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Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
pb@acton-ma.gov
www.acton-ma.gov

DECISION
08-01

Gymboree, 5-19 Nagog Park
Sign Special Permit

January 8, 2008

GRANTED with Conditions

Decision of the Acton Planning Board (hereinafter the Board) on the application of Darlene McCarthy, Viewpoint Sign and Awning, Marlboro, MA on behalf of Nagog Mall, LLC (hereinafter the Applicant) for property located at 5-19 Nagog Park in Acton, Massachusetts, owned by Marcia S. Alevizos, Nagog Mall, LLC of Wellesley, MA. The property is shown on the 2007 Acton Town Atlas map B-4 as parcel 7-2 (hereinafter the Site).

This Decision is in response to an application for a sign special permit, received by the Acton Planning Department on October 19, 2007, pursuant to Section 7.13 of the Acton Zoning Bylaw (hereinafter the Bylaw) and the Sign Special Permit Rules and Regulations (hereinafter the Rules).

Ms. Marcia S. Alevizos presented the subject matter of the special permit to the Board at a duly noticed public hearing on November 27, 2007. The hearing was continued to December 11,

2007 and then closed. Board members Gregory E. Niemyski (Chairman), Ruth M. Martin, Bruce Reichlen, and Alan R. Mertz were present throughout the hearing. The Chairman designated associate members Roland A. Bourdon III and Ryan J. Bettez to sit on the Board as full members for this application pursuant to Section 10.3.9 of the Bylaw. They also attended the entire hearing. The minutes of the hearing and submissions on which this decision is based upon may be referred to in the Planning Department or the Town Clerk's office at the Acton Town Hall.

1 EXHIBITS

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

1.1 Items and documentation required by the Rules consisting of:

- A properly executed Application for a Sign Special Permit, received in the Planning Department on October 19, 2007.
- Certified abutters list.
- A copy of Sign License # 2856, # 2860, # 2861, # 2862, # 2863, # 2864, # 2865, # 2867, # 2866, # 2868, and # 2869, issued for wall signs on the Site, dated 5/18/07 – 6/13/07.
- A copy of the Sign Agreement for a freestanding sign on the Site, dated 11/12/04.
- A locus map.
- Sign renderings:
  - Drawing of a 3' x 8 freestanding sign, dated 7/25/07;
  - Drawing of a 24" x 64" freestanding sign – proposal "A", dated 12/3/07.
  - Drawing of a 20" x 60" hanging sign, last revised 9/11/07;
  - Drawings of a 7' 3/4" x 36" hanging sign - proposal "A", a 10' ¼" x 48" hanging sign - proposal "B", and a 12' 7/8" x 60" - existing hanging sign, last revised 12/5/07.
- A sign location plan.
- A cover letter from the Applicant to the Board, dated 11/1/07.

1.2 Additional information submitted by the Applicant:

- Photographs of the proposed sign location (showing a temporary Gymboree banner sign), date unknown.
- Photographs of existing signs on the Site, taken October and November 2007.
- Sketch plan of proposed sign location showing building edges, walkways, shrubs, etc. at a scale of ¼" = 2 feet, date unknown.
- A letter from the Applicant to the Acton Planning Department, dated 12/5/07.
- E-mail from Anthony M. Gagliardi, President, Vision Builders Company, Inc., to Marcia Alevizos concerning mounting projecting signs to the Nagog Mall retail building, dated 12/4/07.

1.3 Interdepartmental communication received from:

- Acton Building Commissioner, on November 9, 2007;
- Acton Historical Commission dated November 14, 2007;
- Acton Planning Department, dated November 19, 2007;
- Acton Tree Warden & Municipal Properties Dir., dated November 9, 2007.

Exhibits 1.1 through 1.2 are referred to herein as the Plan.

2 FINDINGS and CONCLUSIONS

Based upon its review of the exhibits and the record of the proceedings the Board finds and concludes that:

2.1 The Site is located within the Limited Business (LB) zoning district.

2.2 The Applicant requests a special permit for two signs (hereinafter the Sign(s)) at the Site that would not otherwise be allowed under the Bylaw:

a) The first Sign, a freestanding "Gymboree" sign (freestanding Sign), is one additional sign. Only one freestanding sign is permitted on a lot (Section 7.8.1 of the Bylaw). A business center freestanding sign already exists on the Site at the Great Road and Nagog Park intersection, so the "Gymboree" sign would be one additional freestanding sign.

b) The second Sign, a hanging exterior "Gymboree" sign (hanging Sign), is in a location and/or position not otherwise permitted because it is mounted differently than an exterior wall sign, projecting sign, or awning sign (Bylaw Sections 7.2.1, 7.2.13, and 7.2.16). The hanging Sign is most similar to the Bylaw definition of a projecting sign (Section 7.2.13) because the sign projects perpendicular to the wall of the business.

2.3 The Signs may be allowed on the Site by special permit in accordance with Sections 7.13.1.1 and 7.13.1.3 of the Bylaw.

2.4 Gymboree is the only tenant in the rear of the Nagog Mall retail building and with no wall facing the parking lot where the signs for other mall tenants are located.

2.5 The Signs would replace a Gymboree sign that was located on a structural sidewalk cover (overhang) facing the parking lot, which connected the building where Gymboree is located to the other section of Nagog Mall. The overhang was removed during a mall renovation project, which left no place to reinstall the original Gymboree sign.

2.6 The freestanding Sign is in the general location of the former overhang, but lower to the ground. The hanging Sign is located just under the building arcade at the Gymboree business entrance.

2.7 The Signs will not be illuminated.

2.8 Signs that fit the general description above are already installed. The Applicant acknowledged that the present installation is illegal. The requested special permit seeks to cure the zoning violation. During the public hearing the owner expressed her observation that the installed freestanding Sign is too large and that the installed hanging Sign is too heavy. She provided the Board with sign renderings for three smaller size options for their replacements under a special permit if granted; each of the sizes would be fine with her.

2.9 Section 7.8.3 of the Bylaw requires the freestanding Sign to be integrated into the landscape design of the lot; centered within a minimum landscaped area that shall be planted and maintained with suitable vegetation including shrubs and flowering perennials surrounding the base of the freestanding Sign. Based on the height of the proposed freestanding Sign, six feet, the minimum landscaped area required is 144 square feet. The landscaped area may be provided as part of a landscaped area required under any other section of the Bylaw (Section 7.8.3). The Sign is placed within

a lawn area. The Applicant stated in the public hearing that additional landscaping will be provided around the freestanding Sign to comply with Bylaw Section 7.8.3.

2.10 Section 7.7.5 of the Bylaw requires projecting signs to maintain a minimum clearance of eight feet above a walkway or sidewalk. The applicant stated in the public hearing that the hanging Sign will maintain a minimum clearance of eight feet above the walkway/sidewalk.

2.11 The Signs as approved hereunder are consistent with the character and uses of the area and with the Zoning District in which they will be located; they are appropriate in scale, design, and proportion relative to the buildings in the area and to the general surroundings. They are attractively designed, appropriately located, and will be compatible with the buildings to which they principally relate, and they are in harmony with the general area of the Limited Business zoning district.

2.12 The Signs as approved hereunder are a continuous part of an integrated architectural design of the entire Site with colors and materials that are appropriate, restrained and in harmony with the buildings, and they do not detract from the aesthetic qualities of the surroundings.

2.13 Their number of graphic elements is held to the minimum needed to convey their primary messages and is in good proportion to the area of the Signs' faces.

2.14 The Signs will not unduly compete for attention with any other signs in the area.

2.15 The Signs are necessary for adequate identification of the business at this Site.

2.16 The Signs as approved herein are appropriate for the Site; are consistent with the Master Plan; are in harmony with the purpose and intent of the Bylaw, specifically Section 7; will not be detrimental or injurious to the neighborhood where they are proposed; and comply in all respects to the applicable requirements of the Bylaw and the Rules.

2.17 The Board has received comments from various Town departments, which are listed in Exhibit 1.3 above. The Board considered these comments in its deliberations, made them available to the Applicant, and incorporated them into this decision as deemed appropriate.

3 BOARD ACTION

Therefore, the Board voted - _____ in favor, _____ opposed to GRANT the requested special permit subject to and with the benefit of the following waivers, Plan modifications, conditions, and limitations.

3.1 CONDITIONS

The following conditions shall be binding on the Applicant and its successors and assigns, and shall be enforceable by the Building Commissioner in his administration of the sign permits under Section 7.6 of the Bylaw. Failure to adhere to these conditions shall render this special permit null and void, without force and effect, and shall constitute grounds for the revocation of this special permit, and of any sign permit issued by the Building Commissioner hereunder. The Town of Acton may elect to enforce compliance with this special permit using any and all powers available to it under the law.

3.1.1 The Owner shall remove the existing illegal signs no later than March 31, 2008.

3.1.2 Prior to erecting the Signs approved hereunder, the Applicant shall obtain a sign permit from the Building Commissioner pursuant to Section 7.6 of the Bylaw.

3.1.3 The freestanding Sign shall be erected in accordance with the drawing of "Proposal "A" Gymboree Freestanding Sign" dated 12/11/07 (six-foot high freestanding sign with a 24" x 64" display area) and the Plan approved and amended herewith, and shall otherwise comply with all applicable requirements of the Bylaw.

3.1.4 The freestanding Sign shall be erected more or less in the location shown on the Plan (same location of the present illegal sign), which is centered in the rear grassed island adjacent to the sidewalk located beneath the former overhang. Said island shall contain a landscaped area immediately adjacent to the freestanding Sign that incorporates (1) shrubs similar to the types of shrubs planted in the landscaped island immediately to the south located between the sidewalk and the parking lot, and (2) other flowering shrubs and perennials native to the area; so that the base of the freestanding Sign is surrounded by a generous amount of shrubs and perennials and so that at least one third of the landscaping grows to be at least two feet high (but no higher than four feet) at maturity.

3.1.5 The above specified landscaping shall be completed no later than May 15, 2008, while the Sign may be erected earlier. If the Sign is erected after May 15, 2008, the landscaping shall be installed concurrently with the Sign. Prior to installing the landscaping, the Applicant shall submit to the Board or its designee a landscape sketch plan denoting the proposed species, and their numbers and locations relative to the Sign.

3.1.6 The hanging Sign shall be erected in accordance with the drawing of "Proposal "A" Hanging Sign" last revised 12/5/07 (12" x 36" hanging sign) and the Plan approved and amended herewith, and shall otherwise comply with all applicable requirements of the Bylaw.

3.1.7 The hanging Sign shall be located just under the building arcade at the Gymboree business entrance. The sign shall hang perpendicular to the wall of the Gymboree building such that the word "Gymboree" faces the parking lot. The sign shall maintain a minimum clearance of eight feet above the walkway/sidewalk.

3.1.8 The Signs shall not be illuminated.

3.1.9 All taxes, penalties and back charges resulting from the non-payment of taxes, if any, shall be paid in full prior to issuance of a sign permit.

3.2 LIMITATIONS

This special permit shall be limited as follows:

3.2.1 The foregoing conditions have been stated for the purpose of emphasizing their importance, but are not intended to be all-inclusive or to negate the remainder of the Bylaw and the Rules.

3.2.2 This special permit applies only to the Site identified in this decision and to the proposed Signs as shown on the Plan.

3.2.3 Other approvals or permits required by the Bylaw, other governmental boards, agencies or bodies having jurisdiction shall not be assumed or implied by this decision.

3.2.4 This special permit shall lapse if substantial use thereof has not commenced within two years of the filing date of this decision with the Town Clerk, except for good cause, or if construction under this special permit is not continued through to completion as continuously and expeditiously as is reasonable. A request to extend said time limits must be made in writing to the Board at least 30 days prior to said expiration dates. The Board herewith reserves its rights and powers to grant or deny such extension, to issue any appropriate changes to the special permit and to require any appropriate modifications of the Plan. This paragraph shall not be construed to provide relief from condition 3.1.1 of this Decision.

3.2.5 The Board hereby reserves its right and power to modify or amend the Plan and the terms and conditions of this special permit with or without a public hearing upon the request of the Applicant, his designees or assigns, or upon its own motion.

4 APPEALS

Appeals, if any, shall be made pursuant to MGL, Ch. 40A, S. 17 and shall be filed within 20 days after the date of filing this decision with the Town Clerk.

Signed on behalf of the Acton Planning Board

_____

Roland Bartl, AICP, Town Planner
for the Town of Acton Planning Board

This is to certify that the 20-day appeal period on this decision has passed and there have been no appeals made to this office.

_____

Eva Taylor, Town Clerk Date

Copies furnished:

Applicant -	Building Commissioner	Health Director
certified mail #	Engineering Administrator	Municipal Properties Director
Town Clerk	Conservation Administrator	Town Manager
Fire Chief	Police Chief	Acton Water District
Owner	Historical Commission	Assistant Assessor

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