

05/04/2015

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twenty days have elapsed
since this decision was
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decision has been filed

TOWN OF READING

ZONING BOARD OF APPEALS

DECISION ON THE PETITION OF FAIRHAVEN REALTY ASSOCIATION
FOR THE PROPERTY LOCATED AT

303 SALEM STREET, READING, MASSACHUSETTS

RECEIVED
TOWN CLERK
READING, MASS.

APR 13 A 11:31

Raul G. Gagne
Town Clerk

April 2, 2015
Case No. 15-02

The Zoning Board of Appeals (the "Board") held a public hearing on Thursday, April 2, 2014 at 7:00 p.m. in the Selectman's Meeting Room at Town Hall, 16 Lowell Street in Reading, Massachusetts to hear the petition of Fairhaven Realty Association, also known as Cumberland Farms, (The "Petitioner"). The Petitioner sought a Variance under Section(s) 8.2.3/8.2.5.e of the zoning bylaws in order to remove 6 manual pump toppers and to install 6 LED pump toppers on the property located at 303 Salem Street in Reading, Massachusetts (the "Property").

The Property is located in a Business B district. Carolyn A. Parker (hereinafter, Ms. Parker), made the presentation on behalf of the Petitioner. The Petitioners sought a Variance under Section 8.2.3 of the zoning bylaws as the number of proposed signs exceeds those permitted in the table and under Section 8.2.5e which states that "[a]ny self-illuminated or backlit signs which use LCD, LED or electronic messaging or digital technology" are prohibited. The Petitioner's case was initially presented to the Board on January 5, 2015. A motion was made and seconded and the Board voted 5-0-0 to approve a continuance to permit the Petitioner to obtain a Certificate of Appropriateness from the CPDC pursuant to zoning bylaws Section 8.2.6.4.1 which states that "[n]o sign permit shall be issued for any permanent sign in the Business-B Zoning District without the sign having been granted a Certificate of Appropriateness." On March 23, 2015, the CPDC conditionally approved a Certificate of Appropriateness for LED Pump Toppers on the Property which stated that the standard LED Pump topper shall be non-flashing static display with light levels for the standard LED Pump topper at level number 3 out of 10. At the Board meeting on April 2, 2015, Ms. Parker stated that the Petitioner agreed to the conditions set forth by the CPDC.

The Board of Appeals may grant a variance pursuant to the authority contained in M.G.L. Chapter 40A, Section 10, provided the following four criteria are met:

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:
Ms. Parker stated that the site is unique in that it is a gas station located on a corner lot and needs to properly display the current gas prices. The structures in question are the six fuel dispensers with manual pump toppers located under the existing overhead canopy. The Petitioner proposes to remove the existing manual pump toppers and install new LED pump toppers. The pump toppers are a requirement of the Commonwealth of Massachusetts although the pump toppers are not required to be LED. The subject variance gas station and convenience store has been opened since 1999. The subject variance does not conflict with the general public purposes of the zoning ordinance and continues to permit a reasonable use, i.e., a fuel price sign. The granting of the requested variances poses no adverse impact to the health, safety, and general welfare of the community. The hardship has nothing to do with the property but prevents the Petitioner from keeping up with technology and installing LED pump toppers. The installation of the LED pump toppers has no adverse impact upon the site.


2. A literal enforcement of the provisions of the ordinances or bylaw would involve substantial hardship, financial or otherwise, to the Petitioner:
Ms. Parker stated that the purpose of the Zoning Regulation is to promote the health, safety and general welfare of the inhabitants of the Town of Reading. Manual pump toppers require personnel to physically change the prices. The store employees have to shut down the lanes with safety cones to change the prices even in rainy, icy or windy conditions and can be dangerous. The installation of the LED pump toppers allow the prices to be changed from within the building just like the price signs on the canopy.
3. Desirable relief may be granted without substantial detriment to the public good:
Ms. Parker stated that using electronic price signage helps eliminate human error and environmental effect (e.g. price sign placards blowing away, falling off, etc.), further ensuring that the prices displayed are accurate and up-to-date. This assists consumers in making important decisions regarding gas price choices and there will be no detriment to the public good.
4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or bylaw:
Ms. Parker stated that granting the variance would not nullify or derogate from the zoning ordinance because the signs in question are not the signs which the ordinance intended to prohibit. The pump toppers are 2.15 square feet and located on the dispensers within the property. The purpose of the Zoning Regulation is to promote the health, safety and general welfare of the inhabitants of the Town of Reading and having the signs manually changed can cause safety hazards to the store employees.

A motion was made and seconded and the Board voted 5-0-0 to approve the petition for a variance under section 8.2.3/8.2.5e of the zoning bylaws in order to remove 6 manual pump toppers and to install 6 LED pump toppers on the property located at 303 Salem Street in Reading, Massachusetts as reflected and consistent with the Sign Drawings depicting proposed signage prepared by Able and dated November 2, 2012. Two conditions of the Board's approval shall be: (1) the standard LED Pump topper shall be non-flashing static display and (2) light levels for the standard LED Pump topper shall be at level number 3 out of 10.

Any person aggrieved by the 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 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 # 15-02
Robert Redfern, Damase Caouette, John Jarema, David Traniello, Kathleen Hackett

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