

City of Malden

Massachusetts
Board of Appeal
110 Pleasant St.
Malden, Massachusetts 02148

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BOARD OF APPEAL DECISION

June 20, 2018 Hearing

Petition of:

Paul T. Murphy Insurance Agency, Inc. requests a variance of Section 3.35.6.2 and Section 3.35.9.3.4.2, Chapter 3, of the Revised Ordinances regulating the appearance, size, placement, and location of signs located on residential, commercial and/or industrial properties, at the location known as 628 Broadway, Malden, Massachusetts and also known by City Assessor's Parcel ID# 160 625 510.

Findings of Fact

Petitioner is an insurance agent seeking to construct a digital sign outside its place of business. The proposed sign is prohibited by Section 3.35.6.2, which prohibits signs with an electronic display, and Section 3.35.9.3.4.2, which limits the size of freestanding signs. The proposed sign is located in a commercial district of Malden, where many nearby businesses have similar signs with electronic displays.

Attorney Christopher Fallon appeared on Petitioner's behalf and argued that Malden's Sign Control Ordinance was intended to impose compatibility for sign regulation within the City.

Maria A. Luise from the Office of the Mayor spoke in favor of Petitioner's request, and represented that the Sign Control Ordinance permits the Board to grant variances in consideration of the proposed location of each sign in the City.

No one spoke in opposition.

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).

There is no dispute that Petitioner’s proposed sign would be located in an area with electronic signs of similar dimensions. While the Board recognizes that the referenced sign control regulations impose restraints that do not apply to these other existing signs, Section 3.35.6.2 and Section 3.35.9.3.4.2 expressly prohibit the construction of Petitioner’s proposed sign.

While the Sign Control Ordinance permits the Board to grant a variance to these regulations, Petitioner has identified compatibility as the only ground for this exemption. The Board is not aware of any authority that permits a variance for this reason. The Ordinance, moreover, does not permit the Board to consider the surrounding location of a proposed sign as a basis for allowing exemptions to these regulations.

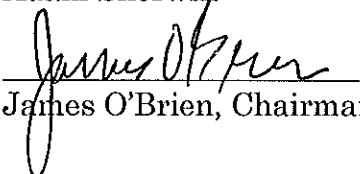
Conclusion

Upon motion by Adam Sherwin, which was seconded by John King, the Board voted to deny Petitioner’s variances, with Adam Sherwin and John King voting in favor, and James O’Brien, Deanno Summers, and William Sullivan voting against denial.

Paul T. Murphy Insurance Agency, Inc’s variance requests for 628 Broadway are DENIED.

Members of the Board Voting:

James O’Brien
John King
Deanno Summers
William Sullivan
Adam Sherwin


James O’Brien, Chairman