



Department of Planning and Community Development

Melissa M. Santucci, Principal Planner
90 Pond Street – Braintree, Massachusetts 02184
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
Linda Cusick Woodman, Clerk
James Eng, Member
Darryl Mikami, Member

APPROVED

Braintree Planning Board
August 17, 2009
Town Hall

Present:

Melissa Santucci, Principal Planner

Linda Cusick Woodman, Clerk
James Eng
Darryl Mikami

The Clerk acting as Chair called the meeting to order at 7:05 P.M.
Roll Call: Mr. Eng, Mr. Mikami, Ms. Cusick Woodman, all present.

New Business/Old Business

Zoning Board of Appeal Petitions - August

For details please see Ms. Santucci's Staff Report dated 8/14/09.

175 Campanelli Drive/AMB Property Corporation

Attorney Frank Marinelli was present to represent the applicant, a major property management firm, and provided background on the petition to the Planning Board. The property in question was originally used for warehouse and offices for the now defunct Bradlees and the applicant wishes to create a new lot line which will provide frontage for the smaller office building. There are a number of issues involved: lot coverage, setbacks of the existing structures, and deficient parking.

Attorney Marinelli had a copy of the Town's Assessors' Plan which does not reflect existing conditions and noted the buildings create the hardship. The proposed lot line will provide conditions for better identification, assessment, improvement, redevelopment, management, leasing, financing and sale of each parcel.

Noting that the Assessors' Plan is not accurate, Mr. Eng questioned if the Town was properly taxing the property, to which Attorney Marinelli responded he felt that the assessment should be on the square footage of the buildings in question. *Mr. Eng asked staff to seek clarification of the assessment of the properties.* Mr. Eng also asked for further explanation about Attorney Marinelli's statement that the hardship is the buildings. Attorney Marinelli referred to M.G.L. 40A Section 10 and Braintree Zoning Bylaw Section 135-407 which include language noting

hardship is created by soil conditions, shape or topography of land or structures. In this instance the placement of existing structures on the lots creates the hardship. Mr. Eng also referred to staff's comments that the newly created lot lines will result in deficiencies in the parking on both lots. Attorney Marinelli responded that although there are deficiencies, there are no problems on site relative to parking. United Liquors uses the warehouse as a distribution center only and needs minimal parking. Ms. Santucci added that there is sufficient parking and the applicant has the ability to restripe the parking area to provide additional spaces. In submitting this application the applicant is attempting to create a better configuration of the lots and a better situation from a zoning perspective.

Mr. Mikami asked about the second floor connector between the buildings [Attorney Marinelli stated he is not certain about the owner's intent in this regard.] and about the benefits Attorney Marinelli mentioned would accrue to the Town. Attorney Marinelli noted that the improvement in the lot configuration will create value which will ultimately benefit the Town.

Ms. Cusick Woodman stated that by separating the lots to create frontage for each a better situation will result.

It was noted in the staff report that a 1985 ANR plan was approved with frontage for both lots on Campanelli Drive. However, the record could not be located to verify the approved lot lines.

Mr. Eng asked if staff knew if the value of the properties would change. Staff has not researched that issue.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 3/0

10-40 Plain Street/Sprint Spectrum, L.P./Clear Wireless LLC

Attorney Ricardo Sousa and Ramon Zamoura were present to represent the applicants. Attorney Sousa noted that the application is only to modify the existing installation to add bandwidth.

Before Attorney Sousa continued Ms. Cusick Woodman asked about the stipulation in the Town's Bylaw requiring telecommunication installations be more than 500' from a school, hospital, convalescent/nursing home or residential dwelling. She stated she is uncomfortable voting on these requests for relief. A very long discussion ensued. Ms. Santucci noted that the FCC does not allow local communities to dictate how far a telecommunication installation must be from a school, hospital, residence, etc. The 500' is an arbitrary figure. And Attorney Sousa stated that some carriers in the Commonwealth have installations on hospitals, dwellings and nursing homes. He added that studies show there are no health effects which arise from these installations and the FCC has stated that communities cannot deny carriers access based on

health concerns. He offered to have an independent study conducted to show the power density and the decreased readings beyond the building-mounted installation.
Ms. Cusick Woodman stated she wants documentation.

Attorney Sousa briefed the Board on this request to add two wireless backhaul antennae to the existing penthouse. The antennae will be below the height of the existing antennae, but still higher than the allowable 10'.

Mr. Mikami had a technical question about whether or not the provider was working on upgrading the 4G broadband network to 5G. Attorney Sousa responded that he knows of no provider having gone to 5G.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 2/0/1 [Ms. Cusick Woodman abstained.]

639 Granite Street/Sprint Spectrum, L.P.

Attorney Ricardo Sousa was present to represent the applicant. Attorney Sousa noted that the application is only to modify the existing installation to add bandwidth. Like the request for 10-40 Plain Street [above], this request is to add two backhaul dishes to the existing WiMax antennae and equipment shed.

Mr. Eng noted that one of the installations is above the allowed 10' [10' 3"]. Attorney Sousa informed the Board that he had inquired with the technicians as to whether the installation could be lowered to the 10' limitation in the Bylaw and was assured it could be lowered and still "communicate" with other dishes.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 2/0/1 [Ms. Cusick Woodman abstained.]

Ms. Cusick Woodman would like staff to follow up with Attorney Sousa to have an independent study conducted pre- and post-installation to indicate the decreased readings beyond the building-mounted installation.

400 Washington Street/ Sprint Spectrum, L.P./Clear Wireless LLC

Attorney Ricardo Sousa was present to represent the applicants. Attorney Sousa noted that the application is only to modify the existing installation to add bandwidth. This request is to add three wireless backhaul dish antennae to the existing equipment room located on the roof and to upgrade some of the structural aspects in the equipment room. Although the antennae will be installed below the height of the existing antennae [20'], they will be higher than the allowable 10' above the building. Unlike the installation at 639 Granite Street, they cannot be lowered.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 2/0/1 [Ms. Cusick Woodman abstained.]

75 Proctor Road/Duong

Attorney Carl Johnson and Philip Duong were present. Attorney Johnson distributed a revised plan and photos to the Board. He stated that the applicant wishes to demolish the small home he has been living in and construct a larger home which will be re-oriented to front on Portland Road.

Ms. Cusick Woodman asked if the neighbors were apprised of the project [Yes, and some neighbors signed a statement supporting the proposal.]

Attorney Johnson informed the Board that the applicant has taken staff's comments into consideration and now proposes to take 2' off the garage which will now be 24' x 22' [originally proposed to be 24' x 24'] and construct a deck with a 5' x 6' stoop which will not be required to meet the setback [Section 135-701, Note 7]. The only deviation will be the house needing 1.8' of relief from the rear yard setback.

Abutters Joanne and Russell Clark, 81 Proctor Road, appeared and stated to the Planning Board that they support the Duongs proposal, but are concerned about the possibility that the applicant will need to blast to construct a basement for the new dwelling. There is a huge amount of ledge in the area and many of the homes were constructed on slabs with no basements or crawl spaces because of the ledge. They live next door to the Duongs and fear what blasting/drilling might do to their home.

Attorney Johnson explained the process for the applicant to get a permit to blast, should blasting be necessary. The process affords protection for the Clarks. He added that there is a very large tree with deep roots on the subject property. Such a large tree would not be able to grow on ledge.

Ms. Cusick Woodman explained to Mr. and Mrs. Clark that the role of the Planning Board in this process is only to provide a recommendation to the Zoning Board of Appeal.

Mr. Mikami asked if the applicant had purchased the home with the intent of tearing it down. Attorney Johnson responded that the applicants have lived in the small home which does not meet their growing needs. They do not wish to leave the neighborhood and school district. It was the advice of their builder to re-orient the home to Portland Road. The Engineering Department will assign a new Portland Road address.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 3/0

54 Edgemont Road/Mendoca

Mr. Mendoca addressed the Board and explained the background to his request for relief. In 1999 he got some bad advice which he took and installed within the side yard setback an 8' x 12' shed which is bolted to footings. A few years later his neighbor complained to the Building Department and he discussed the problem with Building Inspector Mike McGourty who instructed him either to remove the shed or to file for relief. He takes full responsibility for the error in judgment and regrets not having installed a smaller shed which would have complied with the setback requirement.

Mr. Mikami expressed concern that the shed was installed without a permit and Mr. Eng that the applicant was asking the Board to undo his own mistake.

Ms. Santucci pointed out that the applicant had also constructed a porch on the rear of the dwelling which intrudes into the side yard setback. He has not asked for relief for that intrusion in this application. She feels that the applicant should request that the application be tabled and that the applicant speak with the Building Inspector, amend his application and readvertise to include all the violations.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA table the request for relief to allow the applicant to amend his application.

Vote: 3/0

98 Storrs Avenue/Walsh

Attorney Adam Costa was present to represent the applicant and present information about the situation the Walshes find themselves in. They have a home, a shed and a garage with an artist's studio on their property. In 2007 they were given a Certificate of Occupancy for the newly constructed garage/studio with a stipulation that the structure not be used for a business or apartment. A complaint was filed with the Town, a search warrant issued to allow the Town access to the property and the Department of Inspections issued a Cease and Desist to forbid use

of the living space constructed above the garage in direct violation of the Certificate of Occupancy. Said living area is being used by Mr. Walsh's 91-year old mother. Attorney Costa informed the Board he was present to request that the Planning Board allow the Walshes to file an application under Braintree Zoning Bylaw Sections 135-603, 604 and 710.

Ms. Cusick Woodman questioned how a 91-year old individual could negotiate the stairs and live above a garage. She noted that the Cease and Desist was issued in April and asked if the living space has continued to be used since then [yes].

Mr. Mikami stated he feels the applicant has "committed fraud from Day One." Attorney Costa responded that they were issued a C.O. in 2007 and there is case law allowing individuals the opportunity to file requests for relief.

Ms. Santucci noted that the applicant was quick to file an application to overturn the Cease and Desist order, failed to file for the variance for the intrusion into the front yard setback and falsified the plot plan.

Attorney Costa informed the Board that the As-Built Plan reflects the correct surveying information.

Mr. Mikami mentioned that recently there have been a number of cases resulting in injury to/death of individuals living in illegal units. He feels this is a severe version of an illegal apartment. He also asked if the individual living in the garage gets mail delivered to 98 Storrs Avenue [the Walsh residence] or 100 Storrs Avenue [the address affixed to the garage by the Walshes].

Mr. Eng asked who altered the dimension on the stamped plan and stated his concern.

Motion by Mr. Eng, second by Mr. Mikami to support in the strongest terms the decision of the Building Inspector to issue the Cease and Desist.

Vote: 3/0

Ms. Cusick Woodman stated that there have been so many discrepancies in the various versions of this issue that it is hard to see "true from false." She also has concerns about the surveyor.

The Board also wished staff to convey to the ZBA their support for implementing penalties immediately.

34 Dewey Avenue/Payne

Ms. Santucci informed the Board that the applicant could not be present. Ms Santucci reviewed her staff report with the Board, noting that the applicant wishes to construct a shed dormer on the rear of the house.

Motion by Mr. Eng, second by Mr. Mikami to recommend that the ZBA approve the request for relief.

Vote: 3/0

Approval Not Required Plan/521 and 525 Grove Street/Pacheco

For details please see Ms. Santucci's staff report dated 8/7/09.

Ms. Santucci reviewed her staff report and stated that the applicant had submitted a revised plan in response to her notation of the plan deficiencies. The Plan has been submitted in compliance with the Conditions of Approval granted by the Planning Board to Mr. Pacheco for improvements to his business at that location.

Motion by Mr. Eng, second by Mr. Mikami to endorse the ANR Plan

Vote: 3/0

Motion by Mr. Eng, second by Mr. Mikami to adjourn at 9:05 P.M.

Vote: 3/0

Respectfully submitted,

Linda Raiss