

04/08/2015  
I hereby certify that  
twenty days have elapsed  
since this decision was  
filed in this office  
and no appeal from the  
decision has been filed.  
*Laura A. Gemme*  
Town Clerk

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2015 MAR 18 P 2

TOWN OF READING, MASSACHUSETTS

DECISION OF THE ZONING BOARD OF APPEALS ON THE PETITION OF

JEFFREY THEIS FOR THE PROPERTY LOCATED AT

15 BEAR HILL ROAD, READING, MASSACHUSETTS

A TRUE COPY, ATTEST:

*Laura A. Gemme*

LAURA A. GEMME  
TOWN CLERK

MARCH 5, 2015

Case No. 15-03

The Zoning Board of Appeals (the "Board") held a public hearing on Thursday, March 5, 2015, in the Selectmen's Meeting room at Town Hall, 16 Lowell Street in Reading, Massachusetts, to hear the petition of Jeffrey Theis (the "Petitioner") who sought a Variance/Appeal from a Decision of the Building Inspector under Section 5.2.3.2/7.4.2.1 of the Zoning By-Law in order to construct an extension of a structure that resembles an overhang on the property located at 15 Bear Hill Road, Reading, Massachusetts (the "Property"). This proposed overhang/structure encroaches into the required side yard setback of 15', required in an S-15 Residential District.

The proposed overhang/structure is shown on a Plot Plan of Land, prepared and certified by the Edward J. Farrell, PLS, 110 Winn Street, Suite 203, Woburn, MA, dated January 28, 2015, and Architectural Drawings, sheets 1-5 dated December 16, 2014, prepared Fieldworkshop, 562 Massachusetts Avenue, #5, Boston, MA 02118.

The Board first considered whether to uphold the decision of the Building Inspector dated February 19, 2015, that the proposed overhang/structure does not fall into the exceptions enumerated in Section 5.2.3.2.

After discussion by the Board and, following the Petitioners' presentation, the public session was opened to public comment and closed.

Accordingly, a motion was made and seconded and the Board voted (4-1-0, Caouette opposed) to uphold the decision of the Building Inspector dated February 9, 2015.

Next the Board moved to the Petition for a Variance.

The Board of Appeals may grant a Variance if it finds that the four following conditions have been met: (1) particular circumstances existing relating to soil conditions, shape or topography of the land or structures that are subject to the petition, but do not generally affect the zoning district in which it is

located; (2) a literal enforcement of the zoning ordinance would involve a substantial hardship, financial or otherwise; (3) the desirable relief can be granted without substantial detriment to the public good; and (4) that the Variance does not nullify or substantially derogate from the intent or purpose of the zoning ordinance.

The Petitioner presented their positions to the following four criteria required to be met for a Variance and why the Petitioners' request for a Variance is warranted.

1. There are 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 building's south facing façade is located directly on the setback line, thus any effort to provide proper shading overhang for South facing windows would result in an overhang that projects beyond the setback line.
2. A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise. Preventing the inclusion of the roof overhang being requested would eliminate proper shading and potentially require air conditioning during summer months.
3. Desirable relief may be granted without substantial detriment to the public good. The overhang being requested is similar to an exception in the By-laws of a roof eave, built on a building within the allowable setbacks. The proposed overhang is very low profile, which would not impact the local residents.
4. Relief may be granted without nullifying or substantially derogating from the intent or purpose of the zoning by-law. The granting of a Variance would be a minor deviation from Section 5.2.3.2, listing an eave as an exception from enforcement.

Following the Petitioners' presentation, the public session was opened to public comment and discussion by the Board.

Accordingly, a motion was made and seconded and the Board voted (2-3-0 , Traniello/Caouette for, Redfern, Jarema, Hackett against), resulting in a denial of the Petitioners' request for a Variance under Section 5.2.3.2/7.4.2.1 of the Zoning By-Law in order to construct an extension of a structure that resembles an overhang on the property located at 15 Bear Hill Road, Reading, Massachusetts as depicted on the previously referenced Certified Plot Plan and Architectural Drawings.

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 is 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 Special Permit does so at the risk that a court may reverse the permit and that any construction performed under the permit may be ordered to be undone.

ON BEHALF OF THE READING ZONING BOARD OF APPEALS

  
Robert Redfern, Chairman

Zoning Board Members voting on Case # 15-03

Damase Caouette, Kathleen Hackett, John Jarema, Robert Redfern, David Traniello

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