

Town of Reading Zoning Board of Appeals

The Decision of the Board of Appeals on the Petition of

**Reading Petroleum, Inc.
On the Property Located at
431 Main Street
Reading, Massachusetts
Case No. 13-20**

November 7, 2013

The Zoning Board of Appeals (the Board) opened a public hearing in the Selectmen's Meeting Room at the Town Hall, 16 Lowell Street, Reading, Massachusetts at 7:00 PM on Thursday, November 7, 2013, on the petition of Reading Petroleum, Inc., 431 Main Street, Reading, Massachusetts, who sought a Variance under Sections 4.0/4.2.2 of the Reading Zoning By-laws (the By-laws) and/or an appeal of the Decision/Order of the Building Inspector, in order to have "open storage" of used cars for sale in a Business B District on the property located at 431 Main Street Reading, MA.

The Petitioner, currently leasing the property from the owner, and operating a service station at the property, was represented by William Crowley, Esquire, of 159 Haven Street, Suite 1, Reading, MA 01867, who detailed the proposal, the variance criteria and the benefits and impact upon the business conducted at the property and the community. The sale of up to 6 used cars at the property was proposed, with the storage and display of the cars for sale to be in open spaces on the Washington Street (northerly) facing side of the property. The Petitioner represented that the owner of the property did not object to the Petitioner's proposed sale of used cars on the property.

The Applicant requested that the Board issue a Variance pursuant to Section 4.0 and 4.2.2 of the Reading Zoning By-Law, as amended. After a discussion of the variance criteria and the applicable sections of the By-Law, the Board made the following findings:

1. The Petitioner has filed an application with the Town Manager for a license to sell cars. The application is pending.
2. Section 4.2.2 of the By-Law provides that "open storage" is not an Accessory Use allowed in a Business B District.
3. Section 4.2.2 of the By-Law provides that sale of new and used cars is a permitted Automotive Use and is allowed in Business A and B Districts.
4. The sale of new and used cars classification within its scope includes the open storage and display of the cars held for sale.
5. The Petitioner would likely not be able to meet the criteria for issuing a Variance under the present circumstances.
6. The Petitioner is not the owner of the property, and even if the Board was able to grant the Petitioner's application for a Variance, the variance would run with the property, not with the Petitioner, who upon being approved as a business licensed to sell cars, is only the lessee of the property, not the owner.

A motion was made and seconded and the Board voted 5-0-0 in the affirmative pursuant to its authority under Section 7.4.2.1 of the By-Laws and M.G.L. Chapter 40A, Section 8, to reverse the Decision of the Building Inspector denying the Petitioner's request to conduct the sale of used cars at 431 Main Street, Reading, MA, and conditioning said request upon the grant of a Variance for "open storage" of vehicles for sale dated October 7, 2013. In so doing, the Board's decision allows the sale of used vehicles as a permitted Automotive Use in a Business B District, as it applies to the owner and operator of Reading Petroleum, Inc., 431 Main Street, Reading, MA, under Section 4.2.2 of the By-Laws, as a matter of right, conditioned upon the following:

1. That the Petitioner obtain the required license from the Town Manager to sell cars;
2. That the Petitioner comply with all federal, state and local laws and ordinances related to the allowed use upon the property; and,
3. That the Petitioner withdraw its application for a Variance pursuant to Section 4.0/4.2.2 of the By-Laws.
4. That upon approval of said withdrawal, the Board's decision makes no determination upon the "open storage" classification, and is limited to the current application presented by Petitioner and the precise facts and scope of the within application as presented.

Petitioner made a request from the floor through counsel to withdraw its application for a Variance pursuant to Section 4.0/4.2.2 of the By-Laws. A motion was made and seconded and the Board voted 5-0-0 in the affirmative to grant Petitioner's request to withdraw its application for a Variance for "open storage" of vehicles for sale on the property.

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

This Decision 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, 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.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS


Damase Z. Caouette, Chairman

Board members voting on Case No. 13-20

For Granting: Damase Caouette, Robert Redfern, John Jarema, Kathleen Hackett and David Traniello.