restaurant, the intended purpose of the sign is more for the interior of the building than the outside. The Board also recognizes that, although Petitioner technically has two signs on the building, taken as a whole, they are really one sign, given Petitioner’s use of Chinese lettering in its logo. For this reason, Petitioner would suffer a hardship without this variance, as a literal enforcement of the ordinance would force Petitioner to reconfigure its existing sign to comply with the two sign maximum requirement.

This sign will not cause any substantial detriment to the public good, as the sign is limited to an enclosed area of this building in an area that already has extensive signs in its vicinity. For this reason, this variance also does not denigrate the purpose of the zoning ordinance; while the ordinance is intended to impose limitations on the number of allowable signs in the City, Petitioner’s requested sign is one that, under these circumstances, does not result in a significant deviation from this sign limitation.

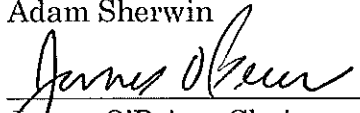
Conclusion

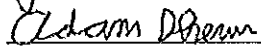
Upon motion by Chairman O'Brien, which was seconded by Deano Summers, the Board voted unanimously to grant Ming's petition.

Ming's Seafood Restaurant, Inc.'s variance request for 15-23 Pleasant Street is GRANTED.

Members of the Board Voting:

James O'Brien  
John King  
Deano Summers  
Adam Sherwin

  
James O'Brien, Chairman

  
Adam T. Sherwin, Esq., Legal Member