



ZONING BOARD OF APPEALS
TOWN HALL WELLESLEY, MA 02181

STEPHEN S. PORTER, Chairman
JOHN A. DONOVAN, JR.
ROBERT R. CUNNINGHAM

MARY ANN McDOUGALL
Executive Secretary
Telephone
~~335-1664~~
431-1019

WILLIAM E. POLLETTA
FRANKLIN P. PARKER
SUMNER H. BABCOCK

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85-69

Petition of Lee Imported Cars Inc.
962 Worcester Street

Pursuant to due notice, the Permit Granting Authority and the Special Permit Granting Authority held a Public Hearing on Thursday, November 14, 1985 at 8 p.m. in Room 17 of the Town Offices at the Phillips Building, 12 Seaward Road, Wellesley Hills, Ma. on the petition of LEE IMPORTED CARS INC. requesting a special permit and variances pursuant to Sections XXIIA, XXIV-D and XXV of the Zoning Bylaw to allow an internally illuminated standing sign at 962 WORCESTER STREET, in a Business District, said sign approximately 147 square feet in size, which exceeds the requirements for the height, the size, and the number of colors.

On October 25, 1985, the petitioner requested a hearing before this Board and thereafter notice of the hearing was given by mailing and publication.

Presenting the case at the hearing was Chris Lee, who stated that the sign was erected in 1969 and a change of letters was approved by the Zoning Board of Appeals in 1978. Mr. Lee recently changed the lettering on the bottom half of the sign to "Jaguar" without obtaining a sign permit. He wishes to retain the existing sign.

Present at the hearing in favor of the request: Antonio Jarvis, 958 Worcester St., abutter.

Statement of Facts

The property in question is located at 962 Worcester Street (Route 9) in a Business District. The property is owned by Howard Bolles and leased by Lee Imported Cars, Inc., an auto dealership currently selling for Volvo and Jaguar.

In 1969 (ZBA Case 69-20) the Board of Appeals granted a Special Permit to allow a standing sign 25 feet high and 147 square feet in area. In 1979 (ZBA Case 78-49) the petitioner requested a change in the lettering on the sign and a Special Permit was granted for the change.

The petitioner recently changed the lettering on the sign from Volvo/Triumph to Volvo/Jaguar without requesting the necessary permits. He wishes to retain the existing internally illuminated sign which has a setback from the street of 12 feet. The sign contains three colors - blue, green and white. Section XXIIA allows a sign by Special Permit which is 20 feet high, 100 square feet in area, with a street setback of 10 feet and containing two colors if internally illuminated.

Petition of Lee Imported Cars Inc.
962 Worcester Street

Plans, sketches and photos of the existing sign were presented, drawn by Don Graves Sign Inc., Millis.

The Design Review Board reviewed the sign on October 16, 1985 and, in a letter of November 1, 1985, recommended that the sign be brought into conformity with the sign bylaw, that a smaller, lower, not internally illuminated sign be allowed.

The Planning Board, at a regular meeting of November 5, 1985, voted unanimously to support the recommendations of the Design Review Board with respect to the size of the requested sign and to strongly oppose the variance request. In a letter of November 6, 1985 to the ZBA, the Planning Board stated it: "sees no justification for the granting of a sign variance. The sign bylaw allows, on Worcester Street, a 50 square foot sign, 10 feet in overall height. By special permit a sign on Worcester Street may be 100 square feet in area and 20 feet in overall height. The Board would offer no objection to an internally illuminated sign meeting the "by right" size and height limitations. If the applicant wishes to have a sign meeting the special permit size and height limitations, only external illumination should be allowed."

Decision

This Authority has made a careful study of the evidence presented. The petitioner is requesting a special permit and variances to allow an existing sign to remain at 962 Worcester Street. The lettering on the sign was recently changed without the necessary special permits and variances. The existing sign requires a variance for the following: the height (25 feet requested, 20 feet allowed by special permit); area (147 square feet requested, 100 square feet allowed by special permit); and the number of colors in an internally illuminated sign (3 colors requested, 2 colors allowed). A special permit is required for the internal illumination and for the setback from the street.

The sign in question is a non-conforming sign erected originally by a special permit granted in 1969. Section XXIIA-C-6 states: "...Any non-conforming sign legally erected prior to the adoption of this section, or any amendment thereof, may continue to be maintained but shall not be enlarged, reworded (other than in the case of theatre signs), redesigned or altered in any way unless it is brought into conformity. ..." Therefore, the newly worded sign must be treated as a new sign.

This Board is concerned with the oversized signs on Worcester Street. The Wellesley Motor Inn at 978 Worcester Street, abutting the petitioner's property, has recently erected a sign by special permit which complies with the sign regulations, and is, in the opinion of this Board, visible and effective. It is the opinion of this Authority that Lee Imported Cars Inc. should also comply with Section XXIIA of the Zoning Bylaws.

It is the opinion of this Authority that the existing sign which is in place without the necessary permits is too high, too large and is not in harmony with the general purpose and intent of Section XXIIA of the bylaw. Furthermore, this Authority fails to find "substantial hardship" within the meaning of Section XXIV-D of the Zoning Bylaw.

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Petition of Lee Imported Cars Inc.
962 Worcester Street

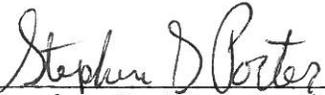
The special permit and variances requested to allow the existing sign at 962 Worcester Street to remain are hereby denied and the case is dismissed.

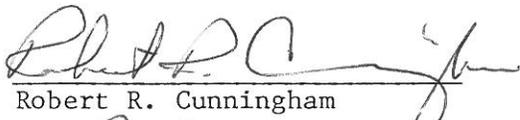
However, this Board would encourage the petitioner to submit a new application to be considered at a new hearing for a sign which would comply with the special permit requirements of Section XXIIA (20 feet high, 100 square feet in area, with 2 color illumination).

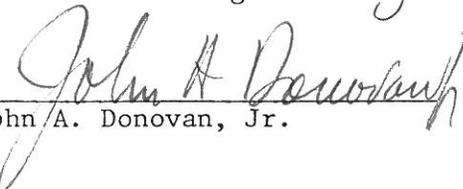
APPEALS FROM THIS DECISION,
IF ANY, SHALL BE MADE PURSUANT
TO GENERAL LAWS, CHAPTER 40A,
SECTION 17, AND SHALL BE FILED
WITHIN 20 DAYS AFTER THE DATE
OF FILING OF THIS DECISION IN
THE OFFICE OF THE TOWN CLERK.

cc: Planning Board
Building Inspector

mam


Stephen S. Porter, Chairman


Robert R. Cunningham


John A. Donovan, Jr.

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TOWN OF WELLESLEY



MASSACHUSETTS

JOAN M. REGAN, CMC, TOWN CLERK

December 31, 1985

Mr. Stephen S. Porter, Chairman
Wellesley Zoning Board of Appeals
44 Swarthmore Road
Wellesley, Massachusetts 02181

Re: Lee Imported Cars, Inc. Notice of Appeal/Complaint

Dear Mr. Porter:

Enclosed please find a Notice of Appeal and a Complaint
filed by Lee Imported Cars, Inc. at Norfolk Superior Court.

Very truly yours,

Joan M. Regan, CMC
Town Clerk

JMR/fr

Encls.

cc: J. A. Donovan, Jr.
Robert R. Cunningham
William E. Polletta
Franklin P. Parker
Sumner H. Babcock
Mary Ann McDougall ✓
Albert S. Robinson

BERNKOPF, GOODMAN & BASEMAN

COUNSELLORS AT LAW

HARRIS I. BASEMAN
KENNETH M. GOLDBERG
ALAN J. GRACE
NEIL R. MARKSON
MITCHEL S. ROSS
GARY P. LILIENTHAL
JAMES B. FOX
JAMES R. PELUSO
RICHARD B. MICHAUD
SHERYL C. STARR
LYDIA G. CHESNICK
JOHN J. SLATER III
MARTIN C. POMEROY
JOAN ZAHORJAN
ANN M. WEINTHAL

MAX E. BERNKOPF -1919-1967
SYLVAN A. GOODMAN -1931-1981

KEYSTONE BUILDING
99 HIGH STREET
BOSTON, MASSACHUSETTS 02110

TELEPHONE (617) 542-7070

December 30, 1985

Town Clerk
Town of Wellesley
Town Hall
Wellesley, MA 02181

RE: Lee Imported Cars, Inc., Notice of Appeal/Complaint

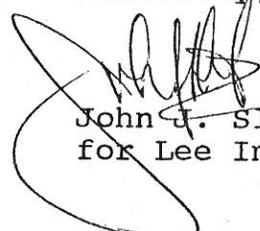
Dear Sir:

Pursuant to Massachusetts General Laws, Chapter 40A, Section 17, you are hereby given notice of the appeal of Lee Imported Cars, Inc., from the decision of the Zoning Board of Appeals of the Town of Wellesley denying Plaintiffs' Petition for a Special Permit and variances with respect to a sign located on the property at 962 Worcester Road, Wellesley, Massachusetts, filed with your office on December 10, 1985.

Attached hereto please find a copy of the Complaint and Notice of Appeal of Lee Imported Cars, Inc., filed with the Norfolk County Superior Court this date, and a copy of the aforementioned Decision of the Zoning Board of Appeals attached thereto as Exhibit A.

Thank you for your cooperation and assistance in this matter.

Sincerely,



John J. Slater III
for Lee Imported Cars, Inc.

JJS/kf

Attachment

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

LEE IMPORTED CARS, INC.)
Plaintiff)

vs.)

STEVEN S. PORTER,)
ROBERT R. CUNNINGHAM AND)
JOHN A. DONOVAN, JR., AS THEY)
ARE MEMBERS OF THE ZONING)
BOARD OF APPEALS OF THE TOWN)
OF WELLESLEY,)
Defendants)

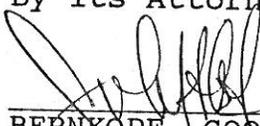
NOTICE OF APPEAL

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Notice is hereby given that Lee Imported Cars, Inc., the above-named Plaintiff hereby appeals to the Norfolk County Superior Court from a decision of the Zoning Board of Appeals of the Town of Wellesley filed with the Wellesley Town Clerk on December 10, 1985, denying the Plaintiff's Petition for a Special Permit and Variances with respect to a sign located on the property at 962 Worcester Road, Wellesley, Massachusetts.

The Plaintiff,

By its Attorneys,


BERNKOPF, GOODMAN & BASEMAN, John J. Sklar Esq.
99 High Street - Suite 2050
Boston, MA 02110
Telephone 542-7070

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.

LEE IMPORTED CARS, INC.)
 Plaintiff)
)
 vs.)
)
 STEVEN S. PORTER,)
 ROBERT R. CUNNINGHAM AND)
 JOHN A. DONOVAN, JR., AS THEY)
 ARE MEMBERS OF THE ZONING)
 BOARD OF APPEALS OF THE TOWN)
 OF WELLESLEY,)
 Defendants)

85 - 3588

COMPLAINT

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Introduction

1. This action is an appeal pursuant to the provisions of Massachusetts General Laws, Chapter 40A, Section 17 of a decision of the Zoning Board of Appeals of the Town of Wellesley. The Plaintiff further seeks a declaration pursuant to the provisions of Massachusetts General Laws, Chapter 231A, Section 1, that a certain provision of the Zoning Bylaw of the Town of Wellesley is invalid.

Parties

2. The Plaintiff, Lee Imported Cars, Inc., is a corporation duly organized and existing under the Laws of the Commonwealth of Massachusetts having a usual place of business at 962 Worcester Road, Wellesley, Massachusetts.

3. The Defendant, Steven S. Porter, is a duly appointed member of the Zoning Board of Appeals of the Town of Wellesley with a place of residence at 44 Swarthmore Road, Wellesley, Massachusetts 02181.

4. The Defendant, Robert R. Cunningham, is a duly appointed member of the Zoning Board of Appeals of the Town of Wellesley with a place of residence at 17 Cushing Road, Wellesley, Massachusetts 02181.

5. The Defendant, John A. Donovan, Jr., is a duly appointed member of the Zoning Board of Appeals of the Town of Wellesley with a place of residence at 14 Upland Road, Wellesley, Massachusetts 02181.

Statement of Facts

6. The Plaintiff is the Lessee of the land and buildings located at 962 Worcester Road, Wellesley, Massachusetts (the "Premises"), whereat the Plaintiff operates an automobile dealership.

7. On or about August 25, 1969, the Building Inspector for the Town of Wellesley issued a Building Permit for the erection of a standing sign at the Premises advertising the sale of automobiles (the "Sign").

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8. On or about January 1979, the Zoning Board of Appeals for the Town of Wellesley issued a Special Permit for certain alterations to the Sign.

9. In or about August, 1985, the Plaintiff relettered one of two panels on the Sign. Such relettering was required as a result of a change in the advertising logo of the automobile manufacturer represented by the Plaintiff.

10. Apparently acting in reliance upon Section XXIIA.C.6. of the "Zoning Bylaw of the Town of Wellesley, Massachusetts", (the "Zoning Bylaw"), the Assistant Zoning Officer for the Town of Wellesley, by letter dated August 30, 1985, directed the Plaintiff to bring the Sign into conformance with the current sign requirements of the Zoning Bylaw.

11. Section XXII A.C.6. of the Zoning Bylaw provides, in pertinent part, as follows: "Any non-conforming sign legally erected prior to the adoption of this section... may continue to be maintained but shall not be enlarged, reworded (other than in the case of theatre signs) redesigned or altered in any way unless it is brought into conformity..."

12. Subsequently, the Plaintiff filed a Petition with the Zoning Board of Appeals of the Town of Wellesley (hereinafter the "Zoning Board") for a special permit with respect to internal illumination of the Sign and for variances from the provisions of

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Section XXIIA with respect to height, area and the number of colors on the Sign of the Zoning By-law. Such Petition was filed in accordance with the requirements of Sections XXIVD and XXV of the Zoning Bylaw.

13. On or about November 14, 1985 the Zoning Board held a public hearing on the Petition filed by the Plaintiff.

14. On or about December 10, 1985, the Zoning Board filed a decision with the Town Clerk denying the Plaintiff's Petition for a special permit and for variances from the provisions of the Zoning By-law. A copy of the decision of the Zoning Board certified by the Town Clerk is attached hereto as Exhibit A and made a part hereof.

COUNT I - APPEAL PURSUANT TO M.G.L. CHAPTER 40A, SECTION 17

15. The Plaintiff realleges and incorporates by reference the allegations set forth in Paragraphs 1-14.

16. The Plaintiff is a person aggrieved by the decision of the Zoning Board in that the Plaintiff is the Petitioner for the special permit and the variances which are the subject of this appeal.

17. Plaintiff hereby claims its appeal pursuant to Massachusetts General Law, Chapter 40A, Section 17.

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18. The decision of the Zoning Board exceeds the authority of the Zoning Board.

19. The Zoning Board failed to render a timely decision on the Plaintiff's Petition for a special permit and variances in accordance with the requirements of Massachusetts General Laws, Chapter 40A.

20. The decision of the Zoning Board failed to specify adequate grounds and facts for the denial of the Plaintiff's Petition for a special permit and variances and is arbitrary and capricious.

COUNT II - DECLARATORY JUDGMENT

21. The Plaintiff re-alleges and incorporates by reference the allegations set forth in Paragraphs 1-14.

22. An actual controversy exists between the Plaintiff and the Defendants in that the Defendants denied the Plaintiff's petition for a Special Permit and Variances.

23. Section XXIIA.C.6. of the Zoning Bylaw is invalid per se and as applied to the Plaintiff in that it exceeds the authority granted to municipalities by Massachusetts General Laws, Chapter 40A, Section 6, to regulate so-called non-conforming uses and structures.

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PLANNING DEPARTMENT
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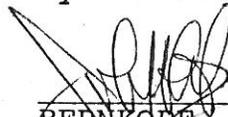
Relief Sought

WHEREFORE, the Plaintiff requests the following relief:

1. Pursuant to Count I, that this Court conduct judicial proceedings pursuant to Massachusetts General Laws, Chapter 40A, Section 17 and annul the decision of the Zoning Board as it exceeds the authority of the Zoning Board.
2. Pursuant to Count II, that this Court make a binding declaration that Section XXIIA.C.6. of the Zoning Bylaw is invalid per se and as applied to the Plaintiff.
3. Pursuant to Counts I and II, that the Plaintiff be awarded the costs of bringing this action.
4. That this Court grant such other relief as this Court may deem equitable and just.

The Plaintiff,

By its attorneys,



BERNKOPF, GOODMAN & BASEMAN
99 High Street - Suite 2050
Boston, MA 02110
Telephone 542-7070

John J. Slater,
Esquire

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TOWN OF WELLESLEY



MASSACHUSETTS

ALBERT S. ROBINSON, TOWN COUNSEL

40 GROVE STREET
WELLESLEY, MA 02181
(617) 235-3300

November 30, 1988

Ellen D. Gordon, Executive Secretary
Board of Appeals
Town Hall
Wellesley, MA 02181

Re: Lee Imported Cars v. Zoning Board of Appeals

Dear Ellen:

I have received, signed and returned for filing the Stipulation for Dismissal in the referenced action, as I understand that the matter has been resolved.

This wraps it up and I am closing my file.

Very truly yours,

Albert S. Robinson

ASR/dmr
File: WJ-228
cc: Thomas E. Lee, Executive Secretary
Board of Selectmen
(5079D)