

Board Members
Rori Stumpf, Chairman
Brian White, Vice Chair
Gibb Phenegar, Clerk
Christina Oster, Member
Tom Emero, Member
Carol Gould, Associate Member



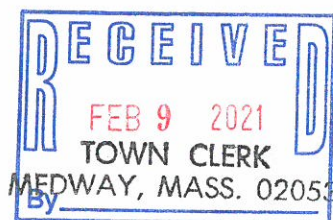
Medway Town Hall
155 Village Street
Medway, MA 02053
Telephone (508) 321-4890
zoning@townofmedway.org

TOWN OF MEDWAY
COMMONWEALTH OF MASSACHUSETTS
ZONING BOARD OF APPEALS

DECISION
VARIANCES AND USE VARIANCE
65 MAIN STREET – SHAW'S ELECTRIC VEHICLE CHARGING STATIONS
DENIED

Applicant(s): Volta Charging, LLC
c/o Bryn Paslawski
155 De Haro Street
San Francisco, CA 94103

Property Owner: Ms. Cathy Ikeuchi
Hidden Acres Realty, LLC
250 E. Parkcenter Blvd.
Boise, ID 83706



20 day appeal
March 1, 2021

Location of Property: 65 Main Street (Assessors' Parcel IDs: 41-023 and 41-024)

Approval Requested: The application is for the issuance of a **use variance** from Section 5.2(A); and **variances** from the following sections of the Sign Bylaw: Section 7.2.3 for signs not expressly permitted or exempted, and which are prohibited under Section 7.2.3 (B, D, K, and T), 7.2.4 (C)(1), 7.2.4(D), 7.2.4(F)(5), 7.2.5 (B)(1) and 7.2.5 Table 5 of the Zoning Bylaw, for the installation, operation and maintenance of 2 electric vehicle charging stations with built-in variable image signs at the existing shopping plaza.

Members Participating: Rori Stumpf (Chair), Brian White (Vice Chair), Tom Emero (Member), Christina Oster (Member), Carol Gould (Associate Member)

Members Voting: Rori Stumpf (Chair), Brian White (Vice Chair), Tom Emero (Member), Christina Oster (Member), Carol Gould (Associate Member)

Date of Decision: February 3, 2021

Decision: **DENIED**

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Date of Decision: February 3, 2021

Decision: **DENIED**

I. PROCEDURAL HISTORY

1. On January 8, 2021, the Applicant's representative, attorney Michael Dolan of Brown Rudnick, filed an application for a **use variance** from Section 5.2(A); and **variances** from the following sections of the Sign Bylaw: Section 7.2.3 for signs not expressly permitted or exempted, and which are prohibited under Section 7.2.3 (B, D, K, and T), 7.2.4 (C)(1), 7.2.4(D), 7.2.4(F)(5), 7.2.5 (B)(1) and 7.2.5 Table 5 of the Zoning Bylaw, for the installation, operation and maintenance of 2 electric vehicle charging stations with built-in variable image signs at the existing shopping plaza.
2. Notice of the public hearing was published in the Milford Daily News on January 20, 2021 and January 27, 2021 and notice sent by mail to all interested parties and posted in Town Hall as required by G.L. c. 40A, §11. The notices included instructions for participating remotely in the public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place.
3. The public hearing was opened on February 3, 2021 and closed the same evening. Member Gibb Phenegar recused himself, so the Chair designated associate member Carol Gould to sit on this application
4. The property is located in the Central Business (CB) Zoning District. The front setback requirement is 10 feet, the side setbacks are 10 feet and rear setback requirements is 25 feet. The minimum lot area requirement is 10,000 sq. ft. and there is no minimum frontage requirement.
5. The Board notified Town departments, boards and committees of this application.
6. All documents and exhibits received during the public hearing are contained in the Zoning Board of Appeal's files and listed in Section V. of this Decision.

II. TESTIMONY

The public hearing, pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, and the Governor's Orders imposing strict limitations on the number of people that may gather in one place, was held via Zoom platform and was also broadcast live on Medway Cable Access. All persons participated remotely.

The applicant's representative, attorney Michael Dolan from Brown Rudnick, was present and explained the application. The charging stations have already been installed in the parking lot outside Shaw's in the Medway Commons plaza. There is no charge to the users for the electricity; Volta sells advertising space on the charging stations to advertisers which generates the revenue for the electricity. Attorney Dolan stated that Volta received an electrical permit but did not realize they needed a zoning relief from the ZBA at the time of installation. He then went over the variance criteria and explained why he believes the criteria are met as presented in the application. He explained that the signage will not be visible from the public road and has minimal visual impact. The advertisements do not use video or sound, and the images rotate every eight seconds for best practices to avoid distracting drivers. He also noted that the signs have been used to make public service announcements and they are willing to continue to do so. There is a letter of support from the Medway Energy and Sustainability Committee. He stated this is a benefit to the community by offering free charging for users, and it also benefits the business (Shaw's).

The Design Review Committee (DRC) and the Planning and Economic Development Board (PEDB) submitted letters in opposition, based on the numerous sections of the sign by-law that the signs violate, including being prohibited signs. These violations include the prohibition on signs advertising businesses not on the premises, illuminated signs, and variable message signs, as well as the lack of landscaping and the number of signs. Jessica Chabot of DRC stated that this could also set a precedent for other businesses to seek signs in violation of the bylaw. Glenn Trindade, speaking as an individual and not as chair of the Board of Selectmen, spoke in favor of the application, citing the need to support electric vehicle charging stations. He felt that the signs are innocuous, located far from the street, and in a commercial zoning district. Andy Rodenhiser, Chairman of the PEDB, stated that he believes the applicant should not be given preference where the signs were installed without proper authorization. He felt that these are signs first and foremost, which then allows the charging station for electric vehicles. Mr. Emero inquired as to how much of a charge a vehicle would typically receive in an hour or so while the owner was shopping at Shaw's, and it appeared to be enough to run an electric vehicle for a few miles, thus typically only a sufficient charge for the trip to and from the store.

Ms. Oster stated that she agrees with Mr. Rodenhiser that the proposed electric vehicle charging stations with signage should go through the proper process, including compliance with the Town's design review criteria. She feels that public benefit insofar as the free charging is limited, versus the primary impact of the signage. Further, Ms. Oster and Ms. Gould determined that application did not meet the stringent criteria for a variance under G.L. c. 40A, §10, as there are no unique circumstances related to soil conditions, shape or topography of the land, nor a financial hardship.

Mr. White inquired about any suggestions the DRC may have for potential conditions if this is approved. Ms. Chabot stated that there are too many issues with the signs that they could not bring them into compliance.

There was discussion regarding potential conditions if the application were to be approved, including that there be no cost to use the stations; installing landscaping; no moving images or animation; no overnight use; and the applicant would continue to make appropriate public service messages. Since the application was denied, no votes were taken with respect to potential conditions.

C. Section 6.1 Variance Criteria

1. Whether owing to circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structures but not affecting generally the zoning district in which it is located;

The Board found that this criterion has not been met because there are no circumstances related to the soil conditions, shape or topography of the land especially affecting the land but not the zoning district. The site is developed as a shopping center, and the charging stations are being placed in the existing parking lot. There are no unusual soil conditions, shape or topography which justify a variance.

2. A literal enforcement of the provisions of the zoning by-law would involve substantial hardship, financial or otherwise, to the applicant, and

The Board found that there is no financial hardship to the applicant caused by any soil conditions, shape or topography of the land, which is developed as a shopping center, and because the charging stations have been installed for almost one year at this point.

3. Desirable relief may be granted without substantial detriment to the public good.

In light of the fact that criteria one and two are not met, no findings were made or necessary under this criterion.

4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

In light of the fact that criteria one and two are not met, no findings were made or necessary under this criterion. During the discussion, however, it was noted that the signs do not comply with a number of provisions of the sign bylaw, including being prohibited for multiple reasons, signifying they could be in substantial derogation from the intent and purpose of the zoning bylaw.

III. INDEX OF DOCUMENTS

A. The application included the following plans and information that were provided to the Board at the time the application was filed:

1. Application for Variances packet from Brown Rudnick, LLP dated January 7, 2021
2. Plan titled “Volta, Shaw’s 65 Main Street Phase 1” dated July 18, 2019, prepared for Volta, 155 De Haro Street, San Francisco, CA 94103, prepared by Kimley Horn, 300 Baker Ave., Suite 300, Concord, MA 01742, 10 sheets
3. “Volta Construction Project: Medway, MA” (3 pages) and “Volta – Station Overview” photos
4. Letter re: Volta Electric Vehicle Charging Stations dated November 9, 2020 from the Medway Energy and Sustainability Committee

B. During the course of the review, the following materials were submitted to the Board by Town departments and boards:

1. Email from Joanne Russo, Medway Treasurer on January 14, 2021
2. Email from Chief Lynch, Medway Fire on January 14, 2021
3. Letter from Andy Rodenhiser, Chairman of the Planning and Economic Development Board dated February 2, 2021
4. Letter from Matthew Buckley, Chairman of the Design Review Committee dated February 2, 2021

VI. VOTE OF THE BOARD

By a vote of 3 to 2, on a motion made by Brian White and seconded by Tom Emero, the Zoning Board of Appeals hereby **DENIES** the Applicants, Volta Charging, LLC, a **USE VARIANCE** from Section 5.2(A); and **VARIANCES** from the following sections of the Sign Bylaw: Section 7.2.3 for signs not expressly permitted or exempted, and which are prohibited under Section 7.2.3 (B, D, K, and T), 7.2.4 (C)(1), 7.2.4(D), 7.2.4(F)(5), 7.2.5 (B)(1) and 7.2.5 Table 5 of the Zoning Bylaw, for the installation, operation and maintenance of 2 electric vehicle charging stations with built-in variable image signs at the existing shopping plaza.

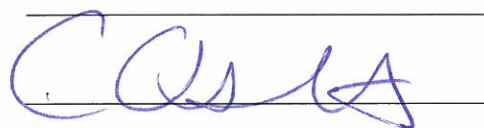
Member:	Vote:	Signature:
Rori Stumpf	AYE	_____
Brian White	AYE	_____
Carol Gould	NAY	_____
Tom Emero	AYE	_____
Christina Oster	NAY	_____

The Board and the Applicant have complied with all statutory requirements for this special permit decision. A copy of this Decision will be filed with the Medway Town Clerk and mailed to the Applicant, and notice will be mailed to all parties in interest as provided in Massachusetts General Laws chapter 40A, section 15.

Any person aggrieved by the decision of the Board may appeal to the appropriate court pursuant to Massachusetts General Laws, Chapter 40A, §17, which shall be filed within twenty days after the filing of this decision in the office of the Medway Town Clerk.

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Member:	Vote:	Signature:
Rori Stumpf	AYE	_____
Brian White	AYE	_____
Carol Gould	NAY	_____
Tom Emero	AYE	_____
Christina Oster	NAY	

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