



Joseph. C. Sullivan
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, MA
www.braintreema.gov

Zoning Board of Appeals (ZBA) Meeting Minutes August 20, 2018

IN ATTENDANCE:

Stephen Karll, Chairman
Michael Ford, Member
Richard McDonough, Member
Stephen Sciascia, Associate
Gary Walker, Associate

ALSO PRESENT:

Jeremy Rosenberger, Zoning Administrator
John Goldrosen, Assistant Town Solicitor

Chairman Karll called the meeting to order at 7:00pm.

OLD BUSINESS:

- 1) Petition Number: 18-26
Petitioner: Heather Dudko
Property Owner: Ivory Plaza LTD Partnership
RE: 180 Pearl Street**

Heather Dudko, 2 Phoebe Way, Worcester, MA 01605 (Property Owner, Ivory Plaza LTD Partnership) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to replace existing wall sign with a 4 ft. x 37 ft. illuminated wall sign and install two (2), 2.5 sq. ft. illuminated under canopy signs for tenant HomeSense; proposed signage would exceed allowable sign area and number of signs. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 180 Pearl Street, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 18, and contains a land area of +/- 7.28 acres.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on July 23, 2018 at 7 p.m. and continued by mutual agreement to August 20, 2018. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Gary Walker, Alternate.

Evidence

At the initial public hearing on July 23, 2018, the petitioner Heather Dudko, explained that HomeSense, a TJ Maxx company, is seeking to increase the size of a wall sign recently approved by the Board in December 2017. The existing sign is 10 ft. x 10 ft. The tenants feel the approved sign's text is smaller than the other retail establishments in the building and therefore would like to increase the wall sign to 14 ft. x 14 ft. In addition, the increase in size will ensure property visibility for potential patrons and better align with the standard branding/sign size for HomeSense. Lastly, HomeSense would also like to provide two (2), under canopy signs, similar to existing under canopy signs the Board granted for TJ Maxx.

Mr. Ford expressed he did not have an issue with the proposed size of the wall sign as the retail site's location is unique and not highly visible. In addition, he would like to support Braintree's existing retail tenants. Furthermore, Mr. Ford acknowledged the actual lettering is significantly smaller than the sign; the height of the sign was due to the signage panel/backing. However, Chairman Karll felt that an increase in size to a recently approved sign would set an unwarranted precedent. As such, Mr. Karll felt he could not vote in favor of the proposal. Mr. McDonough asked the petitioner if there could be an alternative concept to meet the needs of the tenant. Ms. Dudko responded she would explore the possibility of changing to a fully horizontal sign that would be one row of lettering. Chairman Karll asked the petitioner if they would like to extend the hearing to allow for time to develop a new signage plan accordingly. Ms. Dudko agreed. As such, Ms. Dudko and the Board mutually agreed to continue the public hearing to August 20, 2018.

At the continued public hearing on August 20, 2018, Ms. Dudko presented the Board a revised proposal for a 4 ft. x 37 ft. wall sign. Ms. Dudko stated the sign would meet the allowable height, but would be slightly larger than the signage regulations allow. In addition, the proposal still includes the two (2) under canopy signs, which require Board approval due to the number of proposed signs. The Board had no issues with the updated wall sign.

The petitioners seek the following signage variances:

- **Variance from Section 135-904.2 (A)(5)(c):** The Braintree Zoning Bylaw states "No wall sign shall be visible to the major highway, if a ground sign has been permitted." The Petitioner is seeking to add signage on the existing directory ground sign. In this case, both the ground sign facing Pearl Street and the proposed wall sign would be visible to Pearl Street (the "major highway").
- **Variance from Section 135-904.2 (A)(5)(e):** The Braintree Zoning Bylaw states "Sign area is further limited to one square foot of signage per linear foot of frontage. Said frontage shall be the linear feet of the building which faces the access

roadway.” The linear frontage of the HomeSense retail space is +/-105 ft. The aggregate area of the wall sign and hanging directory sign is 152.5 sq. ft.

- **Variance from Section 135-904.2 (A)(5)(g):** The Braintree Zoning Bylaw states “No more than one wall sign for each store or business occupying a building shall be permitted. The aggregate total of all signage allowed shall not exceed 150 square feet in area. Sign permit may be issued only after written permission for said signs is authorized by the Zoning Board of Appeals.” The aggregate area of the wall sign and hanging directory sign is 152.5 sq. ft.

As grounds for the variances, the petitioner noted the large “brick & mortar” stores are located up on a hill and difficult to see from the major roadway (Pearl Street). The location is also a large distance from Pearl Street. In addition, the proposed signage will not be oriented or be visible to any immediate residential areas. The petitioner discussed the new signage will be scaled appropriately relative to the new proposed facades. Comparatively, past Board signage cases for the location have included wall signs that were 6’ and 8’ in height. Also, while the total area of the signs exceeds the signage requirements, the actual size of the lettering will be thin and appropriately designed. As evidenced by the prior Board approvals, the proposed signage will be consistent with previously granted variances.

The petitioner presented signage plans entitled “HomeSense”, dated May 16, 2018, and prepared by American Sign, Inc.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) No sign illumination from 1am-6am, pursuant to Section 135-905. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found that the proposed signage, when analyzed in relationship to the building and existing/previous tenant signage, is appropriate in design, size and scale. The Board found the location of the retail store is uniquely situated higher than the primary roadway and setback significantly. In addition, the Board found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed wall sign is necessary to identify the location of the business and for the traveling public to be safely directed to the businesses. Lastly, the Board found that the wall signs would be well designed, appropriate in terms of size and consistent with the architectural style of the existing building. As a result, the Board found relief can be granted without resulting in a substantial detriment to the public good and will not nullify the intent of the Zoning By-law.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from Bylaw Section 135-904.2, pursuant to Bylaw Section 135-407 and 908, in accordance with the plans submitted and the condition of no sign illumination from 1am-6am, pursuant to Section 135-905.

- 2) Petition Number: 18-17**
Petitioner: Brian & Laura McGourty
RE: 460R Pond Street

The public hearing was continued from July 23, 2018 and the Board requested a continuance to September 24, 2018 to allow for more time for the Board to review the documents/materials related to the petition.

On a motion made and seconded, the Board voted 5-0 to continue the public hearing to September 24, 2018.

NEW BUSINESS:

- 1) **Petition Number: 18-28**
Petitioner: Mai Phung
Property Owner: Julie Ha Vo
RE: 352-354 Washington Street

The initial public hearing was held and continued to September 24, 2018 to allow for more time for the petitioner to seek potential off-street parking arrangements in the area.

On a motion made and seconded, the Board voted 5-0 to continue the public hearing to September 24, 2018.

- 2) **Petition Number: 18-29**
Petitioner: Michael & Nicole Vickery
RE: 28 Willard Street

Michael & Nicole Vickery, 28 Willard Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to construct a 26' x 16' in-ground pool; proposed pool would be within the front yard setback on Claremont Street. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 28 Willard Street, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 3026, Plot 34, and contains a land area of +/- 8,728 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on August 20, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Gary Walker, Alternate.

Evidence

Michael Vickery, the petitioner, explained they are seeking to construct a 16 ft. x 26 ft. in-ground pool with associated hardscape/landscape improvements. The proposed in-ground pool would be 10 ft. from the lot line on Claremont Street. Mr. Vickery noted he constructed the existing rear deck without a permit, and the deck directly touches the existing rear detached garage. The petitioner attests the deck is not physically attached to the garage and acknowledges he did not think the deck, due to its low height, required a permit. After discussions with the Town's Building Inspector, the Building Inspector determined the deck would cause the detached garage to be attached as all the structures would touch and therefore

require a rear yard setback variance. Mr. Vickery agreed to seek a building permit for the deck and remove approximately 1 ft. of the deck closest to the detached garage to remedy the situation. Lastly, the petitioner discussed the proposed pool will require a Special Permit from the Planning Board as the pool is within the Open Space Buffer Zone pursuant to Section 135-702(b).

Chairman Karll and Mr. Ford felt the determination by the Building Inspector regarding the deck and need for a variance was extremely strict. Mr. Vickery replied that he will agree to remove a portion of the deck to resolve any potential issues.

The petitioner's existing lot is nonconforming, as it contains 8,728 sq. ft., where 15,000 sq. ft. is required and provides 70 ft. of lot width, where 100 ft. is required. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

A variance is required for relief from the front yard setback requirement. The proposed in-ground pool will be located 10 ft. from the front yard setback on Claremont Street. Pursuant to Zoning Bylaw Section 135-703(a), no accessory uses other than off-street parking are allowed in the front yard setback areas. Therefore, a variance is required pursuant to Zoning Bylaw Section 135-407.

As grounds for the variance, the petitioner noted the siting of the existing dwelling on the corner lot presents a hardship with regard to the placement of a pool on the property. The petitioner noted the front yard restriction on Claremont Street significantly limits the use of their back yard due to the property having less width than depth. Also, the placement of the pool will not be seen as it will be properly screened with a fence and landscaping.

The applicant presented the plot plan entitled "Proposed Pool", dated July 2, 2018, and prepared by Webby Engineering Associates, Inc. of Plympton, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Prior to issuance of a building permit: (a.) Legalize the recently constructed rear deck via a building permit, and (b.) Remove a portion of the rear deck that is "attached" to the rear garage; 2.) Any changes to the approved plans will require ZBA approval; and 3.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot area and width, as noted above. The Board found that due to the shape of the corner lot, which is much longer in depth than width and sloping topography in the front yard, the petitioners are constrained with regard to placement of the proposed in-ground pool. As such, the proposed location of the in-ground pool is the only suitable location on the property. The Board also found that Claremont Street is not a high traffic street and that the pool will be properly screened. Lastly, the Board found there was no opposition to the proposed project. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and front yard variance, pursuant to Bylaw Section 135-407, in accordance with the plans submitted and the following conditions:

- 1.) Prior to issuance of a building permit: (a.) Legalize the recently constructed rear deck via a building permit, and (b.) Remove a portion of the rear deck that is "attached" to the rear garage;
- 2.) Any changes to the approved plans will require ZBA approval; and
- 3.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

**3) Petition Number: 18-30
Petitioner: Mark and Kara Erdody
RE: 20 Union Place**

Mark and Kara Erdody, 20 Union Place, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to demolish existing rear deck/portion of rear single family dwelling and construct two-story addition (+/- 825 sq. ft. building footprint); proposed additions would maintain, but intensify existing nonconforming side yard setback of 2.7 ft. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 20 Union Place, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 1004, Plot 15, and contains a land area of +/- 12,206 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on August 20, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Stephen Sciascia; and Richard McDonough, Alternate.

Evidence

Mark Erdody, the petitioner, explained they are seeking to raze an existing rear deck and portion of the dwelling to construct a two-story rear addition with a building footprint of +/- 825 sq. ft. The existing building footprint is +/- 1,194 sq. ft. The proposed addition to the first floor would demolish the existing kitchen (one story) and create a new larger kitchen and a new family room. The second floor addition would provide a new laundry room, bedroom and a master bedroom suite. The petitioner has stated they will not be increasing the building footprint on the west side of the property, but in fact replacing an old and inefficient portion of the existing dwelling. Lastly, a new 12' x 10' rear deck off the kitchen is proposed.

The petitioner's existing lot is nonconforming, as it contains 12,206 sq. ft., where 15,000 sq. ft. is required and provides 97 ft. of lot width, where 100 ft. is required. The petitioner's existing single family dwelling is nonconforming as to the left yard setback; the dwelling is located 2.7 ft. from the left side, while the Zoning Bylaw requires a side yard setback of 10 ft.

The proposed additions will maintain the pre-existing nonconforming side yard setback and not create any new zoning nonconformity. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the addition will utilize the existing building footprint on the west side and not generate any new zoning nonconformity. Secondly, the petitioner noted the addition will be well designed, similar to the existing neighborhood characteristics and not be more detrimental to the neighborhood.

The applicant presented the existing conditions plan entitled "Plot Plan, 20 Union Place, Braintree, MA", dated December 12, 2017, and prepared by James E. McGrath of Weymouth, MA. The applicant also presented the plan entitled "Plot Plan, 20 Union Place, Braintree, MA", dated July 5, 2018, and prepared by James E. McGrath of Weymouth, MA. The applicant also presented floor plans and architectural renderings entitled "Erdody Family Addition & Renovation, 20 Union Place, Braintree, MA", dated June 13, 2018, numbered 1 thru 9, and prepared by HOMESTYLEdesigns of Weymouth, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Any changes to the approved plans will require ZBA approval; 2.) Submission of a certified foundation to the Planning & Community Development Department prior to vertical construction; and 3.) Submission of as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found that the lot is pre-existing nonconforming in terms of lot area and width, as noted above. The Board found that the dwelling is pre-existing nonconforming in terms of the left side yard setback. The Board also found that the proposed additions will not create any new zoning non-conformity. The Board further found that the proposed additions will be designed appropriately and be comparable in size relative to the existing housing stock. Lastly, the Board found there was no opposition to the proposed project. As such, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Submission of a certified foundation plan to the Planning & Community Development Department prior to vertical construction; and
- 3.) Submission of an as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

OTHER BUSINESS:

On a motion made and seconded, the Board voted 5-0 to grant a six (6) month variance extension to Petition #17-35, 50 Liberty Park.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 5-0 to accept the July 23, 2018 meeting minutes.

The Board adjourned the meeting at 10:00 pm.