



TOWN OF ROCKLAND ZONING BOARD OF APPEALS

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TOWN CLERK, ROCKLAND
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FINDINGS AND DECISION OF THE ZONING BOARD OF APPEALS

Decision: Denial of Special Permit and Section 6 Finding

Applicant: Thomas P. Healey, Jr., Trustee
Graphic Realty Trust
44 Harmony Crossing, East Bridgewater, MA 02333

Property Address: 443 Webster Street, Rockland, Massachusetts 02370

Case No.: 2023-06

The Rockland Zoning Board of Appeals has considered the application of Thomas P. Healy, Jr., Trustee, Graphic Realty Trust, with regards to the property located at: 443 Webster Street, Rockland MA 02370 for a Special Permit pursuant to Zoning Bylaws §415-89, §415—24 A, Nonconforming Uses, and for a Chapter 40A, Section 6 Finding and/or an Appeal from a Decision of the Zoning Enforcement Officer pursuant to Zoning Bylaws §415-24 A, B and C, Nonconforming Uses to allow applicant to continue alleged previously established nonconforming uses at the premises known as and numbered 443 Webster St., Rockland, MA. The property is located in the R -2 Residence Zoning District, Section 415-9 of the Bylaw, and is further identified as Lot 95, Map 36, on the Rockland Assessor's Maps. The owner of the property is Graphic Realty Trust, Thomas P. Healy, Trustee, 44 Harmony Crossing, East Bridgewater, MA.

The Board certifies that it has complied with all statutory requirements relative to notice to abutters and new publication of notice of the public hearing and has filed copies of this decision and all plans referred to herein with the Town Clerk, Planning Board, and the Building Department pursuant to Mass. Gen. L. c. 40A, Section 11.

Advertised: March 7, 2023, and March 14, 2023, in the Patriot Ledger.

The Board lastly has taken into consideration testimony of the applicant, the application materials, plans and revised plans, and communications from various Town boards, abutters, and with interested parties, all of which are incorporated herein by reference.

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Property Address: 443 Webster Street, Rockland, Massachusetts

A Public Hearing was conducted remotely in accordance with the law at 7:00 P.M. on March 21, 2023, and a continuance public hearing was conducted remotely at 7:30 P.M. on May 16, 2023.

ATTENDANCE:

Board Members: Robert C. Rosa, III, Chair, Gregory Tansey, Timothy Haynes, Robert Baker, Sr., Robert Baker, Jr., and Stephen Galley, (alt).

(All Board members were participating remotely.)

MEMBERS VOTING: Chairman Robert C. Rosa, III, Gregory Tansey, Timothy Haynes, Robert Baker, Jr., and Robert Baker, Sr.

DISCUSSION ON MARCH 21, 2023

The Chairman of the Zoning Board introduced the members of the board advising the public that all are participating remotely and that the hearing is being recorded.

The Chairman entertained a motion to open the public hearing. A Motion to open the public hearing was made by Robert Baker, Jr. and was seconded by Robert Baker, Sr. The Chairman then asked the members of the ZBA for a roll call vote: Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Timothy Haynes – Yes, Robert Baker, Sr. - Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote was unanimous, and the public hearing was opened.

The Chairman read the advertised notice in the Patriot Ledger.

The petitioner's attorney, Richard Bland of 18 Johnson Drive, Norton, Massachusetts, introduced Thomas Healy, Trustee of Graphic Realty Trust, and explained that Mr. Healy has been the owner of the property since 1984 and the trustee of Graphic Realty Trust since it was formed in 1984, at which time he became the fee owner of the property. He further explained that the adjacent property is also owned by Mr. Healy under a different trust. He explained the ownership of the property and the sign business that has been operating on the property pre-date the Zoning Code. Mr. Healy then explained how he acquired the property and his continued operation of a sign business on the property, and a history of his sign business operation.

Chairman Rosa then interrupted to say that the qualifications of the sign company were not in question. The question before the Board was the several uses on the property that most of which, other than one, are not necessarily allowed in the zone. There are 3 uses on the

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property that are not allowed in the R2 Zone, including a landscaping company and a fence company. There is also a residential house on the property and Mass Sign.

Mr. Healy stated that prior to these tenants, he had Cancer Society, a carpenter/contractor and another landscaper. He stated that he had pulled permits for everything he did when questioned by Mr. Rosa.

Mr. Rosa stated that the issue was that the Zoning Enforcement Officer had no idea that there were other businesses on the property other than Mass Sign. He also asked if any of those businesses had Business Certificates and were actual business in the town.

Mr. Healy stated that he did not believe the businesses had Business Certificates and that Mr. Ruble had never been on his property.

Mr. Rosa then explained that those businesses were not allowed to be on the property in that zone and that the Zoning Enforcement Officer knew nothing about them. He wanted to make sure that the Board understood that the issue was that the applicant was trying to get uses approved on a piece of property that technically they are not allowed to be on even though they have been there for 7 to 10 years. However, these businesses were not legal businesses. The question before the board is do they grant a Special Permit for uses on this property that have been here substantially but that have been here illegally.

Discussion ensued about business certificates and building permits issued, when Mr. Ruble found out about the other business on the property and the use history of the property.

Attorney Bland stated that the uses that are there were not detrimental to the zone as there have been no complaints and no questions brought or no stop work orders were ever issued and that the Day Care was allowed. He also stated that Webster Street in front of the property is Route 123 and there is plenty of traffic and he did not believe that there was any mention made to Mr. Healy of any traffic problems with the property and that the plan shows that along one side there is a large buffer zone and that the residential abutter has, to their knowledge, never complained nor have any of the other direct abutters complained.

Mr. Rosa stated that Mr. Ruble advised him that he had not received any complaints about the property.

The Chairman then opened the hearing up to the Board.

Robert Baker, Sr. asked about the storage containers on the property. Mr. Healy stated they were put in 10-12 years ago and were used for storage for Mass Sign.

Robert Baker, Jr. wanted to know if all functions listed on the application were functions of the Mass Sign business on the property. Mr. Rosa clarified that the functions were functions of the manufacturing and installation functions of Mass Sign, aside from the retail, and were not individual uses.

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Timothy Haynes inquired as to how the building since the Zoning bylaws were added. Mr. Healy stated 2 buildings were added in the rear (garages), as well as storage sheds and the containers. Mr. Haynes mentioned that they were not permitted.

The Day Care, which is on a separate parcel, was briefly discussed and whether a deed restriction should be added at the time of sale.

Gregory Tansey wanted clarification of the landscape storage.

Stephen Galley had no questions.

The Chairman stated that the Board was trying to determine exactly what was going on with the property.

Mr. Rosa then opened the hearing up to the public for comments.

No one spoke in favor.

Jacqueline Tieso of 455 Webster Street spoke against and stated that she had filed complaints with the Building Department in the past. She also stated that she felt the rules were ignored and that there were no consequences.

Mr. Baker, Sr. asked to see the building permits and wanted to know how many had been pulled. Mr. Haynes followed up on Mr. Baker, Sr.'s question and wanted to know if any of the changes came under the zoning board's purview. Discussion ensued and Mr. Haynes added that pre-existing uses prior to zoning can continue but not any other uses that were not legally permitted.

Mr. Baker, Sr. added that if there was storage of flammable materials, they would need a permit from the Fire Department.

The Chairman stated that the board needed more information and entertained a motion to continue the hearing. Robert Baker, Sr. moves to continue the public hearing to April 4, 2023, which was seconded by Timothy Haynes.

The ZBA members take a roll call vote:

Chairman Rob Rosa – Yes, Timothy Haynes – Yes, Robert Baker, Jr – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes. The vote was unanimous.

April 4, 2023

The continuance hearing was cancelled due to a clerical error and was rescheduled to April 18, 2023.

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April 18, 2023

Robert Baker, Sr. made a motion to continue the public hearing at the Applicant's request to May 16, 2023. Seconded by Gregory Tansey.

The members take a vote: Chairman Rob Rosa – Yes, Robert Baker, Jr – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes.

DISCUSSION ON MAY 16, 2023 (CONTINUANCE)

The Chairman of the Zoning Board introduces the members of the board advising to the public that all are participating remotely.

ATTENDANCE:

Board Members: Robert C. Rosa, III, Chair, Gregory Tansey, Timothy Haynes, Robert Baker, Sr., Robert Baker, Jr., and Stephen Galley, (alt).

Also present: Land Use Counsel Robert W. Galvin, Building Commissioner/Zoning Enforcement Officer Thomas Ruble, and Deputy Fire Chief Thomas Heaney.

MEMBERS VOTING: Chairman Robert C. Rosa, III, Gregory Tansey, Timothy Haynes, Robert Baker, Jr., and Robert Baker, Sr.

(All Board members were participating remotely)

The Chairman of the Zoning Board introduced the members of the board advising the public that all are participating remotely and that the hearing is being recorded.

The Chairman entertained a motion to open the public hearing. A Motion to open the public hearing was made by Robert Baker, Sr. and was seconded by Robert Baker, Jr. The Chairman then asked the members of the ZBA for a roll call vote: Robert C. Rosa, III – Yes, Gregory Tansey – Yes, Timothy Haynes – Yes, Robert Baker, Sr. - Yes, Robert Baker, Jr – Yes, Stephen Galley – Yes. The vote was unanimous, and the public hearing was opened.

The Chairman read the advertised notice in the Patriot Ledger.

The petitioner's attorney, Richard Bland, gave a recap of the prior hearing. Mr. Healy stated that Mr. Tieso had never contacted him directly and that he had a proposed purchaser for the property.

Michael McEvoy, the proposed purchaser, described his business and discussion by the Board ensued.

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The Chairman then opened the hearing up to the Board.

Robert Baker, Sr. wanted to know what the storage containers were used for and asked about the 2 dry wells in the back of the property. Thomas Healy answered they were needed for dry storage of sign materials in foul weather and the dry wells were for drainage during massive rains.

Robert Baker, Jr. wanted clarification of whether the uses stated in the application were ancillary uses to a sign business or whether the uses could each be allowed separately. Attorney Galvin said that any of the functions could be allowed within a particular use such as an electrician setting up shop pursuant to a Special Permit.

The Board discussed the diesel tank on the property and that it was unpermitted and without fire protection. Deputy Fire Chief Thomas Heaney said that the Fire Department was now aware of the tank, was permitted, and that detectors would be installed to tie into the property for continued usage of the tank.

Timothy Hayes stated he was not clear on what the Board was being asked to do. Attorney Galvin opined that the Board had to determine what were preexisting nonconforming uses and what is not and that use can be continued but it cannot be altered or increased and that the Board would have to make a finding that it was not more detrimental, and that the applicant would have to explain. Mr. Haynes asked if the sign business use would follow the property and Attorney Galvin said that by Special Permit it could run with the land or ends with the current owner, which is customary in Rockland.

Chairman Rosa stated that the question was whether the different uses were accessory to the main use which was the sign business or were they independent uses and is the primary use manufacturing. Attorney Galvin stated that there were multiple principal uses at the time of zoning, and that the Mass Sign business then evolved and the applicant would need to clarify when the other uses started.

Mr. Haynes stated that they would need to evaluate the multiple businesses on the site in buildings that did not predate zoning and there was no ZBA change of use.

Mr. Ruble stated that he had no record of a fence or landscaping business, that other businesses have to meet building and fire codes and that the sign, flag, day care and residential house are all allowed.

Discussion ensued.

Thomas Healy asked if he was denied could he come back to the board within 2 years and if approved he would get a Special Permit and if purchasers would have to come back to the board for what was approved.

Mr. Rosa then opened the hearing up to the public for comments.

No one spoke in favor.

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Jacqueline Tieso of 455 Webster Street spoke against and stated that she lives there 7 days a week and business are unfair on residential properties.

Mary Parsons of 754 Union Street spoke against and said that a new owner is operating a sign business and who is getting permits.

The Chairman stated the question before the board is what current uses are grandfathered.

Robert Baker, Sr. makes a motion to close the public hearing.

Seconded by Gregory Tansey.

The ZBA members take a roll call vote:

Chairman Rob Rosa – Yes, Timothy Haynes – Yes, Robert Baker, Jr – Yes, Gregory Tansey – Yes, Robert Baker, Sr. – Yes. The vote is unanimous, and the public hearing is closed.

Mr. Rosa then told the applicant the Board would deliberate tonight and welcomed him to be present during deliberations and informed him they will receive a decision in the mail with a date stamp and informed him of his obligations to request a certificate of no appeal. If no one has appealed to the Town Clerk, the certification and an attested copy of the original decision will need to be recorded at the Registry of Deeds to be valid, and the applicants must provide proof of recording to the Building Department.

DELIBERATION.

The Board, based on the credible evidence, discussed and agreed that the sign and flag business and their accessory uses with a retail component were preexisting nonconforming uses as they were in existence prior to the adoption of zoning. The applicant is in effect asking to add additional activities and storage which are not part of the nonconforming uses. Storage for other entities that have nothing to do with the preexisting nonconforming uses is not permitted. The Board agreed that the abutter is credibly upset with certain of the nonconforming uses as they affect her use and enjoyment of her residence which are impacted by noise and other aspects of those uses. The Board reasoned that the owner may also in the future seek further zoning relief to alter or extend a nonconforming use but that this relief was not requested or applicable.

DECISION:

The Chairman entertains a motion either for or against the granting of the Special Permit.

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Robert Baker, Sr. makes a motion to deny the Special Permit based on the following findings:

1. The Board finds that the manufacture, assembly and sale of signs and related storage is a legal, preexisting, nonconforming use of the property.
2. The Board finds that the manufacture, assembly and sale of flags and flagpoles and related accessories is a preexisting nonconforming use of the property.
3. The Board finds that ancillary storage associated with those two preexisting nonconforming uses is permitted.
4. The Board finds that offices associated with those two preexisting nonconforming uses are permitted.
5. The Board finds that no other preexisting nonconforming uses lawfully exist on the property.
6. The decision of the Zoning Enforcement Officer is affirmed and the request for a special permit is denied as moot.

The motion was seconded by Gregory Tansey.

The Board takes a vote in favor of denying the Special Permit with members, Gregory Tansey, Robert Baker, Jr., Robert Baker, Sr., Timothy Haynes and Robert Rosa in favor of denying the Special Permit. The vote is unanimous.

The Board also takes a vote in favor of affirming the decision of the Building Commissioner that there were only two preexisting nonconforming uses and that the other uses are not permitted.

FINDINGS:

The Board found that there was no Special Permit requested to modify the preexisting nonconforming uses. The businesses that were preexisting nonconforming have migrated without the benefit of permits and approvals from the Town and are not allowed to do so without zoning relief. The Board did not prohibit

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the prospect that the applicant or a future owner could come back at some point in the future if he/she/it wished to alter or extend the uses.

REASON FOR DECISION: The applicant or a new owner can come before the board and state how the new business is not more detrimental and is similar in use and a new owner may be less impactful and not detrimental. The business has migrated without permits and approvals in place and no uses are allowed by right as nonconforming.

NOTE:

- ❖ This decision may be appealed to the District Court, Housing Court, Land Court or Superior Court pursuant to Chapter 40A, Section 17. Said appeal must be filed within twenty (20) days after this decision is filed with the Town Clerk.
- ❖ Chapter 40A, Section 11, states that in part, that no variance or Special Permit shall take effect until the Town Clerk certifies that twenty (20) days have elapsed, and no appeal has been filed.
- ❖ This Board certifies that copies of this decision have been filed with the Planning Board as well as with the Town Clerk.

FOR THE ZONING BOARD OF APPEALS

By: _____


Robert C. Rosa, III
Chairman