



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

May 26, 2009

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

ALSO PRESENT: Michael McGourty, Local Building Inspector
Carolyn Murray, Town Solicitor

Mr. Karll called the meeting to order at 7:05pm.

APPROVAL OF MINUTES:

The Board voted unanimously to accept the meeting minutes of April 28, 2009.

OLD BUSINESS:

- 1) Petition Number 09-2
MetroPCS Massachusetts, LLC
RE: 35 Roc Sam Park**

Mr. Karll advised the Board that the petitioner has requested a 60-day extension of the petition until the July 28, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier and seconded by Mr. Mulligan, the Board voted unanimously to approve a 60-day extension until July 28, 2009.

- 2) Petition Number 09-3
Omnipoint Communications, Inc
RE: 25 Hayward Street**

Mr. Karll advised the Board that the petitioner has requested a 30-day extension of this petition until the June 23, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Mulligan, the Board voted unanimously to approve a 30-day extension of the petition until June 23, 2009.

3) Petition Number 09-13
Eileen Sullivan
RE: 10 Portland Road

Present: Eileen Sullivan, petitioner
Christian VanDerslice, husband of petitioner

Eileen Sullivan of 10 Portland Road seeks relief from Zoning By-laws Chapter 135, Sections 403, 407, and 701 to construct an addition to the existing dwelling. The addition consists of a second story addition with a two foot overhang in the rear, conversion of the existing garage to living space, the addition of a one-car garage, a fireplace, and front door overhang. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1098, Plot 20 and contains 8,103 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 May 26, 2009 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, John Gauthier and Jay Nuss, with alternate, Joseph Mulligan.

Evidence

The petitioner, representing herself, appeared with her husband, Christian VanDerslice, and explained to the Board that she is seeking permission to construct an addition to her existing dwelling, which is a 1 ½ story Cape-style house. The petitioner's house is located on a corner lot, which is pre-existing, nonconforming as to size. The petitioner seeks to construct a second story addition, which will include a 2 foot overhang. The petitioner also proposes to convert the existing garage and breezeway into living space, and to the side of the converted garage, a new 12 ft. x 20 ft. garage will be constructed. To accomplish this, several variances are required. While the addition will line up with the existing dwelling, the addition will slightly encroach into the rear lot line because the existing building is located at an angle to the rear lot line. At its closest point, the addition will encroach 1.5 feet into the rear yard setback, as it will be located 28.5 feet off the rear lot line. The Zoning By-law requires a rear yard setback of 30 feet, so a variance is required. The proposed garage will also encroach into the side yard setback; at its closest point, it will be located 8.9 feet off the side lot line but slope out to a conforming 11.5 feet off the lot line. The Zoning By-law requires a side yard setback of 10 feet, so a variance is required. The proposed porch will minimally encroach into the Portland Road front yard setback; the Zoning By-law requires a front yard setback of 20 feet, but the proposed porch will be located 19.8 feet from the lot line. The chimney on the Amherst Road side of the house will also slightly encroach into the front yard lot line, as it is to be located 19.5 ft. from the lot line, while the Zoning By-law requires a setback of 20 feet.

As grounds for a variance, the petitioner informed the Board of the presence of ledge on the property, as evidenced by the lack of basement under the house. The ledge is located in the rear of the property, on the Amherst Road side, making it difficult to locate the addition on this side of the house. The petitioners also submitted a chart, demonstrating other houses in the neighborhood that have recently been permitted to construct additions or make renovation to the existing dwellings which are similar in size and character as the

petitioner's proposal. The petitioners also submitted letters of support from Russell and Joan Clark of 81 Proctor Road, Mary and Thomas Matthews of 24 Portland Road, and Jean O'Leary of 11 Portland Road.

The petitioner submitted a plan entitled "Plot Plan, 10 Portland Road, Braintree, MA," dated April 16, 2009, prepared by James E. McGrath, PLS.

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

Findings

The Board found that, while the petitioner's proposed alteration to the existing dwelling created several nonconformities as to front, side and rear setback, these encroachments were de minimus, with the greatest encroachment being 1.5 feet into the setback. The Board also found that the petitioners had proven a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the petitioner had established the presence of ledge on the Amherst Road side of the lot, making it difficult for the petitioner to locate an addition on the Amherst Road side of the lot. Finally, 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. Gauthier and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plan presented.

4) Petition Number 09-14 Edith and Robert McGinn RE: 91 Plymouth Avenue

Present: Edith McGinn, petitioner

Edith and Robert McGinn of 91 Plymouth Avenue seek relief from Zoning By-laws Chapter 135, Sections 403, 407, and 701 to remove an existing three season porch and construct a deck. The property is located in a Residence B Watershed Zoning District as shown on Assessors Plan No. 1078, Plot 63 and contains 10,000 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 May 26, 2009 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, John Gauthier and Joseph Mulligan, with alternate, Jay Nuss.

Evidence

The petitioner, representing herself, explained to the Board that she is seeking permission to demolish a conforming three season porch, which measures 8 ft. x 12 ft., and replace it with a 12 ft. x 24 ft. deck. The petitioner's lot is pre-existing nonconforming as to lot size, containing only 10,000 SF where 1 acre is required. The proposed deck will be located to the rear of the property and will encroach into the rear yard setback,

offering a setback of 27.5 feet at its closest point, where a setback of 30 feet is required under the Zoning By-law. As grounds for a variance, the petitioner informed the Board of the presence of ledge on the property, making it difficult to locate the deck elsewhere.

The petitioner submitted a plan entitled "Plan Showing Proposed Deck in Braintree, MA." dated April 18, 2009, prepared by Peter G. Hoyt of Hoyt Land Surveying of Weymouth, 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.

Findings

The Board found that, while the petitioner's proposed alteration to the existing dwelling created a nonconformity where one does not presently exist, this encroachment of 2.5 feet into the rear yard setback was de minimus. The Board also found that the petitioner had proven a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the petitioner had established the presence of ledge on the lot, making it difficult for the petitioner to locate the deck elsewhere on the lot, while still being logically connected to the interior configuration of the dwelling. Also, the Board found that the open nature of the deck would not be inconsistent with the Watershed Zoning District. Finally, 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. Gauthier and seconded by Mr. Mulligan, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Petition Number 09-15

Simon Property Group and Braintree Property Associates, L.P.

RE: 250 Granite Street

Present: Carl Johnson, Attorney for the petitioner
Judy Tullius, Manager of the South Shore Plaza
Richard Tonzi, Simon Property Group
William Jackson, Simon Property Group
Michael Hille, Target
Katie Rivard, Target

Simon Property Group, Inc. of Indianapolis, IN and Braintree Property Associates L.P. seek relief from Zoning By-laws Chapter 135, Sections 403, 407, 701, 701 Note 3, and 904.2 to erect new signs at the South Shore Plaza, located at 250 Granite Street. The property is located in a Highway Business Zoning District as shown on Assessors Plan No. 2089, Plots 21 and 22, Plan No. 2039, Plot 93D, and contains 111.67 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 held before the Zoning Board of Appeals on May 26, 2009 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, John Gauthier and Jay Nuss, with alternate, Joseph Mulligan.

Evidence

The petitioner, represented by Attorney Carl Johnson, appeared with Judy Tullus, manager of the South Shore Plaza, Richard Tonzi and William Jackson of Simon Property Group, along with Michael Hille and Katie Rivard of Target. Attorney Johnson explained that the petitioner seeks to install a 600 SF directory wall sign with panels to list the names of six tenants of the South Shore Plaza. In addition, the petitioner seeks to install three signs related to the proposed Target, to be located on the south side of the South Shore Plaza, adjacent to the new Nordstrom's building. The total area of all signs associated with Target is 602 SF.

The petitioner seeks to install a "Wayfinding Directory Wall Sign" on the exterior face of the south parking facility. Attorney Johnson explained that this wayfinding sign will replace existing wall signs currently affixed to the south parking deck, one of which currently advertises Legal Seafood's and the other, Filene's Basement. The total area of the way finding sign measures 600 SF. The way finding sign will consist of six separate panels reflecting the names of six tenants of the South Shore Plaza. Each panel measures 4 ft. x 25 ft. However, the maximum size of the individual store letters contained on the panels is 72 SF each, for a total area of 432 SF.

The petitioner also seeks permission to erect one sign consisting of a 12 ft. diameter bull's eye, reflecting the Target logo, the name "Target", with letters measuring 37 SF, and the word "Pharmacy", measuring 35 SF, for a total area of 216 SF. This sign is proposed to be located on the south elevation of the South Shore Plaza. Attorney Johnson and Ms. Rivard explained to the Board that, under Massachusetts law, a store containing a pharmacy is required to post a sign reflecting this service is available. Under Zoning By-law Section 135-904.2(A) (5) (a), wall signs shall not exceed 150 SF in area. This bulls eye, plus the words, Target, measure 181 SF. Section 135-904.2(A) (5) (b) of the Zoning By-law also limits a wall sign to 4 feet in overall height; this bulls eye is 12 feet in height.

On the upper level of the south elevation of the South Shore Plaza, the petitioner seeks to install a smaller bulls eye of 8 ft. in diameter, or 64 SF in area, along with four "graphic display windows", illuminated by internal white light and measuring 44.4 SF each, for a total of 177.6 SF of window display area. Attorney Johnson explained that the graphic display windows are used by Target to display items or fashions available in the store. As noted above, Section 135-904.2(A)(5)(b) of the Zoning By-law limits a wall sign to 4 feet in overall height; this bulls eye is 8 feet in height.

The petitioner seeks to install another sign consisting of the 12 ft. diameter bull's eye only, for a total area of 144 SF, on the north elevation of the South Shore Plaza. Again, Section 135-904.2(A)(5)(b) of the Zoning By-law limits a wall sign to 4 feet in overall height; this bulls eye is 12 feet in height.

In addition, Section 135-904.2(A) (5)(g) of the Zoning By-law limits one wall sign for each store or business occupying a building and limits the aggregate total of all wall signs to 150 SF in area, unless additional signage is allowed by the Board. Not only does this petition seek more than one wall sign for the Target store, it also adds to the existing signage in place at the South Shore Plaza, which presently exceed this cumulative limitation.

The Board inquired as to the manner and duration of illumination of the Target signs, and Attorney Johnson advised that the signs are internally illuminated, but the lights are shut off when the store is closed. Attorney Johnson advised that the hours of operation may vary seasonally, such as during the peak holiday shopping season.

Finally, the petitioner seeks a determination and/or variance with respect to what is described as an "architectural screen wall". This wall is an extension of the Target vestibule canopy entrance, which projects

up beyond the rooftop of the building, up to a height of 66.6 feet. The petitioner noted that the Board had previously granted relief relative to the height of the adjacent Nordstrom's building. Attorney Johnson advised that the architectural wall screen would not exceed the height previously allowed for the Nordstrom's building. Attorney Johnson suggested that the extension of the canopy forms an architectural screen wall, which hides the ventilation duct work of the roof-mounted mechanical units servicing the store, could fall under the Zoning By-law Section 135-701, note 3, which states that the height limitation for buildings shall not apply to "equipment rooms", which extend 12 feet or less above the roof line. Attorney Johnson posed that the Board could find that the architectural wall screen is in fact an "equipment room" not subject to the height limitations, or in the alternative, the Board could make a finding that the height of the wall screen is not substantially more detrimental to the neighborhood than the existing height of the Nordstrom's building, or grant a height variance. In its recommendation, the Planning Board noted that the architectural wall screen could be considered an equipment room under Section 135-701 note 3 of the Zoning By-law and not require a variance. If a variance is required, Attorney Johnson noted the unique topography of the site, with Granite Street located at a higher elevation and the South Shore Plaza essentially sitting in a bowl, at a lower elevation from the street.

The petitioner submitted a set of renderings entitled "Braintree, South Shore Plaza, Massachusetts, Target" dated April 24, 2009, along with two plans: Drawing No. OS-1 entitled "Overall Site Plan" and Drawing No. OS-2 entitled "Wayfinding Sign Plan", both dated May 15, 2009 and prepared by R.J. O'Connell & Associates, Inc. of Stoneham, 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.

Findings

The Board found that the proposed signage was necessary to identify the location of stores on this large commercial mall site and to safely direct the traveling public on the site. Although the Zoning By-law limits the aggregate total of signage allowed, the Board may grant additional signage when needed to serve the public convenience and safety. Given the size of this site and the number of tenants within the South Shore Plaza, the Board found that the additional signage was necessary to serve the public convenience and to safely direct travelers to their destinations. The Board also found that the structure was pre-existing nonconforming as to the height, noting that the adjacent Nordstrom's wing of the South Shore Plaza is 66.5 feet high, and therefore, the Board found that allowing the Target vestibule canopy to meet this same height limit would not be substantially more detrimental to the neighborhood than the existing structure. Finally, 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. Gauthier and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plans presented and subject to the condition that the illumination of the Target signs be consistent with the store's hours of operation.

6) Petition Number 09-16
St. Francis of Assisi Residence at Braintree
RE: 41-53 Independence Avenue

Mr. Karll advised the Board that the petitioner has requested a 30-day extension of this petition until the June 23, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day extension of the petition until June 23, 2009.

7) Petition Number 09-17
St. Francis of Assisi Residence at Braintree
RE: 41-53 Independence Avenue

Mr. Karll advised the Board that the petitioner has requested a 30-day extension of this petition until the June 23, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day extension of the petition until June 23, 2009.

8) Petition Number 09-18
St. Francis of Assisi Residence at Braintree
RE: 41-53 Independence Avenue

Mr. Karll advised the Board that the petitioner has requested a 30-day extension of this petition until the June 23, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day extension of the petition until June 23, 2009.

The meeting adjourned at 9:00pm.