

**DECISION OF PEABODY CITY COUNCIL DENYING  
A SPECIAL PERMIT FOR A BILLBOARD TO 47 NEWBURY WORLD REALTY  
TRUST FOR PROPERTY AT 47 NEWBURY STREET, PEABODY, MASSACHUSETTS  
DATED DECEMBER 16, 2014 – SPECIAL PERMIT 38-2014**

Pursuant to Section 15.7.1 and Section 6.1.2 of the Zoning Ordinance of the City of Peabody (the “Ordinance”), the Peabody City Council (the “Council”), acting as the Special Permit granting authority, hereby denies 47 Newbury World Realty Trust (the “Applicant”), the requisite zoning relief and Special Permit at the property located at 47 Newbury Street, Peabody, MA 01960 (the “Site”).

**I. Applicant**

47 Newbury World Realty Trust  
47 Newbury Street  
Peabody, MA 01960

**II. Attorney for Applicant**

John R. Keilty, Esq.  
40 Lowell Street  
Peabody, MA 01960

**III. Property Location (the “Site”)**

47 Newbury Street, Peabody, MA 01960

**IV. Zoning Ordinance**

Section 6: Special Regulations (6.1, 6.2) and Section 11 Signs (11.6.3, 11.6.4)

**V. Description of the Action Sought**

The Applicant seeks a special permit to construct a digital/electronic billboard at 47 Newbury Street, Peabody, MA 01960.

**VI. Information Submitted By the Applicant**

The Board reviewed the following information submitted by the Applicant for a special permit:

1. Application for Special Permit dated September 12, 2013;
2. Site Plan for proposed digital billboard;
3. [any other documentation as filed and on record with the City of Peabody].

## **VII. Findings of Fact**

1. The Applicant seeks to construct a digital billboard at the Site;
2. **Hearing:** On December 5, 2013, after providing notice required by applicable law, the Council held a public hearing and heard from two applicants requesting special permits to construct digital billboards. The proposed locations were adjacent to each other; one at the Site by the Applicant and the other at 55 Newbury Street, Peabody, MA 01960. The applicant for 55 Newbury Street raised many concerns regarding the Applicant's proposed billboard, including but not limited to:
  - a. the proposed location of the Applicant's billboard would block its existing restaurant sign and consequently interfere with the use of an adjacent property causing loss of business;
  - b. the Applicant's billboard would have an adverse impact on its adjacent property causing a shadow on the property and its new dining hall facility; and;
  - c. the proximity of the Applicant's billboard to the overpass and Route 1 would create a hazardous condition for drivers.
3. The Council discussed the requirement by the Zoning Ordinance that billboards be in harmony with the surrounding environment and not interfere with the use of or cause an adverse shadow or flicker on adjacent properties as according to Sections 11.6.4(2-3,5));
4. The Applicant shared that the proposed location of the billboard could be moved to be further away from the 55 Newbury Street location. The Council advised the two applicants to come to an agreement with each other because based on the proximity of the two sites; both special permits could not be issued. The Council recessed the hearing until the December 12, 2013.
5. **Hearing:** On December 12, 2013, the Council held a public hearing and heard from both applicants once again. The Applicant and the applicant for 55 Newbury Street were unable to come to an agreement on their own. The City Council voted (8-0) to deny the Applicant's application for a Special Permit for a digital billboard and approve the application for 55 Newbury Street. The Council determined that the proposed billboard at 55 Newbury Street was in harmony with the general purpose and intent of the Zoning Ordinance.
6. **Appeal:** On December 31, 2013, the Applicant filed an appeal in the Commonwealth of Massachusetts Superior Court of the Council's decision to deny its application and approve the application for 55 Newbury Street.

7. **Remand Hearing:** On October 2, 2014, the Council held a remand hearing, ordered by the Essex Superior Court of the Commonwealth of Massachusetts in the matter of Civil Action No. 13-2088A. After hearing the presentation on the details of the proposed digital billboard at 47 Newbury Street, the Council voted (10-0) to deny the Applicant's application for a Special Permit because the application did not satisfy the Zoning Ordinance criteria for such Special Permit as according to Sections 11.6.4 (1-3,5). Councillor Manning-Martin shared concerns regarding the number of billboards in the area and traffic safety, and cited Section 11.6.4(5), "In making the determination, the Special Permit granting Authority may consider among other factors: health, safety, and general welfare of the public, as well as the number of signs on the premise and in the area where the billboard is to be located." Councillors Gould, Manning-Martin and Sinewitz shared concerns with the Applicant complying with the Massachusetts Outdoor Advertising Board Regulations as required by Section 11.6.4(1). The state regulation states that an electronic sign shall not be within 1000 feet of another Electronic Sign (700 CMR 3.17(5)(g)) and 55 Newbury Street's application was approved by the Outdoor Advertising Board. Councillor Gould and Walsh pointed out that the Applicant's own presentation displayed shadowing on the 55 Newbury Street property showing both interference with the use of an adjacent property and shadowing of an adjacent property in violation of (11.6.4(2-3)). Councillor Saslaw then summarized and made a motion to "not approve the Special Permit in accordance with the remand motion from the Superior Court of Essex County to the Peabody City Council as it pertains to Civil Action 2013-02088A, 47 Newbury Street Realty Trust, 47 Newbury Street, Peabody, Mass., with instructions to draft a new Special Permit decision, including specific findings – to not approve a permit. For these specific reasons the Applicant's application does not satisfy the Zoning Ordinance criteria for a Special Permit for a digital billboard, specifically, Zoning Ordinance 11.6.4.1, 11.6.4.2, 11.6.4.3, 11.6.4.5 and there is no desirable local need.

**VIII. The Applicant's Application does not satisfy the Zoning Ordinance criteria for a Special Permit for a Digital Billboard.**

1. The Applicant's proposed billboard is not in harmony with the intent and purpose of the Zoning Ordinance, including but not limited to the health, safety and general welfare of the public;
2. The Applicant did not demonstrate that the proposed Site does not adversely interfere with the uses of adjacent properties (11.6.4(2));
3. The Applicant did not demonstrate that the proposed Billboard does not cause an adverse shadow or flicker on adjacent properties (11.6.4(3)); and
4. The Applicant did not demonstrate that the Billboard is in harmony with or suitable for the surrounding area and would not do significant damage to the visual environment especially considering the number of signs in the area (11.6.4(5)).

5. Furthermore, according to the Massachusetts Department of Transportation's Office Of Outdoor Advertising Board Regulation 700 CMR 3.17(5)(g), an electronic sign shall not be within 1000 feet of another off premise permitted Electronic Sign on the same side of the traveled way regardless of which direction the sign is intended to face. On July 3, 2014, the Outdoor Advertising Board issued a permit for an electronic billboard to 55 Newbury Street pending resolution of Civil Action No. 13-2088A. The permit issued to 55 Newbury Street will prevent the Applicant from complying with the Outdoor Advertising Board Regulation as required by (11.6.4(1)).<sup>1</sup>

#### **IX. Notice of Decision and Appeals**

Appeals of this Decision, if any, shall be made pursuant to M.G.L. c. 40A, §17 and shall be filed within twenty days after the date of filing of this Decision in the Office of the City Clerk.

Signed this 16<sup>th</sup> day of December, 2014.

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Timothy E. Spanos  
City Clerk

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<sup>1</sup> On [February 27, 2014], the applicant for 55 Newbury Street applied to the Massachusetts Department of Transportation's Office of Outdoor Advertising Board ("OOA") for a permit to erect an electronic billboard at 55 Newbury Street. On [May 8, 2014] the OOA held a public hearing on the matter. Prior to issuing the permit, the Applicant filed a temporary restraining order to prevent the issuing of the permit for 55 Newbury Street. The motion for a temporary restraining order was denied on June 23, 2014 by the Essex Superior Court of the Commonwealth of Massachusetts.