



ZONING BOARD OF APPEALS
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ZBA 88-69
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 September 15, 1988 at 8 p.m. in the Selectmen's Meeting Room (Conference Room B) of the Town Hall, 525 Washington Street, Wellesley on the petition of LEE IMPORTED CARS, INC. requesting: 1) a Special Permit pursuant to Section XXIIA and Section XXV of the Zoning Bylaw to allow removal of an existing standing sign and replacement with a standing sign which exceeds the requirements of height and setback at 962 WORCESTER STREET, in a Business District; 2) a Special Permit/Variance for said sign to exceed the maximum area allowed under Section XXIIA and pursuant to either Section XXV or Section XXIV-D of the Zoning Bylaw. This petition was reheard on September 15, 1988 due to absence of a full Board at the August 25, 1988 Public Hearing which nullified said hearing.

On August 8, 1988 the petitioner filed a request for a hearing before these Boards and thereafter due notice of the hearing was given by mailing and publication.

Presenting the case at the hearing were Edward C. Donlon, attorney for Lee Imported Cars, Inc., and Christopher Lee, owner of Lee Imported Cars, Inc. Mr. Donlon said that the petition was being submitted as a resolution to the case which has been pending in the Norfolk Superior Court since 1985 involving the existing sign. Mr. Donlon contended that as the present petition was to resolve the court case, the area requirement of 100 square feet per side in existence in 1985, rather than the present requirement of 100 square feet including both sides of a sign, should be the operative bylaw. If the sign were to be considered under the 1985 area requirements, a Special Permit would be required for the 180 square foot sign.

It was the opinion of the Board that the petition was for a new sign which must be considered under the present bylaw requirements for area and would require a variance. However, due to the unique situation of the existing court case, the Board was inclined to make some compromise with the understanding that the granting of a variance was not to be considered as precedent for new signs fronting Worcester Street.

After lengthy discussion about the area of the proposed sign, the Board and Mr. Lee agreed that the sign would be no larger than 150 square feet including both sides. It was the opinion of the Board that a sign of this size would be visible at the required setback of 10 feet to automotive traffic on Worcester Street.

Mr. Donlon stated that Lee Imported Cars, Inc. would dismiss the pending court suit 20 days after the date of decision by the Board on the petition.

No other persons present had any comment on the petition.

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Statement of Facts

The property in question is located at 962 Worcester Street owned by Howard Bolles, Trustee and leased to Lee Imported Cars, Inc. Said property is in a Business District.

The existing 294 square foot sign would be removed and replaced with a new sign which would be 180 square feet, with a height of 20 feet and a setback of 10 feet from the property line. A Special Permit is requested for the height and the setback and a Special Permit/Variance for the area of the sign.

The petitioner is submitting the request in order to settle existing litigation (Norfolk Sup. Ct. #85-3588; appeal from ZBA Decision 85-69). In November, 1985, the petitioner requested a variance for the height, area, and number of colors on an internally illuminated sign and a Special Permit for illumination. It was the opinion of the Board that as the petitioner had changed the lettering on the sign without requesting the necessary permits, the sign must be considered as a new sign, not as a remodeled existing sign. The special permits and variances were denied. The petitioner appealed the decision in the Norfolk Superior Court. The petitioner is presently contending that the current request is to resolve the above-referenced litigation.

An unsigned, undated rendering of the proposed sign; an unsigned, undated site plan; and photographs were submitted.

The Design Review Board held a preliminary review of the proposed standing sign on July 28, 1988 and a final review on August 25, 1988, at which time the Board voted to approve the design of the sign as presented.

The Planning Board, on August 9, 1988, voted to strongly oppose all variance requests and offer no objection to special permit requests. The Board also voted strongly to support the position that the petitioner is not grandfathered under the 1985 sign bylaw and that all requirements and regulations currently in effect shall apply.

Decision

This Authority has made a careful study of the evidence presented.

The petitioner is requesting a Special Permit and a Special Permit/Variance for a sign at 962 Worcester Street to identify Lee Imported Cars, Inc. This Authority is of the opinion that the proposed standing sign is in harmony with the general purpose and intent of Section XXIIA with regard to height and setback.

However, this Board is of the opinion that the proposed sign must be considered as a new sign regulated by the current provisions of Section XXIIA, and not as a resolution of the current court case, and therefore, not regulated by the provisions of Section XXIIA existing in 1985. Therefore, the proposed area of the sign requires a variance as it exceeds that which is allowed by Special Permit.

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It is the further opinion of the Board that due to the unique circumstances detailed in the foregoing Statement of Facts, a variance can be granted for the area of the sign to exceed that required by Special Permit.

Therefore, a Special Permit is hereby granted for the proposed sign at 962 Worcester Street to have a height of 20 feet and a setback of 10 feet from the property line pursuant to Section XXIIA and Section XXV of the Zoning Bylaw, as shown in the drawing and site plan noted in the foregoing Statement of Facts.

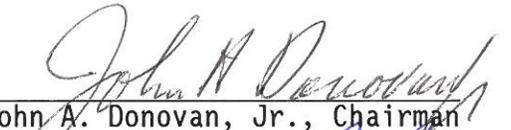
It is the further opinion of this Authority that a literal enforcement of Section XXIIA of the Zoning Bylaw would involve a substantial hardship to the petitioner and that desirable relief may be granted without substantially derogating from the intent or purpose of the Zoning Bylaw.

Therefore, the requested variance is granted for the proposed sign at 962 Worcester Street to have an area not to exceed 150 square feet, said area to include both sides of the proposed sign.

The Building Inspector is hereby authorized to issue a permit for the sign upon his receipt and approval of an application.

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
Inspector of Buildings
edg


John A. Donovan, Jr., Chairman

Kendall P. Bates


William E. Polletta

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