



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 Notes August 23, 2016

IN ATTENDANCE:

Stephen Karll, Chair
Michael Ford, Member
Michael Calder, Member
Richard McDonough, Member

ALSO PRESENT:

Jeremy Rosenberger, Zoning Administrator

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

NEW BUSINESS:

- 1) Petition Number: 16-30
Petitioner: Lauren R. Sweeney
RE: 234 Commercial Street**

Lauren R. Sweeney, 15 Grove Circle, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403 and 701 to construct a second story, rear addition (+/- 494 sq. ft.) with +/- 140 sq. ft. first floor bump-out; increase the height of the existing second floor (755 sq. ft.) to 32 ft. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 234 Commercial Street, Braintree, MA 02184 and is within a Residential B District Zone and 100-Year Floodplain, as shown on Assessors Map 3023, Plot 02, and contains a land area of +/- 37,460 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 23, 2016 at 7 p.m. Sitting on this case for the Zoning

Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

Evidence

Kevin Sweeney was on hand representing the petitioner, his wife Laura R. Sweeney. Mr. Sweeney discussed with the Board, his wife had purchased the run-down two-family dwelling through foreclosure. He added the roof is in severe disrepair and there is evidence of animals living in the structure. Mr. Sweeney explained the proposed project before the Board is to construct a second story, rear addition (+/- 494 sq. ft.) with +/- 140 sq. ft. first floor bump-out. The proposed project would also increase the height of the existing second floor (755 sq. ft.) to 32 ft. Lastly, Mr. Sweeney highlighted, that while the property is very large (37,460 sq. ft.), most of the property is unusable due to its location within the 100-Year Floodplain, proximity to the Monatiquot River and existing wetlands on the property.

The petitioner's existing lot is nonconforming, as it provides only +/- 90 feet of lot width at the existing structure, where 100 feet is required. The petitioner's existing two-family structure is nonconforming as to the front yard setback; the front stairs/landing, which exceeds the 30 sq. ft. allowance afforded to projections into setbacks pursuant to Section 135-701(7), is located +/-15 feet from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 feet. In addition, the petitioner's existing two-family structure is nonconforming as to the side yard setback; the structure's front stairs/landing is located +/- 4 feet from the side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 feet. Furthermore, the petitioner's existing two-family structure is nonconforming as to the rear yard setback; the structure is located 4.5 feet from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 feet. Lastly, the petitioner's existing two-family structure is nonconforming as to the two-family use; a two-family use is not allowed in a Residence B Zoning District. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6 for the existing non-conforming lot, structure and use.

As grounds for the finding, the petitioner noted the proposed project will significantly improve an existing, run-down legal two-family dwelling. Secondly, Mr. Sweeney discussed the project will not generate any new zoning nonconformity. Furthermore, the petitioner noted the existing side yard setback non-conformity will be slightly reduced, as the side of the front stairs/landing will be moved to be flush with the existing side of the dwelling.

The applicant presented the plan entitled "Plot Plan Showing Proposed Addition to 234 Commercial Street in Braintree, Mass.", dated July 29, 2016 and prepared by Neponset Valley Survey Assoc., Inc. of Quincy, MA. The applicant also presented floor plans and architectural renderings entitled "Proposed Alterations, 234 Commercial Street, Braintree, MA", labeled A-1 thru A-3, dated July 2016 and prepared by David Tonis of East Bridgewater, MA.

The Planning Board submitted a favorable recommendation. No one else 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 width, as noted above. The Board also found the existing dwelling is pre-existing nonconforming in terms of front, side and rear yard setbacks. In addition, the Boards found the existing two-family dwelling is pre-existing nonconforming in terms of the two-family use. The Board also found

that the proposed improvements to the existing rundown structure will significantly improve the neighborhood. The Board also found that the proposed alteration/extension will not create any new zoning non-conformity. The Board further found the proposal will slightly decrease the existing side yard setback nonconformity. As a result, the Board found that the proposed alteration/extension to an existing non-conforming lot, structure and use would not be substantially more detrimental to the neighborhood than the existing nonconforming lot, structure and use.

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.

- 2) Petition Number: 16-31**
Petitioner: Heather Dudko/National Sign Corporation
Property Owner: Seritage KMT Finance LLC
RE: 200 Grossman Drive

Heather Dudko/National Sign Corporation, 2 Phoebe Way, Worcester, MA 01605 (owner, Seritage KMT Finance LLC) for relief from Bylaw requirements under Chapter 135, Sections 407 and 904.2 to install (2) two tenant panels (9 sq. ft. and 42 sq. ft.), on (2) two existing ground signs, displaying Nordstrom Rack. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 200 Grossman Drive, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 2019, Plot 4-1, and contains a land area of +/- 34.36 acres.

Notice

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Evidence

Heather Dudko appeared on behalf of National Sign Corporation and Nordstrom's Rack. Ms. Dudko explained Nordstrom's Rack is to be located in the newly subdivided retail space previously occupied by KMart. Ms. Dudko further discussed Nordstrom's is seeking to install (2) two tenant panels (9 sq. ft. and 42 sq. ft.), on (2) two existing ground signs, displaying Nordstrom Rack. The Zoning Administrator discussed Nordstrom's Rack was granted a building permit for a 128 sq. ft. wall sign on June 23, 2016 (141 ft. frontage). The permit was issued only for a wall sign and no panels on the three existing ground signs. The wall sign met the requirements pursuant to Section 135-904.2 of the Zoning By-laws. However, the retailer has decided they would like panels on two of the existing large ground signs, which requires a variance from the Board.

The petitioner seeks a variance from Section 135-904.2(A)(5)(c) of the Zoning By-laws which does not allow a wall sign visible to a major highway if a ground sign has permitted. The Zoning Administrator discussed Nordstrom's Rack was granted a building permit for a 128 sq. ft. wall

sign that met the requirements pursuant to Section 135-904.2 of the Zoning By-laws. However, the retailer has since decided they would like panels on two of the existing large directory ground signs, which requires a variance as stated. Ms. Dudko explained the two proposed locations for the tenant panels are on the existing directory ground sign at the corner of Union Street and Grossman Drive, and the second, on the existing directory ground sign located on the Marketplace property, facing and adjacent to Route 3. The Zoning Administrator further discussed the existing ground sign at the corner of Union Street and Grossman Drive is located on MBTA property. The Zoning Administrator explained the Town Counsel in 1997 determined the ground sign, due to its location on MBTA property, was not subject to local zoning laws (but subject to Commonwealth's Outdoor Advertising Board). Therefore, the Sign Review Board on February 24, 1999, found they did not have jurisdiction with regard to the ground sign. The existing ground sign facing Route 3, on Marketplace property, was approved by the Sign Review Board on March 16, 1994, allowing a 58 ft. high sign that would contain 553 sq. ft. of signage.

As grounds for the variance, the petitioner noted the proposed two tenant panels of 9 sq. ft. and 42 sq. ft. are consistent with previously approved panels on the two existing ground signs. As depicted per the submitted plans, tenants are all afforded the same size panel on each of the ground signs. As such, the petitioner explained the signs will be consistent with the existing signage of the Grossman Drive retail area. Furthermore, the approved ground signs provide important direction signage/presence for the retailers/businesses. Lastly, the petitioner noted the proposed signage is necessary for visibility due to the location of the retail store facing the existing Route 3 highway corridor.

The applicant presented a locus map and untitled signage plans, dated April 21, 2016 and prepared by Pattison Sign Group of Knoxville, TN.

The Planning Board submitted a favorable recommendation. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that based on the evidence presented by the Zoning Administrator, the Board does not have jurisdiction with regard to the Marketplace ground sign located on MBTA property. However, the Board found, that if they did have jurisdiction, the proposed tenant panel for the ground sign would be consistent with the existing signage and not result in substantial detriment to the public good and will not nullify the intent of the Zoning By-law. With regard to the proposed 42 sq. ft. tenant panel for the directory ground sign on Marketplace property, the Board found the sign would be consistent in size, scale and design of existing and approved tenant panels. The Board also found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed tenant panel signage is necessary to identify the location of the business and for the traveling public to be safely directed to the business, which only has one point of entry/exit. 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 variances from the Bylaw Section 135-904.2 requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 3) Petition Number: 16-32**
Petitioner: Sears Holdings Corporation and Primark US Corp.
Property Owner: Braintree Property Associates
RE: 250 Granite Street

Sears Holdings Corporation, 3333 Beverly Road, BC-174B, Hoffman Estates, IL 60179 and Primark US Corp., 101 Arch Street, Suite 300, Boston, MA 02110 (Property owner, Braintree Property Associates) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to install eight (8) Sears wall signs, totaling 515.3 sq. ft. and three (3) Primark wall signs and glass display window, totaling 643 sq. ft., at the South Shore Plaza. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 250 Granite Street, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 2089, Plot 22, and contains a land area of +/-111.67 acres.

Notice

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Evidence

Attorney Carl Johnson, representing the petitioners, was joined by Gregory Siroonian of RESCOM Architectural, Inc., representing Sears, and Julie Reker of Gensler Architects, representing Primark. Mr. Johnson provided an overview of the retail store Primark for the Board. He further added Primark will be sub-leasing the 70,000 sq. ft. third floor of the existing Sears department store at the South Shore Plaza. Sears, until recently, occupied three floors at the northeastern portion of the Plaza. Primark is currently renovating the third floor space, with a goal of a spring 2017 opening. Mr. Johnson discussed the Primark location is highly unique, as the third floor retail space does not have direct access from the exterior of the mall other than from the upper level of the North garage. As such, Primark is seeking to provide appropriate signage to direct the general public to their store. Mr. Johnson also discussed, Sears is undergoing a rebranding strategy. As a result, Sears is seeking to update their existing signage.

Mr. Johnson explained the petitioners, both Sears and Primark, are seeking relief from the Board to install eight (8) Sears wall signs, totaling 515.3 sq. ft. and three (3) Primark wall signs and glass display window, totaling 643 sq. ft. Mr. Johnson added Sears has reduced the total square footage of signage from 544.20 to 515.3 sq. ft. Primark has reduced the number of wall signs requested from four (4) to three (3). As a result of the reduction in number of wall signs, Primark has reduced the total square footage of signage from 767 sq. ft. to 643 sq. ft. Attorney Johnson discussed the changes to the signage were the result of an onsite visit with Planning Department staff and recommendations of the Planning Board.

Sears Holdings Corporation seeks the following variances:

- Variance from Section 135-904.2(A)(5)(a) of the Zoning By-laws which states, “No wall sign shall exceed 150 sq. ft. in area.” The proposed Sears west elevation wall sign is 158.5 sq. ft. in total area;
- Variance from Section 135-904.2(A)(5)(b) of the Zoning By-laws which states, “No wall sign shall exceed four feet in overall height.” The proposed Sears west elevation wall sign is 6’ 6” in height;
- Variance from Section 135-904.2(A)(5)(e) of the Zoning By-laws which 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 proposed signage for the west elevation that faces Common Street/Granite Street is 201.5 sq. ft. The linear frontage of the existing Sears retail space on the West elevation is +/- 235 ft. However, the proposed west elevation Sears signage exceeds the maximum allowable square footage of 150 sq. ft. pursuant to Section 135-904.2(A)(5)(a);
- Variance from Section 135-904.2(A)(5)(f), which states, “Wall signs for businesses occupying other than the first floor may be permitted by the Zoning Board of Appeals. Said permit shall require the written permission of the owner of the property. Secondary wall signs shall not exceed 48 square feet in area. No more than two such secondary wall signs shall be allowed for any building.” Sears currently occupies the first, second and third floors. Sears will sublease the third floor to Primark. Sears is also proposing eight (8) wall signs, with an aggregate signage total of 515.3 sq. ft.;
- Variance from Section 135-904.2(A)(5)(g), which 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.” Sears is proposing eight (8) wall signs, with an aggregate signage total of 515.3 sq. ft.

Primark US Corp seeks the following variances:

- Variance from Section 135-904.2(A)(5)(a) of the Zoning By-laws which states, “No wall sign shall exceed 150 sq. ft. in area.” The proposed Primark display window on the west elevation is 299 sq. ft. The precedent for a display window being considered wall signage is based on the Zoning Board of Appeals petition #08-50 granting of signage relief for Target on 4/24/2009, which included a conclusion that a display window constituted wall signage. The Zoning Board of Appeals acknowledged windows that don’t provide visibility into the physical store, are considered part of the signage square footage. The Primark display window would not allow visibility into the first floor Sears store where the display is proposed to be located. The display would provide a small lit sign for PRIMARK, and an illuminated model display of goods;
- Variance from Section 135-904.2(A)(5)(f), which states, “Wall signs for businesses occupying other than the first floor may be permitted by the Zoning Board of Appeals. Said permit shall require the written permission of the owner of the property. Secondary wall signs shall not exceed 48 square feet in area. No more than two such secondary wall signs shall be allowed for any building.” Primark will sublease the third floor from Sears. Primark is also proposing three (3) wall signs and a display window, with an aggregate signage total of 643 sq. ft.; and
- Variance from Section 135-904.2(A)(5)(g), which 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.” Primark is proposing three (3) wall signs, with an aggregate signage total of 643 sq. ft.

As grounds for the variances, Attorney Johnson explained to the Board, the existing Sears department store structure is uniquely located. The department store is located approximately 1,276 feet from Granite Street, which provides frontage for the South Shore Plaza, and is located on the northeasterly corner of the 111.67 acre site. Attorney Johnson highlighted the portions of the Sears store are located at a lower elevation than plaza and cannot be readily seen from Granite Street or the highway as shown on submitted “OS-1” plan. In addition, Attorney Johnson discussed the Braintree Zoning Bylaws for signage is extremely restrictive for the South Shore Plaza. More specifically, the bylaws create a hardship to adequately sign the existing Sears store and the new Primark store, which is located on the upper level of a structure without an entrance or egress visible from the public ways. Mr. Johnson articulated literal enforcement of the restrictive provisions of the zoning creates a hardship on the Sears department store, its new subtenant Primark, and the convenience and safety of the shopping public to locate the stores. The requested relief will provide adequate advance notice to the public to locate the department stores and the location of exterior entrances and egress. Attorney Johnson further stated any store similarly sited at this location would encounter the same hardship. Furthermore, Attorney Johnson described similar signage relief granted by the Board to stores at the South Shore Plaza. The requested relief is necessary to adequately identify the business and to aid the general public in identifying the location of the entrances to the store and the merchandise pick-up areas. Lastly, the Primark display boxes provide notice of the goods and services offered by Primark and safely direct customers and the travelling public to the location of store entrances without any harm, inconvenience or impact to adjacent properties or the community.

Sears and Primark presented a site plan entitled “Overall Site Plan”, labeled “OS-1”, dated July 14, 2016 and prepared by RJO’Connell & Associates, Inc. of Stoneham, MA. Sears and Primark also presented a signage elevation plan entitled “Building Signage”, labeled “AS-1”, dated August 19, 2016 and prepared by RESCOM Architectural, Inc. of Bourne, MA. Sears also presented signage plans entitled “Presentation Drawings, Project ID#105479”, pages 1-10 and 13-16, dated August 4, 2016 and prepared by Southwest Signs. Primark also presented a photo key plan, untitled, labeled “Photo Key Plan” and “Photo 1-3”. Lastly, Primark presented signage plans entitled “Channel Letters-Elevation”, pages 2-3, dated August 8, 2016 and prepared by Ruggles Sign of Versailles, KY.

At a meeting before the Planning Board on August 9, 2016, a question was posed to the petitioners with regard to mounting the Primark north elevation sign onto the existing parking garage. The petitioners responded putting signage on the garage would be complicated due to lease agreements and also would be better addressed on existing wayfinding signs. The Planning Board also asked Primark, if they would remove one wall sign on the west elevation per the staff recommendation, which wall sign would be removed. The petitioners responded they would remove the wall sign closest to Common Street, if they decided to do so. The Planning Board also recognized there are no immediate residential homes that would be impacted by the proposed Sears and Primark signage.

The Planning Board submitted a favorable recommendation with conditions: 1.) Reduction in size of Sears west elevation main entrance sign to a maximum of 6’ 6” in height; 2.) Allowance of only one 4’ x 31’ Primark sign on the West Elevation; 3.) Provide detailed plans regarding

materials/lighting/mounting for Primark window display; and 4.) Signage illumination to be consistent with the Special Permit issued by the Planning Board and hours of operation/signage guidelines of the South Shore Plaza. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found that while the wall signage may exceed what is allowed under the Zoning By-laws, the proposed wall signs, when analyzed in relationship to existing Sears signage and signage at the South Shore Plaza, is appropriate in size and scale. In addition, the Board noted that the petitioners had reduced the total requested square footage of signs from 1,340.4 sq. ft. to 1,158.3 sq. ft. The Board found the location of the Sears and Primark department stores are uniquely situated on the property as the store is 1,276 feet from Granite Street as depicted on the submitted plans. As such, the Board found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed wall signs are necessary to identify the location of the business and for the traveling public to be safely directed to the businesses. Furthermore, the Board found the petitioners had demonstrated the proposed signage will not be oriented or be visible to any immediate residential areas. Lastly, the Board found that the wall signs would be slim in nature and of a better design than the existing Sears' signage. 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 variances from the Bylaw Section 135-904.2 requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 3-0 to accept the July 26, 2016 meeting minutes.

The Board adjourned the meeting at 7:45 pm.