

Town of Reading Zoning Board of Appeals

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The Decision of the Board of Appeals on the Petition of JUN 32 P 2: 36

**Home Depot USA Inc.
For The Property Located At
60 Walker Brook Road, Reading, Massachusetts**

**June 21, 2012
Case No. 12-10**

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, June 21, 2012 to hear the petition of Home Depot USA Inc., (the "Petitioner") who sought a Variance under Section 6.1 of the Zoning By-Laws in order to allow the Petitioner to have fewer than the number of parking spaces required by the Zoning By-Laws for retail use located at 60 Walker Brook Road in Reading, Massachusetts (the "Property"). This public hearing was a joint meeting of the Community Planning and Development Commission and the Zoning Board of Appeals.

The Property is located in a PUD-1 Zoning District. For the gross floor area of the Home Depot facility, the Zoning By-Laws require 469 parking spaces on the Property. The Petitioner requested relief in the number of required parking spaces to allow for increased use of parking spaces for truck rentals, cart corrals, shed displays, seasonal sales and additional outdoor areas as depicted on Parking Supply and Layout Drawing C-1, prepared by Vanasse Hangen Brustlin, 101 Walnut Street, P.O. Box 9151, Watertown, MA 02471 and certified by Michael E. McNiece, PE dated May 11, 2012 and amended June 21, 2012. The amendment dated June 21, 2012 revised the requested parking space relief from 75 to 65 spaces for the seasonal period of March through February from 32 to 22 spaces for the seasonal period of August through February.

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 Bradley Latham made a presentation on behalf of the Petitioner, detailing the proposed parking plan and compliance with the variance criteria. The meeting was then opened for public comment where some suggested alternatives were expressed.

A memorandum from the Zoning Officer dated June 20, 2012 was read into the meeting record. The Zoning Officer opined that truck rentals were not a retail use allowed by the Zoning By-Laws, however, subsequent discussion resulted in the conclusion that action on this issue rested with the Community Planning and Development Commission. Member Jarema concurred with the Zoning Officer's interpretation that the 12 parking spaces designated for the Penske Rental Truck enterprise is not a retail use at this location and subsequently, the petitioner/owner Home

Depot USA, does not qualify, in his opinion, for variance relief for reduction of parking requirements for the retail Home Depot use of the Reading Zoning Bylaws.

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

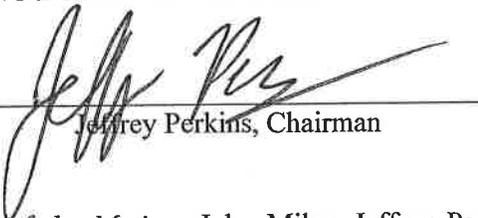
- (1) The uniqueness of the topography and soil conditions of the Property makes it difficult to reconfigure the parking arrangement or expand the retail activities into areas other than the existing parking field.
- (2) Literal enforcement of the Zoning By-Laws would involve significant changes to the property to provide additional parking spaces for truck rentals, cart corrals, shed displays, seasonal sales and additional outdoor activities.
- (3) Historical data on the use of customer parking spaces indicates the requested reduction in parking spaces will not change the character of the surrounding area, thus relief can be granted without detriment to the public good.
- (4) The reduction in parking spaces will not change the appearance of the property and will still allow an adequate margin for customer parking, 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 6.1 of the By-Laws in order to reduce the number of parking spaces as depicted on the referenced Plan.

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


Jeffrey Perkins, Chairman

Zoning Board Members Voting in favor of the Motion: John Miles, Jeffrey Perkins, Damase Caouette, Kristin Cataldo

Zoning Board Member Voting against the Motion: John Jarema