



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

Braintree, Massachusetts 02184

Meeting Minutes

June 24, 2008

IN ATTENDANCE: Stephen Karll, Chairman
Jack Gauthier, Member
Joseph Mulligan, Member
Jay Nuss, Member

ALSO PRESENT: Bob Galewski, Inspector of Buildings
Carolyn Murray, Town Solicitor

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

**1) Petition Number 08-26
Five Star Quality Care
RE: 250 Pond Street**

Present: Attorney John Walker representing the applicant; Brian Yergatian, engineer from Levi & Wong Design Associates; Robert Ferrisi, Braintree Rehabilitation Hospital and Robert Mannon, Braintree Rehabilitation Hospital.

This is a petition filed by Five Star Quality Care of 400 Centre Street, Newton, MA regarding the property located at 250 Pond Street in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Section 135-806. The applicant seeks a permit and/or variance to provide less parking spaces for the hospital use than is required under the Zoning By-laws, all in accordance with the plans of record. The property is located in a Residence B Watershed Protection Overlay Zoning District as shown on Assessors Plan No. 1044, Plot 03 and contains 454,351 +/- of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on May 27, 2008 at 7 p.m. and continued until June 24, 2008 at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jay Nuss and Joseph Mulligan.

Evidence

Attorney John Walker of Weymouth represented the applicant, accompanied by Brian Yergatian, an engineer from Levi & Wong Design Associates, as well as Robert Ferris and Robert Manno from Braintree Rehabilitation Hospital, now owned by Five Star Quality Care. Attorney Walker advised the Board that, in the course of proposing to add some canopies to the entrances of the hospital, the Planning Department staff noted that the hospital site did not have sufficient parking on site. According to a 1985 Planning Board Special Permit/Site Plan Review Decision for the hospital, the site was required to provide 516 parking spaces. A review of the Town's and hospital's records was unable to provide a satisfactory explanation for the fact that over time, the site offered only 472 parking spaces. Attorney Walker speculated that parking spaces were lost when fire lanes were delineated and parking spaces were properly striped. The applicant now wishes to alter the parking layout in the rear of the building and further reduce the available parking on site to 466 spaces.

According to the Zoning By-laws parking requirements for a hospital use, 1 parking space is required for every two beds plus 1 space is required for every 250 gross SF dedicated to medical or office use. Applying this formula to the hospital, with 166 beds and 78,655 SF of medical/office use, 1,390 parking spaces would be required. Therefore, a variance is needed to reduce the parking to 466 spaces.

In support of its petition, the applicant submitted a parking study, conducted in March of 2008, which concluded that the hospital had 136 surplus parking spaces available during peak demand. The Applicant noted that the use of the rehabilitation hospital has changed over time, which is reflected in its parking needs. For example, Attorney Walker explained that number of employees has been reduced, inpatient usage is down from 160 to 80 patients/day, and the average patient stay is reduced from 24 to 15 days. Instead, more people use the facility on an outpatient basis for physical therapy, coming in for one hour per day. Attorney Walker argued that the changes in the way the facility is used is consistent with the reduction of parking spaces.

As a basis for a hardship, Attorney Walker noted the irregular shape of the lot and topography of the lot, as well as the presence of a sewer easement to the rear of the property. Attorney Walker also explained that the site is located in a Watershed Protection Overlay District, and if the hospital were required to comply with the parking requirements under the Zoning By-law, the hospital would have to construct more impervious surface at the site, which would be detrimental to the protection district.

The petitioner submitted a plan entitled "Braintree Rehabilitation Hospital, 250 Pond Street in Braintree, Massachusetts (Norfolk County), Parking Plan," dated January 9, 2008, prepared by Levi & Wong Design Associates of Concord, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 in favor of the requested relief.

Mr. Karll expressed concern regarding parking off the site, along Pond Street and the surrounding residential area and asked the applicant if they could install signage to discourage people from parking on the surrounding streets. Mr. Nuss noted that there are "no parking" signs posted along Pond Street. The applicant had no objection to working with the Building Department to install suitable signage.

Findings

The Board found that the proposed reduction of on-site parking spaces from the required 516 to the proposed 466 would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming parking, in light of the parking study submitted which reflects that there are sufficient surplus parking spaces available during peak demand of the site. Further, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

Decision

On a motion made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented, on the condition that the applicant install appropriate signage on site to discourage patients and visitors from parking on the street, said signage to be installed within 30 days of the grant of this relief.

**2) Petition Number 08-27
MetroPCS
RE: 639 Granite Street**

Present: Attorney Ricardo Sousa of Prince, Lobel, Glovsky and Tye of Boston representative of the petitioner; Don Hayes, a consultant for the applicant; Kamal Johari, a radio frequency engineer; Mike Johnson, leasing agent

This is a petition filed by MetroPCS Massachusetts, LLC of 36 Prospect Street, Reading, MA regarding the property located at 639 Granite Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407 and 1603(B) and seeks a permit and/or variance to install six wireless communications antennae on the roof of an existing building, all in accordance with the plans of record. The property is located in a Residence B and Commercial Zoning as shown on Assessors Plan No. 2048, Plot 15A and contains 3.57 +/- acres of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was scheduled before the Zoning Board of Appeals on May 27, 2008 but was continued to June 24, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Joseph Mulligan.

Evidence

The petitioner, represented by Attorney Ricardo Sousa of Prince, Lobel, Glovsky and Tye of Boston, explained to the Board that the petitioner is a newcomer to the wireless telecommunication market and is seeking permission to add six antennae, ballast-mounted on the roof of the existing building with associated equipment cabinets to be located in the basement of the building. The six antennae are to be arranged in clusters of two in three different locations and will not exceed 10 feet in height. Attorney Sousa noted that Nextel and Omnipoint are currently located on this rooftop, and these providers were granted similar relief. In fact, this rooftop currently houses at least ten other antennae. Since the

building is significantly set back from Granite Street, and the installations on the top of the building are unobtrusive.

Attorney Sousa explained that the use is allowed under the Town's Zoning Bylaws, subject to certain restrictions. Under Section 135-1603(B)(3), no wireless communication facility is permitted within 500 feet of a residential area or nursing home, and this site is within 210 feet of a residential area. In addition, this site is less than 500 feet from the Sunrise development. Therefore, a variance is needed under the Zoning By-laws. Attorney Sousa noted that the Federal Communications Commission regulations which govern these installations prohibit local boards from discriminating against carriers and do not place a 500 feet restriction on locating these installations near residences or nursing homes. In fact, Attorney Sousa noted that the Federal Telecommunications Acts encourages co-location on existing structures, and this petition promotes this goal. In addition, the Telecommunications Act allows carriers to select their installation sites with a goal of eliminating gaps in coverage within a service area. The coverage area to be serviced by this network is from Worcester to Providence, RI to Manchester, NH within the Route 495 belt. The location of these antennae at this site is needed to service this area, as supported by a statement of Kamal Johari, a radio frequency engineer. Don Hayes, a consultant for the applicant, advised that a cumulative study of all antennae on the tower is still below the limits set by the Federal Communication Commission regarding radio frequency exposure.

The petitioner submitted five sheets entitled "BOS0389A, Granite Executive Park, 639 Granite Street, Braintree, MA", dated March 18, 2008 and revised through April 16, 2008, prepared by Atlantis Group of Newton Centre, MA.

Mr. Gauthier questioned whether the antennae could be located further back from the roof parapet, noting that two antenna are to be located 7 feet or less from the edge of the roof. Kamal Johari explained that the location of the antenna is critical to insure that MetroPCS can transmit a signal without interfering with the signals of other carriers on the roof. Mike Johnson, the leasing agent stated that the antenna cannot be set much further back without creating "shadowing", which decreases the strength of the signal and may contribute to gaps in coverage. Attorney Sousa also explained that the location of other cable trays on the roof limit alternate siting on the roof.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-1 in favor of the requested relief.

Findings

The Board found that the petitioner had satisfied the goals of co-location as promoted under the Telecommunications Act and that the location of antenna on the existing tower was needed to provide service to the area. The Board also concluded that the the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

Decision

On a motion made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented, on the condition that the two antennae located on the front of the building be set back 7 feet from the parapet, with the third antenna on the rear of the building located 15 feet from the edge of the building.

**3) Petition Number 08-30
Leonard Lyons
RE: 61 Court Road**

Present: Leonard Lyons, applicant; Laurie Gozzo, resident of Court Road

This is a petition filed by Leonard Lyons of 61 Court Road, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407 and 701. The applicant seeks a permit and/or variance to construct a 25.5 ft. deep by 18.8 ft. wide one-story garage to the side of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Watershed Protection Overlay Zoning District as shown on Assessors Plan No. 1073E, Plot 109 and contains 14, 415 SF +/- of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on June 24, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Joseph Mulligan. The alternate member was Jay Nuss.

Evidence

Leonard Lyons, representing himself, explained to the Board that he is seeking permission to alter a pre-existing, nonconforming dwelling on an undersized lot in order to add a garage. The applicant's lot is undersized, as the Watershed Protection District required a one acre minimum, and the applicant's lot is only 14,415 SF. In addition, the applicant's lot is deficient as to width, as 100 feet is required, and the applicant's lot affords only 96 feet. A 10 foot side yard setback is required for the garage, yet the applicant proposes to locate his garage 5.5 feet off the property line, requiring a variance. Maximum lot coverage in this Zoning District is limited to 50%, and the Planning Board noted that it was not clear from the plan submitted if this requirement would be satisfied; this was due in part to applicant's representation that a portion of the existing horseshoe-shaped driveway would be removed and replaced with grass, while another portion of driveway would be installed to access the garage.

This dwelling used to contain a one-car garage, but this was converted to living space. The proposed new garage will encroach into the side yard and may add impervious surface to the lot. The Planning Board noted that in addition to the horseshoe-shaped driveway, there is also a double wide, double deep driveway on the site.

The applicant explained that the garage is needed for storage, as the ranch-style house has no attic. The applicant also explained that the rather large sized garage is needed to house his 22 ft. long pick-up truck, but added that the garage will maintain the same roof line as the existing house. The applicant represented that he will remove some bituminous concrete of the semi-circular driveway and will plant grass. As grounds for his hardship, the applicant noted the irregular shape of his lot, being rhomboidal in shape and narrowing towards the rear. The applicant also stated that the existing location of the house on the lot limits his ability to place the garage elsewhere.

The Board expressed concern about the large size of the garage, noting that the average size two-car garage measures 20 ft. x 24 ft. The Board also questioned whether the garage width could be reduced to minimize the encroachment into the side yard.

The petitioner submitted a plan entitled "Plot Plan, 61 Court Road, Braintree, Mass.," dated May 12, 2008, prepared by Antoni Szersunowicz, Registered professional Land Surveyor.

Laurie Gozzo of Court Road requested to view the plan, but expressed no opinion or opposition to the petition. No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 to take no action.

Findings

The Board found that the proposed addition to 61 Court Road would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Further, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law. The Board also found that the applicant had presented a hardship based on the irregular shape of the lot, warranting the variance from the side yard setback.

Decision

On a motion made by Mr. Gauthier and seconded, it was unanimously voted to grant the requested relief, subject to presenting a new plan that conforms to this decision and subject to the applicant satisfying the following conditions:

1. the width of the garage must be reduced to 15.5 feet to the outside dimension, so that the garage shall measure 15.5 feet x 25.5 feet;
2. the applicant must remove a portion of the semi-circular driveway and replace it with grass; and
3. the driveway is to be relocated to be flush with the new garage.

4) Petition Number 08-31

John Williams

RE: 20 Bramblewood Lane

Present: John Williams, Applicant; Ed McCormack, 19 Bramblewood Lane

This is a petition filed by John Williams of 20 Bramblewood Lane, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The applicant seeks a permit and/or variance to construct a 16 ft. deep by 20 ft. wide deck to the rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Watershed Protection Overlay Zoning District as shown on Assessors Plan No. 1073B, Plot 161 and contains 15,477 SF +/- of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on June 24, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Jay Nuss. The alternate member was Joseph Mulligan.

Evidence

Mr. Williams, representing himself, explained to the Board that he is seeking permission to alter a pre-existing, nonconforming dwelling on an undersized lot in order to add a deck to the rear of the existing dwelling. The applicant's lot is undersized, as the Watershed Protection District requires a one acre minimum, and the applicant's lot is only 15,477 SF. A 10 foot side yard setback is required for the deck, yet the applicant proposes to locate his deck 2.43 feet off the property line, requiring a variance.

The applicant explained that he wishes to construct a deck on the rear of his house. The applicant recognizes that the deck will encroach into the side yard setback but explained that this is the logical location for the deck, off of the living room, where the applicant intends to use the space currently occupied by a double window in his living room and convert it to a slider to the deck.

As grounds for a variance, the applicant noted the irregular shape of the lot, being rhomboidal in shape, and the location of the existing house on the lot. The existing house is currently 2.65 feet off the same side yard line, and the proposed deck would further encroach into this setback. While there is ample room to construct a deck on the opposite side of the house, which may require no variance, the applicant explained that, due to the interior configuration of the house and the location of the kitchen at the opposite side of the house, it was not feasible to place the deck at this side of the house.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 20 Bramblewood Lane," dated May 10, 2008, prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

Ed McCormack of 19 Bramblewood Lane, who lives directly across the street from the applicant, noted that the deck would not be visible from the street. No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 to recommend favorably on a deck with a minimum setback of 6 feet at the southwest corner and at the stairs.

The Board expressed concern about the size of the deck and the further encroachment of the proposed deck into the side yard. The Board also questioned whether the applicant could reduce the size of the deck or cut off the corner of the deck to be less intrusive into the setback. The applicant explained that he could not comply with the Planning Board's request for a 6 foot setback, as the deck would not line up with the double wide window of the living room to be used for the slider to the deck, but the applicant admitted that he could reduce the size of the deck by 6 to 8 inches.

Findings

The Board found that the proposed addition of the deck to 20 Bramblewood Lane would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot, particularly where the pre-existing house encroaches into the same side yard setback as the proposed deck. Further, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law. The Board also found that the applicant had presented a hardship based on the irregular

rhomboidal shape of the lot and the placement of the existing dwelling on the lot, warranting the variance from the side yard setback.

Decision

On a motion made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to presenting a new plan that conforms to this decision and subject to the applicant satisfying the following conditions:

1. the proposed deck is to maintain the existing setback of the house and be located 2.65 feet off the southerly side yard; and
2. the applicant must move the stairs to the deck to the opposite side, closer to the northerly lot line.

**5) Petition Number 08-32
William and Maryellen Fleming
RE: 4 Marjorie Road**

Present: Maryellen Fleming, Applicant

This is a petition filed by William and Maryellen Fleming of 4 Marjorie Road, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The applicant seeks a permit and/or variance to construct a 12 ft. by 16 ft. sunroom addition to the rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1087, Plot 124 and contains 12,502 SF +/- of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on June 24, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Joseph Mulligan. The alternate member was Michelle Lauria.

Evidence

Mrs. Fleming, representing herself, explained to the Board that she is seeking permission to alter a pre-existing, nonconforming dwelling on an undersized lot in order to add a sunroom to the rear of the existing dwelling. The applicant's lot is undersized, as Residence B Zoning District requires a minimum lot size of 15,000 SF, and the applicant's lot is only 12, 502 SF. In addition, the Zoning By-law requires a minimum lot width of 100 feet, and this lot provides only 76 ft. +/- of width. Further, the Zoning By-law requires a 30 foot rear yard setback, where the existing structure provides only 17.9 feet. The proposed sunroom will further encroach into the rear yard setback by 0.1 foot, which requires a variance.

As grounds for a variance, the applicant noted the irregular shape of the lot, which is located on the corner of Marjorie and Alida Roads, and the existing house is placed at an angle some distance back from the front yard. The applicant explained that she wished to add a sunroom to enjoy her backyard, and due to the placement of her house on the lot, there is no other location on the lot where she could locate this sunroom without encroaching into the rear yard setback. At its closest point, the existing house is currently 17.9 feet from the rear lot line, and the proposed sunroom would only minimally add to the encroachment.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 4 Marjorie Road," dated June 2, 2008, prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 to recommend favorably on the petition.

Findings

The Board found that the proposed addition of the sunroom would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot, particularly where the pre-existing house encroaches into the same rear yard setback as the proposed sunroom. The Board also found that the further encroachment of 0.1 foot into the rear yard setback was de minimus. Further, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law. The Board also found that the applicant had presented a hardship based on the irregular shape of the lot and the placement of the existing dwelling on the lot, warranting the variance from the rear yard setback.

Decision

On a motion made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

**6) Petition Number 07-36
Wallorz Trucking, Inc.
RE: 33 Garden Park**

Present: Mr. Wallorz, Applicant

In a decision dated May 31, 2007, the Zoning Board of Appeals voted to grant a variance to Wallorz Trucking, Inc. Said variance expired on or about May 31, 2008.

At a public meeting of the Zoning Board of Appeals held on June 24, 2008, Wallorz trucking, Inc. requested a 6 month extension of this variance, claiming that additional time was needed to complete the project. Due to the Town's transition to a new form of government, Mr. Wallorz explained that there was a delay with new boards being appointed and in place to act on his applications, and therefore, additional time is needed to complete the project.

Pursuant to Zoning By-law Section 135-407 C, Mr. Karll made a motion to approve the extension of the variance for 6 months. The motion was unanimously voted.

Other items for the Minutes:

The Chairman introduced the newest members of the ZBA, Michelle Lauria, and welcomed her to the Board.

7) RE: Petition No. 08-33, Barbara Lemieux regarding 95 Howard Street

The ZBA had previously voted to reconsider this petition, which had been denied when filed under the name of Gary Gabriel last Fall. The ZBA voted to deny the petition after Mr. Gabriel and/or his representative failed to appear at two ZBA hearings. The ZBA never heard any substantive evidence on this petition. According to G.L. c. 40A, §16 and Zoning Bylaw Section 135-205, the ZBA may not hear any petition for a variance within two years of its denial unless four members of the Planning Board assent and the ZBA unanimously finds that there are material changes in the conditions upon which the previous unfavorable decision was based. The ZBA noted that the Planning Board voted to take no action on this petition, and after conferring with the Town Solicitor, the ZBA was advised that they could take no action on this petition without the Planning Board's assent. The ZBA requested that the Town Solicitor submit a letter to the Planning Board, noting that the ZBA's prior denial was not based on the substance or merits of the petition and requesting that the Planning Board reconsider its vote of "no action."

The meeting adjourned at 8:30pm

