

Town of Reading Zoning Board of Appeals

The Decision of the Board of Appeals on the Petition of

**Anne Jack
On the Property Located at
51 Walnut Street
Reading, Massachusetts
Case No. 13-03**

March 28, 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, March 21, 2013, on the petition of Mrs. Anne Jack of 51 Walnut Street, Reading, Massachusetts, who sought a Variance under Section 4.2.2 of the Reading Zoning By-laws (the By-laws) in order to use the premises as a "home occupation" (as that term is defined by the By-laws) with a person (her sister) that is not a resident of the dwelling of the property located at 51 Walnut Street, Reading, Massachusetts.

The Petitioner was represented by herself, and she detailed the proposal to start a bakery business in her kitchen that bakes gluten free bakery items to sell at retail shops, along with her sister, Margaret Sweeney, a resident of Reading but not of the premises where the baking business will be operated. The name of the business will be "Love My Gluten Free, LLC," and this name has been registered with the Massachusetts Secretary of State.

At the March 21, 2013, meeting, the Board inquired about the size and location of the business, the expected timing of the operation of the business, the presence of employees other than Ms. Sweeney, and the benefit to the Petitioner.

It was noted at the meeting that the Town Zoning Officer, via C. Glen Redmond, had prepared two memos, one dated June 5, 2012, outlining the denial of Petitioner's Application for a Permit as a Home Occupation under Section 2.0 of the By-Laws as Ms. Sweeney, one of the operators and employees of the proposed business, was not a resident of the property at 51 Walnut Street, Reading, Massachusetts, and a second, dated March 21, 2013, again outlining the denial of the Petitioner's application, and requiring the current application for a Variance. Mr. Redmond did not have an issue with the Variance application.

Section 2.2.17 defines Home Occupation as: "The use of room or rooms in a dwelling as an office, studio or working room by a person resident in the house where no goods are publicly displayed or offered for sale."

Section 4.2.2 of the Use Regulations lists a Table of Uses allowing a Home Occupation in a S-15 District, which covers the property above.

After discussion, The Board determined that the Petitioner has applied for a Use Variance of the terms of the by-laws, which may be granted by the Board pursuant to the authority contained in M.G.L. Chapter 40A, Section 10, provided the following four criteria are met:

1. Owing to 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:
-Petitioner outlined that the structure, specifically, the kitchen would be the sole base of operation for the proposed Home Occupation. The Board also determined that as the primary issue for the application was the "non-resident" status of Margaret Sweeney, this first criteria was not specifically applicable to a determination on Petitioner's application.
2. A literal enforcement of the provisions of the ordinance or by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant:
-Petitioner has sought out off-premise baking kitchens to suit her "gluten free" requirements but has not found one suitable for her needs either practically or financially as a start-up business. A variance would allow the non-resident sister, Margaret Sweeney, to contribute to the operation of the business.
3. Desirable relief may be granted without substantial detriment to the public good:
-Petitioner will only use her residence kitchen, no sign will be displayed, and no product will be sold from the premises. Deliveries will be made by Petitioner's private vehicles, and no increase in vehicular traffic, including delivery vehicles, will occur.
4. Desirable relief may be granted without nullifying or substantially derogating from the intent or purpose of such ordinance or by-law:
-Petitioner intends to maintain and preserve the residential nature of the surrounding neighborhood, and further intends that no additional employees besides herself and Ms. Sweeney will operate the business. Further, no signage will be displayed, there will be no sale of goods from the premises, and deliveries will be made using Petitioner's private vehicle.

A motion was made and seconded and the Board voted 5-0-0 in the affirmative to grant a Use Variance under Section 4.2.2 of the by-laws to Petitioner Anne Jack, in order to use the premises as a "home occupation" as defined by Section 2.2.17 of the by-laws, to wit: Love My Gluten Free, LLC, with a person that is not a resident of the dwelling on the property located at 51 Walnut Street, Reading, Massachusetts as reflected and consistent with: (1) the drawings numbered 2 and 3 prepared and stamped by Professional Engineer Peter Sandorse and Phoenix Collaborative Architects of Wakefield, Massachusetts, dated May 21, 2009, appended to the Petition. A condition of the Board's approval shall be that the Applicant must operate the baking business from her own kitchen, must not hire any additional employees, must not post any signage, must not offer any goods on display for sale, and must maintain and preserve the residential nature of the property and surrounding neighborhood.

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 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, 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.

The person exercising rights under a duly appealed Variance 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



Damase Caouette, Chairman

Board members voting on Case No. 13-03

For Granting: Chairman Damase Caouette, Vice Chairman Robert E. Redfern, John J. Jarema, Kathleen Hackett and David Traniello. Associate Member John Miles was present but did not vote.