



**ZONING BOARD OF APPEALS, TOWN OF WEST BOYLSTON**  
140 WORCESTER STREET  
WEST BOYLSTON, MASSACHUSETTS 01583

**Notice of Decision to Deny a Variance**

**Applicants:** Branded Realty Group II, LLC

**Nature of Request:** Variance to construct an additional standing sign on the lot in the Business District

**Location:** 262 West Boylston Street

**Board Members:** Christopher E. Olson, Chair  
Barur R. Rajeshkumar  
Nathaniel Orciani  
David Femia  
John Benson

On June 8, 2020, the Petitioner, Branded Realty Group II, LLC (represented by Robert Branca), filed a Petition with the Zoning Board of Appeals, Town of West Boylston, Massachusetts, for a Variance from the Zoning Bylaws, Sections 5.6.C.2, for the construction of a second standing sign.

Under Section 6.2.F of the Zoning Bylaws, the Zoning Board of Appeals (“the Board”) may grant, upon appeal or petition with respect to particular land or structure, a variance from the provisions of the town’s bylaws.

Notice was duly given as required by Section 11, Chapter 40A, Mass. General Laws, as well as notices sent to all persons deemed to be affected thereby, as they appear on the most recent tax list, and at which hearing all parties desiring to be heard were given an opportunity to speak.

The Zoning Board of Appeals of the Town of West Boylston, Massachusetts held a public hearing on September 17, 2020 via remote participation over the internet due to the statewide covid-19 state of emergency and orders from the Governor related to the suspension of certain provisions of the open meeting law.

The above noted Board members each attended the hearing and voted on this Petition.

**Submissions:** The Petitioner submitted along with the Petition, two Requests for Findings of Fact (Form A, one from the Petitioner and one from the Trustee of the lot), a certified list of abutters (Form C), and drawings with details of the proposed standing sign and location.

## **FACTS AND FINDINGS:**

The Zoning Board of Appeals (the Board), after carefully considering all of the facts and evidence submitted at the hearing, makes the following findings:

1. The Board finds through testimony of the Petitioner (either in written submissions or in person at the hearing) and evidence submitted that RNBW Realty Nominee Trust & BWRN Realty Nominee Trust are the owners of certain land situated on the westerly side of West Boylston Street in the Town of West Boylston, described in a deed recorded in the Worcester District Registry of Deeds, Book 25639, Page 299 and 305, and as shown on the West Boylston Board of Assessors Map No. 163 Lot No. 11 (262 West Boylston Street).
2. The Board finds said land is situated in a district classified under the Town of West Boylston Zoning Bylaws as Business.
3. The Board finds that presently located on the premises is an existing business (CVS/pharmacy®) with an existing standing sign on the southerly portion of the lot and undeveloped land on the northerly portion of the lot.
4. The Petitioner seeks a variance to construct an additional standing sign on the undeveloped portion of the lot.
5. The current lot at 262 West Boylston Street includes an existing business (CVS/Pharmacy) with a parking lot, a drive-thru pharmacy and a standing sign near the intersection of West Boylston and Woodland Streets. The Petitioner is proposing to build an additional building (to be used for a new Dunkin'® restaurant) on the currently undeveloped northerly portion of the lot. A Petition for a special permit under Section 3.2.F.4 has also been filed with this Board concurrently with this Petition for the use of a drive-in [drive-thru] restaurant. Connected with this proposed new building, Petitioner is requesting this variance for an additional standing sign on the lot (on the northerly portion) which would abut West Boylston Street.
6. According to drawings provided to the Board, the proposed sign is approximately 9 feet long, 4 feet high, and 16 inches wide and would be constructed to be about 15 feet above the ground. Further, it was stated at the hearing that the principal reason for the sign is to alert drivers along West Boylston Street of the location and presence of the new business.
7. Section 5.6.C.2 of the Zoning Bylaws details the sign schedule for signs allowed in the Business district. According to this sign schedule, one (1) standing sign is allowed per lot. In addition, the Board acknowledges that Section 5.6.A.7.a of the bylaws states that “[s]igns not specifically permitted by this bylaw shall not be allowed.”

8. Section 5.6.F.6.a of the Zoning Bylaws also states that “[v]ariations may be granted by the Zoning Board of Appeals if it is determined that the approval criteria contained in Section 6.2 F have been met.

9. In accordance with the Zoning Bylaws Section 6.2.F, the Board may grant a variance in this matter if the Board finds that owing to the circumstances relating to the soil conditions, shape or topography of the land but not affecting the general zoning district, a literal enforcement of the provisions of the zoning bylaw would involve substantial hardship, financial or otherwise, to the petitioner, and that relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning bylaw.

10. The Petitioner argues that the geometrically shaped lot due to it being a leased portion of a co-owned lot combined with the adjacent CVS development and having access easements restricts the location of where a standing sign can be placed. Further, the Petitioner argues the proposed sign location would not hamper site distance for approaching vehicles.

11. The Petitioner also argued at the hearing that the lot shape is atypical as it abuts the intersection at West Boylston and Woodland Streets.

12. No evidence of soil conditions or topography of the land was provided to indicate that the lot was especially affected relative to the general district.

13. The Board finds that Petitioner has not shown that there is sufficient evidence of circumstances relating to the soil conditions, shape, or topography of the land and especially affecting the land at 262 West Boylston Street. There are several lots within the business district along West Boylston Street that abut an intersection. Further, there are several lots within the business district along West Boylston Street that include more than one business.

14. In addition, the granting of a variance in this case would appear to amount to nullification and substantial derogation from the intent or purpose of either Section 5.6.C.2 or Section 5.6.A.7.a of the Zoning Bylaws.

15. For the foregoing reasons, the Board finds that the standard for granting a variance has NOT been met.

## **DECISION:**

The Board finds and so votes, by a vote of one (1) in favor and four (4) opposed to the granting of the requested Variance, that in accordance with Zoning Bylaw Section 6.2.F the Petitioner in this matter has NOT provided sufficient evidence that circumstances relating to the soil conditions, shape, or topography of the land and especially affecting the land exist; or that a literal enforcement of the provisions within the bylaws would involve substantial hardship, financial or otherwise to the Petitioner; or that no nullification or substantial derogation from the intent or purpose of the bylaw would result from the granting of a variance. Therefore, the Petition for Variance is denied.

Decision of the Town of West Boylston Zoning Board of Appeals Action: The Board, by the Chair's signature below, being present remotely, voted as follows for the above-referenced Variance request under Section 5.6.C.2 of the Zoning Bylaws:

Christopher E. Olson – “no”

Barur R. Rajeshkumar – “no”

Nathaniel Orciani – “no”

David Femia – “yes”

John Benson – “no”



Christopher E. Olson

Chair

Notice is hereby given that any appeal from this Decision shall be made pursuant to Massachusetts General Laws, Chapter 40A, §17, and shall be filed within twenty (20) days after the date of the filing of this Decision in the Office of the Town Clerk of West Boylston, MA.

Filed with the Town Clerk on

**RECEIVED**

SEP 29 2020

TOWN CLERK'S OFFICE  
WEST BOYLSTON, MA