



Joseph C. Sullivan
Mayor

Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Meeting Minutes

November 24, 2009

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Carolyn Murray, Town Solicitor

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

OLD BUSINESS:

- 1) Petition Number 09-41
Agnoli Sign Company, Inc. on behalf of Stop & Shop
RE: 300 Grove Street**

Present: Christine Morrow, Agnoli Sign Company representing the petitioner.

This is a petition filed by Donald Agnoli, Agent, Agnoli Sign Company, Inc. of 722 Worthington Street, Springfield, MA, on behalf of Stop & Shop, regarding the property located at 300 Grove Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407 and 135-904.1 to install four secondary wall signs, all in accordance with the plans of record. The property is located in a General Business Zoning District, as shown on Assessors Plan No. 1084, Plot 10 and contains +/- 13.30 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 October 27, 2009 at 7 p.m. and continued to November 24, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and member, John Gauthier, Joseph Mulligan and alternate, Michelle Lauria.

Evidence

At the continued hearing on this petition on November 27, 2009, the petitioner was advised that only two members of the Board who were assigned to hear this petition at the initial hearing date, Stephen Karll and Jack Gauthier, were present to sit on the petition, as members Mulligan and Lauria were not present. The Chairman inquired of the Town Solicitor as to the quantum of vote required to approve a sign petition and was advised that two votes were required. The Chairman asked the petitioner if she wished to proceed with only two members present or if she preferred to continue the matter to the following month, when another member may be in attendance. The petitioner opted to proceed with the hearing.

The petitioner was represented by Christine Morrow of Agnoli Sign Company. The petitioner explained to the Board that the petitioner is seeking to add to the existing signage on the façade of the Stop and Shop Supermarket. Currently, the façade contains the signs "Stop & Shop," the Stop & Shop logo, and two welcome signs over the entrances. The petitioner is seeking variances to add wall signs to the façade. One wall sign will replace the existing Stop & Shop sign with its newly designed brand accompanied by the multi-colored fruit basket. The total area of the newly branded Stop & Shop sign with logo is 193.5 SF, which includes 5 ft. high letters and a 6 ft. 8 in. high logo. The two welcome signs total 15.6 SF.

According to Section 135-904.2 (A) (5) (a) of the Sign By-law, no wall sign shall exceed 150 SF in area, nor shall a wall sign exceed four feet in overall height. The new Stop & Shop sign and fruit basket logo exceed both limitations, and therefore, variances are required. Ms. Morrow explained that a permit had already been granted for the large "Stop & Shop" sign, the Stop and Shop logo, and the two welcome signs, therefore these signs currently exist on the façade of the building. However, the Planning Board is of the opinion that these signs require variances under the Sign By-law.

The other proposed wall signs include:

1. one stating "Low Prices," which measures 14.25 SF;
2. one stating "Great Food," which measures 14.79 SF;
3. one stating "Citizens Bank," which measures 13.61 SF; and
4. one stating "Stop & Shop Pharmacy" sign, which measures 29.63 SF.

With the exception of the Pharmacy sign, all other signs will not be illuminated. These four signs would add approximately 72.28 SF of wall signage to the above-referenced signage, bringing the new total of wall signage area to 281.38 SF. As noted above, Section 135-904.2 (A) (5) (a) of the Sign By-law limits wall signage to 150 SF in area, and therefore variances will be needed for these four additional wall signs. In addition, Section 135-904.1(A)(5)(b) limits each store to one exterior wall sign, unless the store has an entrance on another side of the building, and no store may have more than two secondary wall signs, and the total aggregate area of all secondary wall signs cannot exceed 50% of the maximum permissible allowed. In this situation, any secondary wall signs would be limited to 75 SF in aggregate area, yet the requested wall signage exceeds the 150 SF limit by an additional 131.38 SF, and therefore, variances are needed for these additional wall signs.

Ms. Morrow explained that "Great Food" and "Low Prices" are part of the new Stop & Shop brand and are catch phrases used by Stop & Shop on other stores. Ms. Morrow stated that the illuminated "Pharmacy" sign and the "Citizens Bank" sign are necessary to inform and direct customers to these services located within the store. With respect to the Pharmacy sign, Ms. Morrow noted that state law requires an exterior sign on a building containing a pharmacy. The Board asked the Town Solicitor as to this legal requirement, and the Solicitor advised that the Code of Massachusetts Regulations Title 247 Chapter 6.02 section (5) states, "A pharmacy or pharmacy department shall have a reasonably-sized sign affixed to the main entrance of the business or otherwise installed in an easily observable area outside the premises, identifying the presence of a pharmacy or pharmacy department."

Ms. Morrow explained that the requested signage was all necessary to alert the traveling public and to direct them to the location of the Stop & Shop, the pharmacy and the bank. Ms. Morrow explained that Stop & Shop has recently redesigned their logo to include the multi-colored fruit basket and that Stop & Shop is replacing all of their old signs so that customers will readily recognize the new brand. Ms. Morrow also noted the size of the store warrants more signage than allowed under the Sign By-law and argued that the signage is proportionate to the expanse of the façade. Ms. Morrow also noted the location of the Stop & Shop building, set back at a distance from the main road within the shopping plaza, and therefore, she asserted that larger signs and letters are necessary to identify the store and to safely direct the public to the site.

The petitioner submitted an untitled sheet, dated July 27, 2009 and revised through Sept. 8, 2009, prepared by Agnoli Sign Company, Inc. of Springfield, MA, along with photos of existing signs on the façade of a Stop and Shop at a different location.

An unidentified abutter, who lives diagonally across the street from the site, appeared at the October hearing and questioned the additional light that will be visible from these new signs. Ms. Morrow explained that the proposed signs use less powerful wattage than the previous Stop & Shop signs. Ms. Morrow also stated that the proposed signs will be less powerful than other business signs in the plaza, such as those used by TJ Maxx.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 against the requested relief.

Findings

The Board found that the petitioner had proven a hardship as a basis for a variance for the new Stop & Shop sign with the logo, finding that the size of the building and the distance and angle with which the building is set back from the main roadway warranted larger signs. For similar reasons, the Board found that the petitioner had proven a hardship for the unlit "Citizens Bank" and the LED lit "Pharmacy" signs. The Board also found that the pharmacy sign was required under the state regulation, and found that the area of this sign at 29.63 SF was reasonable and necessary to direct the public to the pharmacy. However, the Board did not find that the petitioner had demonstrated any hardship or need for the "Low Prices" or "Great Food" signs. Rather, the Board found that these two wall signs were excessive and did not serve the public need in terms of directing them to or informing them of the location of the store on the site.

With the exception of the "Low Prices" and "Great Food" signs, the Board concluded that the proposed alteration of the site by the addition of the other signage would not visually impact the neighborhood negatively or be more intrusive than the existing signage on the facade, nor would the alteration of the structure 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. Karll and seconded by Mr. Gauthier, it was unanimously voted:

- a) to grant the requested relief with respect to the Stop & Shop sign and logo, the unlit Citizens Bank sign and the LED lit Pharmacy sign, subject to the plan presented; and
- b) to deny the requested relief relative to the "Low Prices" and "Great Food" signs.

NEW BUSINESS:

**2) Petition Number 09-42
Valquirio Mendonca
RE: 54 Edgemont Road**

Present: Valquirio Mendonca, petitioner.

This is a petition filed by Valquirio Mendonca of 54 Edgemont Road, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Section 135-403, 407, and 701, to legitimize the placement of an existing shed and a back porch, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors Plan No. 3003, Plot 40 and contains +/- 6,250 Sq. Ft. 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 November 24, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier, and Jay Nuss, with no alternates.

Evidence

The petitioner, Valquirio Mendonca, represented himself. Mr. Mendonca explained that the lot and structure do not meet the dimensional and density requirements of section 135-701, but are preexisting non-conforming. The lot is pre-existing nonconforming as to lot area, as it contains only 6,250 SF whereas the Zoning By-law requires a minimum lot size of 15,000 SF. The lot is also deficient as to width, as it is 50 feet wide, while the Zoning By-law requires a minimum width of 100 feet.

The petitioner admitted that he placed a shed on his property and constructed a porch on the rear of the dwelling without obtaining any required permits or variances. After being made aware of this situation, Mr. Mendonca seeks permission from the Board to construct both structures as is, albeit after the fact. Neither the shed nor the porch meets the side yard setback requirements. Pursuant to 135-701 the required side yard setback for a porch is ten (10) feet, yet the porch is located 9.5 feet from the side lot line. The pre-existing nonconforming dwelling is located even closer to the same side lot line; therefore, a finding that the proposed alteration to the pre-existing nonconforming structure is not substantially more detrimental is required. Mr. Mendonca stated that he covered an existing deck, thereby converting the deck to a porch, which was built without the required finding from the Board. Mr. Mendonca also stated that the existing dwelling is located further into the side yard setback by approximately one (1) foot more than the porch.

Mr. Mendonca also requested a variance for a shed that was built too close to the side yard setback. Pursuant to 135-701 a shed must be 5 ft. from the side lot line, but Mr. Mendonca's shed is 1.8 ft. from the side lot line. The Board noted that there is sufficient room to locate the shed within the required setback, but Mr. Mendonca explained that the shed was located so as to line up with his driveway and it would be a hardship for him to move it.

Joanne and Terrence Weldon, the abutters on the side of the shed, spoke in opposition to the petition. The Weldons stated that they were opposed to the location of the shed, primarily because they insisted that they made renovations to their house and complied with the permit process when doing so. In addition, the

Weldons complained that the petitioner works in the shed at all times of the day and night and disturbs their enjoyment of their yard. The Weldons felt that moving the shed to be in accordance with the by-law would reduce the noise that they hear from the shed.

The petitioner submitted photos of the shed, aerial views of the site, and a plan entitled "PLOT PLAN No. 54 EDGEMONT RD. BRAINTREE, MASS.", dated Dec. 20, 2005, prepared by Michael P. Antonino of Stoughton, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 to take no action on the Petition.

Findings

The Board found that the petitioner's conversion of a pre-existing nonconforming deck into a covered porch was not substantially more detrimental to the neighborhood than the existing nonconforming structure, noting that the porch was further away from the side lot line than the footprint of the dwelling. The Board also concluded that the requested relief could be granted for the porch without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

With respect to the shed, the Board found that the petitioner had failed to present a hardship owing to the shape, soil or topography of the property to warrant locating the shed closer to the lot line than the Zoning By-law allows. The Board found that although the shed was built without proper permits, it could be moved in accordance with the by-law without substantial detriment to the property owner.

Decision

On a motion made by Mr. Karll and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief with respect to the porch, subject to the plan presented. With respect to the shed, the Board voted to deny the requested relief and instructed the petitioner to move the shed so as to comply with the Zoning By-laws within thirty (30) days of this decision.

3) Petition Number 09-43 Ralph W. Bucknam RE: 107 Arbutus Avenue

Present: Ralph Bucknam, petitioner

This is a petition filed by Ralph W. Bucknam of 107 Arbutus Avenue, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, Section 407, and 701, for a 7' X 10' porch on the front of the existing dwelling, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors Plan No. 1070, Plot 70 and contains +/- 8,000 Sq. Ft. 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 November 24, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier, and Jay Nuss, with no alternates.

Evidence

The petitioner, Ralph Bucknam, spoke on behalf of himself. Mr. Bucknam stated that the lot and structure do not meet the dimensional and density standards under section 135-701, as both pre-existing nonconforming. Pursuant to Section 135-701 of the Zoning By-laws, the minimum lot area is one (1) acre, yet this lot only has 8,000 SF. The minimum lot width for this zoning district is 100 ft., yet this lot offers only 80 feet of width. The minimum side yard setback is 10 ft., yet the existing dwelling is located 8 feet from the side lot line. The proposed porch would further encroach into the side yard setback, as the porch would be located 7.5 feet from the side lot line, thereby requiring a variance.

Mr. Bucknam stated that the alteration desired was to construct a roof over an existing cement slab to protect the porch landing from snow and ice. Mr. Bucknam explained that the proposed porch and a rear addition were approved by the Board in 2003, but they did not construct the porch at that time, and the variance lapsed. The petitioners would now like to proceed with constructing the previously approved porch.

The petitioner submitted a sheet entitled "Addition Plan Braintree, Mass.", dated Sept. 19, 2003, prepared by Michael P. Antonino, RLS of Stoughton, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 in favor of the requested relief.

Findings

The Board found that the petitioner had proven a hardship based on shape soil and topography to warrant the variance. Specifically, the Board found that the undersized lot and the placement of the existing structure on the lot made it difficult for the petitioner to construct the porch in compliance with the By-laws. The Board noted that the proposed porch will be in line with the existing footprint of the house, so that any further encroachment into the side yard setback is de minimus. The Board also noted that relief for this porch had been previously granted in 2003. 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. Karll and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

4) Petition Number 09-44 Minh Van RE: 50 Stonecrest Drive

Present: Minh Van, petitioner; James Dunn representative for petitioner and surveyor for the petitioner.

This is a petition filed by Minh Van of 34 Prospect Street, Quincy, MA regarding the property located at 50 Stonecrest Drive in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, Section 407 and 701 for the construction of new dwelling, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors Plan No. 1085, Plot 5H and contains +/- 20,069 Sq. Ft. 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 November 24, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier, and Jay Nuss, with no alternates.

Evidence

The petitioner appeared with his representative, James Dunn, as well as his surveyor. This proposed house is among those to be built at the Grove Heights subdivision. At the time that subdivision was approved by the Planning Board, the applicant submitted plans showing the proposed location of single family homes on each lot in compliance with the Zoning By-laws dimensional requirements, thus establishing the "building envelope". According to the building envelope for the subject lot, this house was proposed to be located 26 feet further back from the street line, so that the house was located in a wider portion of the lot that accommodated the 100 foot width required under the Zoning By-law. Now, the applicant wished to move the proposed house closer to the street line by 26 feet, so that the house will be located in an area of the lot that only provides 86.5 feet of lot width. Therefore, a variance from Section 135-701 is required.

Mr. Dunn stated that the back of the lot as well as the building envelope that was within the subdivision plan contained a substantial amount of ledge. He stated that the shape of the lot and the location of the ledge established substantial hardship that could be resolved by a variance. Mr. Dunn also noted that Mr. Van would incur a significant expense if required to remove the existing ledge. Mr. Dunn also noted the "pie" shape of the lot and explained that the dwelling would still meet adequate front, back and side yard setbacks, even though it would not have the minimum lot width.

The Board asked the petitioner about the Planning Board's suggestion that the house be pushed back 13 feet into a portion of the lot that would measure approximately 95 feet in width. Mr. Dunn and the surveyor reiterated that ledge outcroppings are still prevalent in that area of the lot, and therefore the placement of the house 13 feet back is not feasible.

Abutters, Vishal and Ridhi Aggarwal opposed this petition. Mr. Aggarwal stated that they encountered ledge in building the dwelling on their property. Although removal of the ledge increased the cost of the dwelling, it did not prevent Aggarwals from completing the project. The Aggarwals also opposed this petition, because they believe that building the dwelling in the proposed area will detrimentally affect the use of their living room, primarily obstructing the view from one of their windows.

Dave Gargano, a reside of Evergreen Avenue, located to the rear of this subdivision, expressed concern about blasting and note the existence of a gas line easement to the rear of the lot.

The petitioner submitted a packet of sheets entitled "PLAN OF LAND IN BRAINTREE, MA, Showing Proposed Dwelling & Deck, prepared for Minh Van. Lot 6, Stonecrest Drive", dated October 18, 2009, prepared by Commonwealth Engineering Associates of East Walpole, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 in favor of the petitioner, provided the petitioner move the house back 13 ft. making the lot width approximately 95 feet.

Findings

The Board found that the petitioner had established sufficient hardship based on shape, soil, and topography to warrant a variance. Specifically, the Board noted the irregular shape of this lot, which is a pie shape. The hardship was also found to be owing to the topography of the lot, due to a substantial amount of ledge in the rear 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. Karll and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Independence Manor III/St. Francis of Assisi Housing Partnership RE: 43 Independence Avenue

Mr. Forsberg advised the Board that he had received a request from St. Francis of Assisi Housing Partnership for the release of the outstanding monies remaining in the account designated for consultation and administration of the comprehensive permit for the Independence Manor III housing project.

On a motion made by Mr. Nuss and seconded by Mr. Gauthier, it was unanimously voted to release said funds back to the care and custody of St. Francis of Assisi Housing Partnership.

6) Future Meeting Dates

Mr. Forsberg introduced the proposed future meeting dates schedule for 2010 to the Board for their consideration.

On a motion made by Mr. Nuss and seconded by Mr. Gauthier, it was unanimously voted to accept the meeting schedule as outlined in the proposal.

APPROVAL OF MINUTES:

On a motion was made by Mr. Nuss and seconded by Mr. Gauthier, it was unanimously voted to approve the meeting minutes of October 27, 2009.

The meeting adjourned at 8:25pm.