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ZONING BOARD OF APPEALS
DECISION ON THE PETITION OF ALICE BELTRAN
FOR THE PROPERTY LOCATED AT
29 GARDNER ROAD
READING, MASSACHUSETTS

December 5, 2013
Case No. 13-12

The Zoning Board of Appeals (the "Board") held a Public Hearing on Thursday, December 5, 2013 in the Selectmen's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts, to hear the continuation of the petition of Alice Beltran (the "Petitioner"). The Petitioner sought to modify a Variance granted by the Reading Board of Appeals on December 17, 1957 in order to use an existing structure as a cottage, accessory to the principal building (dwelling), on the property located at 29 Gardener Road in Reading, Massachusetts, (the "Property").

This case was originally opened on June 20, 2013 and continued, at the Petitioner's request, numerous times until December 5, 2013 in order for the Petitioner to obtain advice from attorney and also for the Board to receive advice from Town Counsel. At the December 5, 2013 hearing, the Petitioner was represented by Michael P. Osborne, Attorney-at-Law, of the law firm Hemsey Judge, P.C., Salem, Massachusetts.

Attorney Osborne opened the hearing with a presentation of why he was opinioned that the Petitioner should receive consideration from the Board to modify the Variance granted by the Board of Appeals on December 17, 1957, which allowed the use of the cottage on the Property as an accessory use or separate apartment. Attorney Osborne cited what he felt was relevant case law regarding the modification of the original Variance, specifically *Huntington v. Bd. Of Appeals*. Attorney Osborne felt *Huntington* would allow for the modification to the original 1957 Variance.

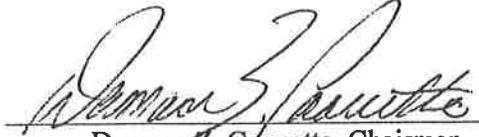
In a letter dated November 29, 2013, Town Counsel refuted Attorney Osborne's claim by noting that in the *Huntington* case, modification of a variance was allowed to the original applicant three years after the original Variance was granted. Town Counsel felt that *Huntington* does not stand for the fact that the Board of Appeals may modify conditions to a variance granted many years after and to a different petitioner. Because of the length of time that has passed since the original Variance was granted (December 17, 1957) and because the current Petitioner is not the original variance applicant, Town Counsel is of the opinion the Board of Appeals does not have the power to modify the original 1957 Variance.

Upon a motion duly made and seconded, the Board voted unanimously (0-5-0) to deny the Petitioner's request to modify the original Variance granted on December 17, 1957 in order to use the existing cottage as a separate apartment or accessory building to the principal dwelling on the property located at 29 Gardner Road, Reading, Massachusetts. This decision does not preclude the Petitioner from submitting an application for a new variance for an accessory apartment at the property located at 29 Gardner Road, Reading, at a future date.

Any person aggrieved by this decision of the Board may appeal to the appropriate court pursuant to MGL 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.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS



Damase L. Caouette, Chairman

Zoning Board Members voting on Case No. 13-12
Damase Caouette, Robert Redfern, David Traniello, Kathleen Hackett, John Jarema