

# **Town of Reading Zoning Board of Appeals**

## **The Decision of the Board of Appeals on the Petition of**

**Patrick Devaney  
For The Property Located At  
60 Mount Vernon Street, Reading, Massachusetts**

**May 24, 2012  
Case No. 12-06**

The Reading Zoning Board of Appeals (The "Board") held a public hearing in the Selectmen's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts on Thursday, May 24, 2012 to hear the petition of Patrick Devaney (the "Petitioner") who sought a Variance under Section 5 of the Zoning By-Laws in order to construct a new single family residential dwelling on a legal non-conforming lot located at 60 Mount Vernon Street in Reading, Massachusetts (the "Property").

The Property is located in an S-15 residential Zoning District and is presently non-conforming in regards to lot size and frontage. The lot size is 5,661 square feet and the frontage is 42.16 feet whereas the requirements for an S-15 residential Zoning District are 15,000 square feet and 100 feet respectively. The Petitioner proposes to construct a new single family residential dwelling as shown on the Topographic and Site Plans of Land, sheets 1 and 2 respectively dated April 26, 2012, prepared by Benchmark Survey, 41 Elm Street, Stoneham, MA 02180 and certified by Andrew Bramhall, PLS dated April 26, 2012. Landscaping will be as shown on the Landscape Plan dated March 15, 2012, prepared by Collins Development, P.O. Box 460, Lexington, MA 02420 (The "Plans"). Whereas the height of the proposed structure was not specified in the above referenced Plans, Petitioner's representative assured full compliance with the structure height requirement of Section 5 of the Zoning By-Laws.

The Board may grant a Variance from the By-Laws if it determines that each of the following conditions are met: (1) particular circumstances exist relating to the soil conditions, shape or topography of the land or structure that are the subject of the petition, but do not generally affect the zoning district in which it is located; (2) literal enforcement of the zoning ordinance would involve a substantial hardship, financial or otherwise; (3) desirable relief can be granted without substantial detriment to the public good; and (4) the requested relief does not nullify or substantially derogate the intent or purpose of the zoning ordinance.

Attorney Steven Ciccattelli made a presentation on behalf of the Petitioner, detailing the plans for the proposed construction and its compliance with the variance criteria. The Board also received inputs from three abutters expressing concern with drainage, fencing, lighting and landscaping. Attorney Ciccattelli agreed to provide a letter of confirmation to the Board identifying the positive actions to abutter concerns. Letters dated May 30, 2012 and May 31, 2012 were hand delivered to the Zoning Board of Appeals office in the Reading Town Hall and are included as part of this decision.

Following the presentation and public input, the Board determined that:

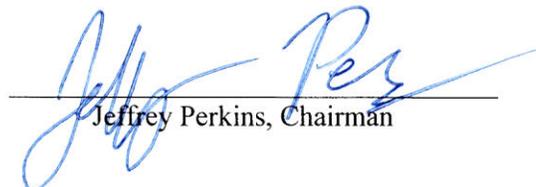
- (1) The existing non-conforming structure is located on a small, topographically challenged lot making expansion difficult without a variance. Further, the residential area is made up of similar small properties of non-conforming lot sizes, frontages and setbacks.
- (2) The topography, property lines and small lot size greatly limit the possible options and attendant costs. The proposed construction of a single family structure will now bring the Property into compliance with the intended residential use in this Zoning District.
- (3) The proposed addition for the Property will provide significant improvement in both structure and property than the previous vacant lot. The addition will not change the character of the neighborhood, thus relief can be granted without detriment to the public good.
- (4) Although the proposed addition of a residential structure requires variance in all side setbacks, its location is within a residential district made up of small non-forming lots, thus relief can be granted without nullifying or derogating from the intent or purpose of the zoning ordinance.

Upon a duly made motion and seconded, the Board voted (4-1-0) to grant the Petitioner's request for a Variance under Section 5 of the By-Laws in order to construct the new single family dwelling, as depicted on the referenced Plans.

Any person aggrieved by this decision of the Board may appeal to the appropriate court pursuant to M.G.L. c. 40A, § 17, within twenty (20) days after the date of filing this Decision with the Town Clerk. Notice of appeal with a copy of the complaint must also be filed with the Town Clerk within twenty (20) days as provided in § 17.

This Variance shall not take effect until a copy of this Decision, bearing certification of the Town Clerk that twenty (20) days have elapsed after the Decision was filed in the Office of the Town Clerk and no appeal has been filed, or if an appeal has been filed within such time, that it has been dismissed or denied, is recorded in the Middlesex South District Registry of Deeds and indexed in the Grantor's Index under the name of the owner of record, or is recorded and noted on the Owner's Certificate of Title. The fee for recording or registering shall be paid by the Owner or Petitioner. Any person exercising rights under a duly appealed Variance does so at the risk that a court may reverse the variance and order undo any construction performed under the variance.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS

  
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Jeffrey Perkins, Chairman

*Zoning Board Members Voting in favor of Motion:* John Miles, Jeffrey Perkins, John Jarema, Damase Caouette

*Zoning Board Member Voting against Motion:* Robert Redfern