

City of Malden

Massachusetts

Board of Appeal

110 Pleasant St.

Malden, Massachusetts 02148

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BOARD OF APPEAL DECISION

January 15, 2020 Hearing

Petition of:

Petition 20-001 by Andy Layman of Sign Art, Inc. on behalf of Pleasant Smoke Shop for 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. Namely, Number and placement of signs, as per plans SGER- 031660-2019 at the property known as 13 Irving St, Malden, MA and also known by City Assessor's Parcel ID # 075-283-303.

Findings of Fact

Petitioner is the owner of a smoke shop in downtown Malden and seeks a variance on Section 3.35.9.2.2.1 of the sign ordinance, which permits one wall sign per tenant per street frontage, up to a maximum of two signs for a business in this zoning district. Petitioner has a sign on the portion of its building facing Irving Street, and seeks a second sign for the back of the building, which faces Centre Street. Petitioner is not allowed to erect a sign on this portion of the building because this side does not face street frontage. Rather, a small portion of the adjacent commercial lot is between Petitioner's store and Centre Street, due to the unusual shape of the lot where Petitioner's store is located.

Petitioner represents that, without this second sign, this business is not readily observable in Downtown Malden, as the other existing sign is located on a side street, and not easily viewable to ongoing traffic and pedestrians.

Petitioner complied with each of the required publication notices. No one spoke in favor or in opposition of this request.

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 finds that Petitioner satisfies the first element for a variance: the lot where Petitioner’s store is located has an unusual shape. Due to this shape, a small portion of the adjacent lot is between Petitioner’s building and Centre Street. Without this small portion of land, Petitioner would otherwise have a right to this sign on its building. The Board similarly finds that Petitioner would have a hardship from this zoning ordinance, as it would make it difficult for Petitioner to advertise its business in Downtown Malden. This relief will not be a substantial detriment to the public good or substantially derogate the purpose of the zoning ordinance, as this is only a minor deviation from the zoning ordinance.

Conclusion

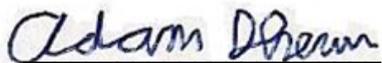
Upon motion by King, which was seconded by Bilgen, the Board voted 5-0 to ALLOW Petitioner’s request.

Petitioner’s variance is ALLOWED.

Members of the Board Voting:

James O’Brien
William Sullivan
John King
Kathryn Bilgen
Adam Sherwin


James O’Brien, Chairman


Adam T. Sherwin, Esq.
Legal Member

PURSUANT TO G.L. C. 40A, § 11, A COPY OF THIS DECISION SHALL BE RECORDED
IN THE MIDDLESEX SOUTH REGISTRY OF DEED