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BOARD OF APPEALS CASE NO. S18-08

PETITION OF RICHARD SMITH AND DOMINIQUE RENEE REALTY TRUST

DATE OF DECISION: OCTOBER 9, 2018

1. Application

This document is the DECISION of the Framingham Zoning Board of Appeals (hereinafter the Board) acting as the Sign Appeals Board on the Application of RICHARD SMITH and DOMINIQUE RENEE REALTY TRUST (hereinafter the Applicant), for property located at 665 COCHITUATE ROAD (hereinafter the Site). This Decision is in response to an Appeal of the Building Commissioner's determination that window coverage is a non-conforming sign and a Petition for a Variance to the Sign Bylaw for that same sign (hereinafter the Application).

2. Applicant and Property Owner

Richard Smith and Dominique Renee Realty Trust
665 Cochituate Road
Framingham, MA 01701

3. Location

Property is located at 665 Cochituate Road and is identified by Assessors' Parcel ID 084-77-2163-000 (hereinafter the Site).

4. Board Action

After due consideration of the Application, the record of proceedings, and based upon the findings set forth below, on October 9, 2018 the Board voted to GRANT a VARIANCE and OVERTURN the Building Commissioner's determination by a unanimous vote of three (3) members sitting on the Application. The record of the vote is stated as follows:

EDWARD COSGROVE	YES
JOSEPH NORTON	YES
RICK MCKENNA	YES

5. Proceedings

The Application was received by the Board on September 6, 2018 pursuant to the City of Framingham's Sign Bylaw, Article VII of the General Bylaws. A duly-noticed public hearing was held by the Board on the Application on October 9, 2018 at 8:00 P.M. in the Ablondi Room of the Memorial Building. Board Members Edward "Ted" Cosgrove, Joseph Norton, Rick McKenna, and Alternate Stephen Meltzer were present throughout the proceedings. To dispel any appearance of potential conflict of interest, and as required by G.L.c.268A, section 23 (b) (3), Mr. Norton read into the record a disclosure form. The minutes of the public hearing and submissions on which this Decision is based, which together with this Decision constitute the record of the proceedings, may be referred to in the Office of the Zoning Board of Appeals at the Memorial Building.

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Mr. Richard Smith introduced himself and Ted Rebholz, CEO of Temescal Wellness. Mr. Smith explained, Temescal Wellness recently renovated and currently occupies the first floor for a medical marijuana facility. He explained, state regulations require windows be covered so that business functions and product are not visible from the exterior. Mr. Smith explained that originally, blue artwork covered the windows but were removed because they were never permitted.

Mr. Cosgrove spoke in favor of the original window coverage and requested the “Wellness Starts Here” text be removed, making the coverage not signage. Mr. Smith responded, the text depicted on the Temescal Wellness windows were less than the allowed 10%, of the entire structure. Mr. Meltzer clarified, the 10% window coverage applies only to the business windows, and not the entire structure. Mr. Smith clarified that Temescal Wellness occupies additional windows on the side of the building. Mr. Meltzer and Mr. Cosgrove spoke in favor of shrinking the text to comply with the 10% coverage, as allowed by the Sign Bylaw. Mr. Norton suggested placing the text on the smaller window, directly above the business entrance. Temescal Wellness CEO stated that shrinking the text was possible since they would need to be remade. Board members spoke in favor of replacing the blank white screening with the original blue screening.

6. Exhibits

Submitted for the Board's deliberation were the following exhibits:

- 6.1 Email communication between the Applicant and Sign Officer referencing the nonconformity of Suite 1B at 665 Cochituate Road, Temescal Wellness window signage, dated September 14, 2018.
- 6.2 Application for Hearing before the Zoning Board of Appeals filed with the City Clerk on September 14, 2018.
- 6.3 Filing fee in the amount of \$250.00.
- 6.4 Sign Officer comments, dated September 17, 2018.
- 6.5 Photographs of Temescal Wellness depicting white screening, original blue screening with text, and existing site conditions.
- 6.6 Site plan depicting Existing Building, submitted with the application.

Exhibits 6.5 and 6.6 shall hereinafter be referred to as “the Plans”.

7. Findings and Conclusions

Based upon its review of the Application, exhibits, and the public hearing thereon, the Board makes the following findings and conclusions:

- 7.1 The property is located within the Light Manufacturing (M-1) zoning district and Regional Center (RC) overlay district.
- 7.2 On September 14, 2018, in email communication the Building Official stated that the original blue window coverage was not compliant under §1.3.1 and §1.9.14(b) of the Sign Bylaw.

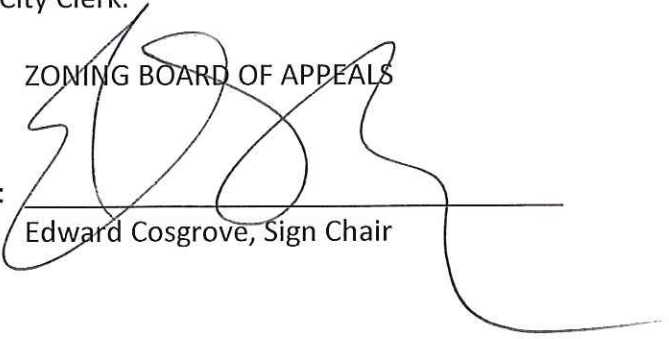
- 7.3 On September 14, 2018, the Applicant filed with the City Clerk an Application for Hearing before the Zoning Board of Appeals for the purpose of appealing the Building Commissioner's denial and obtaining a Variance from the Sign Bylaw.
- 7.4 Notice of the public hearing was duly published in "THE METROWEST DAILY NEWS" on September 24 and October 1, 2018 and mailed to all parties-in-interest, as defined in §1.12.4.b of the Sign Bylaw.
- 7.5 The Applicant claims that the original Temescal Wellness signage was considered noncompliant by the Sign Officer who verbally requested it be removed. The Applicant complied with the verbal request. An official citation was never issued but signage was changed to white window coverage, not depicting text or images. Email correspondence from the Sign Officer confirming that the window covering was non-compliant was submitted as the basis for an appeal and the requested variance.
- 7.6 The Variance standard established by the City of Framingham's Sign Bylaw, §1.12.2.b is a demanding criterion. A Variance may be granted from the limitations imposed by the Sign Bylaw if it is determined that the nature of the use of the premises, the architecture of the building or its location with reference to the street, or the topography of the land are such that said Variance may be permitted without being contrary to the public good. The Applicant must demonstrate that compliance with the Bylaw presents a hardship to the Applicant. The hardship must relate exclusively to the specific and unique circumstance of the situation faced by the Applicant, and not apply generally to other land, buildings or structures in the same zoning district.
- 7.7 The Board finds that the nature of the use of the premises is such that a variance may be permitted without being contrary to the public good, and that compliance with the Bylaw would present a hardship to the Applicant. *The Temescal Wellness tenant is required by law to cover the windows of the premises due to its operation of a medical marijuana dispensary. The blue graphic pasted to the inside of the window is visually preferable to a blank white covering. The Board finds that the spirit of the By-law is respected if the text within the window covering does not exceed 10%. The rest of the blue covering does not count toward that limit.*
- 7.8 The Board finds that relief from the Sign Bylaw may be granted without substantial detriment to the public good and surrounding properties, and without degradation of the neighborhood's visual environment, or causing a traffic or pedestrian hazard. *As long as the text is limited to 10%, the intent of the By-law is respected and does not cause any detriment to the public good. The blue graphic window covering is preferable to blank white.*
- 7.9 The Board therefore moved to OVERTURN the Building Commissioner's determination and APPROVE the Variance Application, subject to the following conditions:
- 7.9.1 The sign shall be located and constructed as shown on the Plans, with the following stipulation:
- 7.9.2 "Wellness Starts Here" text shall not exceed 10% of the total glass face.

8. Appeals

Appeals, if any, shall be made pursuant to Sign Bylaw, §1.12.6.f. and shall be filed within sixty (60) days after the date of filing this Decision with the City Clerk.

ZONING BOARD OF APPEALS

By:



Edward Cosgrove, Sign Chair