

**TOWN OF DEDHAM  
ZONING BOARD OF APPEALS  
26 BRYANT STREET, DEDHAM, MASSACHUSETTS 02026**



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**DECISION**

<b>Applicant:</b>	<b>Sovereign Bank, a Federal Savings Bank</b>
<b>Project Address:</b>	929 Providence Highway
<b>Property Owner:</b>	Lucy Dedham, LLC (formerly owned by Nissan Realty, LLC)
<b>Case #:</b>	VAR-06-11-1391
<b>Map/Lot:</b>	149/28
<b>Zoning District:</b>	RDO
<b>Date of Application:</b>	July 18, 2012
<b>Date of Hearing:</b>	August 15, 2012
<b>Members Present and Voting:</b>	James F. McGrail, Esq., J. Gregory Jacobsen, Scott M. Steeves, Jason L. Mammone, P.E.
<b>Applicant Representative:</b>	Stephen P. Rahavy, Esq. Steven Szramiak, Symmes, Maini, &McKee Associates Thomas Gianni, ImageOne
<b>Petition:</b>	To be allowed a waiver from the Town of Dedham Sign Code for three (3) tower signs, A1, A2, and A3 at Sovereign Bank, 945 Providence Highway, Dedham, MA
<b>Section of Zoning By-Law:</b>	<i>Town of Dedham Sign Code Section 3. Applicability and Effect, Section 4, Definitions, Section 5, Administration, Section 7 Special Regulations, Subsection D.5, Section 11. Appeals, and Table 2 Sign Dimensions and Location</i>
<b>Date Of Filing With Town Clerk:</b>	<b>August 27, 2012</b>

The Town of Dedham, Massachusetts Zoning Board of Appeals (hereinafter, "ZBA") held Public Hearings on August 15, 2012, in the Selectmen's Chambers, at the Town Office Building located at 26 Bryant Street, Dedham, Norfolk County, Massachusetts. Present were members of the Zoning Board of Appeals James F. McGrail, Esq., Chairman, J. Gregory Jacobsen, Scott M. Steeves, and Jason L. Mammone, PE.

The public hearings for this meeting of the ZBA were duly advertised on July 27, 2012, and August 3, 2012, in *The Dedham Times* in accordance with the requirements of G.L.c. 40A, § 11. The ZBA meeting notice was duly posted in accordance with the provisions of G.L.c. 39, § 23A, as amended.

At 7:03 p.m., the Chairman called the second of five scheduled hearings on the Application of Sovereign Bank, a Federal Savings Bank, Banco Santander, S.A., CVS Caremark Corporation, Massachusetts, CVS Pharmacy, LLC and Nissan Realty, LLC. The Applicant seeks appropriate relief or waivers from the Town of Dedham Sign Code for three (3) Tower Signs depicted as A-1, A-2 and A-3 (See Drawings dated July 18, 2012) submitted with the Application. Said Tower Signs will each be 23.81 square feet and be internally illuminated and flush mounted.

**Applicable Sections of Sign Code:**

- (i) Section 3. Applicability and Effect;
- (ii) Section 4. Definitions;
- (iii) Section 5. Administration;
- (iv) Section 7. Special regulations, Subsection D.5;
- (v) Section 11. Appeals;
- (vi) Table 2 – Sign Dimensions and Location.

The Applicant was represented by Stephen P. Rahavy, Esq., Law Offices of Stephen P. Rahavy, 18 Norfolk Street, Dedham, MA 02026. Also present were the Applicant's Architect, Steven Szramiak, from Symmes, Maini, &McKee Associates, Inc., 1000 Massachusetts Avenue, Cambridge, MA 02138 and Thomas Gianni from ImageOne, 577 Dunsferry Road, Bensalem, PA 19020, the Applicant's sign contractor.

The Applicant incorporated by reference the following materials submitted to the prior ZBA on November 17, 2010:

1. Planning Board Decision and Certificate of Action for Site Plan Approval dated May 8, 2008, and recorded with the Norfolk County Registry of Deeds on June 10, 2008, in Book 25827, Page 52.
2. Dedham Police Department Incident Address History for the period from November 13, 2009, to November 14, 2010, reflecting zero incidents at 929 Providence Highway.
3. Concept Renderings of Sovereign Bank building to be constructed on the site prepared by Symmes Maini & McKee Associates SMMA, and dated November 15, 2010.

4. Site Plan dated November 15, 2010, reflecting the proposed Sovereign Bank building and drive-through.
5. Traffic Analysis prepared by VHB dated November 17, 2010.
6. Traffic Analysis prepared by VHB dated June 12, 2007.
7. A Letter of Intent dated July 29, 2010, by and between Massachusetts CVS Pharmacy, LLC and Sovereign Bank, a Federal Savings Bank.

The Applicant submitted the following additional materials to the ZBA:

1. ImageOne drawings depicting the Sovereign Tower Signs as A-1, A-2 and A-3, respectively.
2. Various other drawings reflecting the Sovereign Bank Signage on the property.

The minutes from the August 15, 2012, Public Hearing are the primary source of evidence and are incorporated herein by reference.

The site is located on Providence Highway at the intersection of Elm Street. The intersection was recently upgraded significantly and is controlled by numerous traffic signals. In 2008, all existing buildings on the site formally occupied by Clay Nissan were raised to allow development of the site, consistent with the Certificate of Action by the Planning Board on May 8, 2008. The site has been enhanced significantly, and a CVS Pharmacy currently operates on the property. The 3,200 square foot retail building had previously been approved by the ZBA (as to "use 3") [07-43] and the Planning Board on Site Plan Approval. The Sovereign Bank structure with a drive-through configuration is nearly complete.

By decision dated May 8, 2008, the Planning Board approved the sign package for the site, as recommended by the Design Review Advisory Board.

**THE DEDHAM SIGN CODE [REVISED THROUGH NOVEMBER, 2010]**

At the core of this Application for relief or waivers from the Sign Code in the interpretation of Section 7, Special Regulations, Specifically Subsection D.5 which reads as follows:

5. No wall sign except window signs which identify a business occupying space in a level above the ground floor level, shall extend higher than the lowest of (i) twenty-five (25) feet above grade; or (ii) the top of the sills of the first level of windows above the first story; or (iii) the lowest point of the roof.

The Applicant has asserted its position that, since Section D.5 is in the disjunctive by the purposeful use of the word “or,” and it has satisfied the first criteria as to height (the signs will be 24 feet above grade), no further relief or waivers are necessary.

The Building department has taken the position that, notwithstanding the disjunctive use of the word “or” in section D.5 of the Code, the Applicant must satisfy (i) (ii) and (iii) or seek appropriate relief or waivers from the Sign Code.

And/or

Ordinarily, as in everyday English, use of conjunctive “and” in a list means that all of the listed requirements must be satisfied, while use of the disjunctive “or” means that only one of the listed requirements must be satisfied. Courts do not apply these meanings “inexorably;” however, if a “strict grammatical construction” will frustrate evident legislative intent, a court may read “and” as “or” or “or” as “and.” Moreover, statutory context can render the distinction secondary.

**SIGN CODE WAIVERS FOR THE THREE (3) SOVEREIGN BANK TOWER SIGNS**

Nora Costa of 38 Orchard Street, an abutter to the property, spoke in opposition to the petition. She stated that illumination from Sign A3 would have a direct impact on her because the illumination would be visible from her front yard. After discussion, she and the Applicant agreed that this sign would not be illuminated.

As a result, the ZBA finds that the three (3) Sovereign Bank Tower Signs, all as submitted by the Applicant, are consistent with the purpose and intent of the Sign Code and affirmatively find that such relief or waivers have been recommended by the Design Review Advisory Board.

The ZBA further finds that the relief or waivers requested by the Applicant are granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the Sign Code.

On motion duly made by Scott M. Steeves and seconded by J. Gregory Jacobsen, the ZBA voted unanimously at 4-0 to grant a waiver from the Sign Code Relief as requested by the Applicant for signs A1, A2, and A3 with the condition that sign A3 never be illuminated. The decision herein is incorporated as part of the public record and is on file in the office of the Zoning Board of Appeals.

Dated: August 15, 2012

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James F. McGrail, Esquire, Chairman

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J. Gregory Jacobsen

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Scott M. Steeves

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Jason L. Mammone, P.E.