



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

April 27, 2010

IN ATTENDANCE: Stephen Karll, Chairman
John Gauthier, Member
Michelle Lauria, Member
Michael Calder, 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 10-04**
Lisa Smith
RE: 224 Common Street

Present: Lisa Smith, petitioner accompanied by her husband, Joseph Smith

This is a petition filed by Lisa Smith of 224 Common Street, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407 and 701. The applicant seeks a permit and/or variance to construct an above-ground pool, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2087, Plot 14 and contains 7,702 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 February 23, 2010 and continued until April 27, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition at the February hearing was Chairman, Steve Karll, and members, Jack Gauthier and Jay Nuss; however, at the continued hearing on April 27, 2010, Jay Nuss was absent. Therefore, the Board heard this petition de novo; Chairman, Steve Karll, along with members, Jack Gauthier and Michael Calder, and alternate, Michelle Lauria, sat on this petition.

Evidence

Lisa Smith and her husband, Joseph, presented their petition to the Board, explaining that the above-ground pool was installed last year. Prior to the installation, the petitioners contacted the Building Department to inquire about setback requirements and to obtain a building permit. The petitioners marked out the 10 foot required setbacks from their rear and side property lines for their contractor to place the pool. However, on the day of installation, the contractor discovered a large tree stump in the area where the pool was supposed to be installed and determined that the pool could not be located where proposed, as the decaying tree stump would cause the pool to settle and compromise the structure. Instead, the contractor moved the pool, without benefit of obtaining the necessary zoning relief, so that the pool is located 3 feet from the rear lot line and 4 feet from the side lot line. Under the Zoning By-laws, a 10 foot setback is required from both the side and rear lot lines, and therefore, variances are required.

The Board inquired as to whether the petitioners had contacted the contractor who installed the pool to request that the contractor move the pool to the intended location. The petitioners explained that they had difficulty contacting the contractor, but after finally making contact, the contractor, Lot-2 Enterprises, Inc., supplied a letter explaining that the tree stump could not be moved, and the pool could not be located elsewhere in the yard, due to the location of a patio and shed.

The petitioners also asserted that the pool could not be located elsewhere on the lot. There is an existing patio off the rear of the house, and if the pool were moved closer to the patio, it would still encroach into the 10 foot setback. The petitioners explained that they could move the shed, but the pool still could not be located in the area of the shed due to the visible location of rocks and ledge in that area of the yard. The Building Inspector, Russ Forsberg, confirmed that there is a great deal of ledge in the Common Street area, and the vicinity of the petitioners' property is also known for having sandy soil, both of which would not be conducive to the placement of a pool.

The Board expressed concern about pool-hopping and potential liability issues with the pool located so close to the property lines. The petitioners explained that their neighbors were not opposed to the location of the pool and stated that they have a fence along their property lines. For added security, the petitioners offered to install a railing and 2 foot high fence along the periphery of the pool to restrict access to the pool.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 224 Common Street," dated November 2, 2009, prepared by C.S. Kelley Land Surveyors of Pembroke.

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

Findings

The Board found that the applicant had presented a hardship based on the topography of the site, particularly the presence of ledge, and the positioning of existing structures on the lot, making it difficult to install a pool elsewhere on the lot without encroaching into setbacks. The Board also 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. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented and on the condition that the petitioners install a fence with a locking mechanism along the periphery of the pool.

NEW BUSINESS:

**2) Petition Number 10-12
Clear Wireless, LLC
RE: 100 Grossman Drive**

Present: Attorney Ann Malone of Prince, Lobel, Glovsky and Tye representing the petitioner
Ramon Zamora, radio frequency engineer

This is a petition filed by Clear Wireless, LLC of 200 Fifth Avenue, 3rd Floor, Waltham, MA regarding the property located at 100 Grossman Drive in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407 and Article XVI, Section 1603.B to install three wireless communications panel antennas and three wireless backhaul dishes inside faux chimneys, along with related equipment cabinets, on the rooftop of the building, all in accordance with the plans of record. The property is located in a Highway Business Zoning District, as shown on Assessors Plan No. 2019, Plot 1N and contains 4,768 +/- 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 April 27, 2010 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, Jack Gauthier and Michelle Lauria, with alternate, Michael Calder.

Evidence

The petitioner, represented by Attorney Ann Malone of Prince, Lobel, Glovsky and Tye of Boston, appeared with Ramon Zamora, a radio frequency engineer. Attorney Malone explained to the Board that the petitioner is seeking permission to add three panel antennas and three wireless backhaul dishes inside faux chimneys on the rooftop of the building. A supporting equipment cabinet will also be located on the rooftop. Attorney Malone submitted an application packet, which explains that Sprint and Nextel merged in 2005, and subsequently, Sprint Nextel have been developing and deploying its 4th generation nationwide broadband mobile network in partnership with its affiliate, Clear Wireless, LLC. As a result, the applicant seeks to add three backhaul dishes and three panel antennas on this building to improve the high speed wireless network to accommodate Worldwide Interoperability for Microwave Access or "WiMAX" technology, which allows high speed internet access on-the-go and allows the transmission of large quantities of data over a longer distance at faster speed. Attorney Malone explained that other wireless telecommunications carriers currently have equipment located on the rooftop of this building, but this would be the first installation for Clear Wireless.

The panel antennas will be located within faux chimneys, painted to match the façade of the building, to be as visually unobtrusive as possible; each faux chimney measures 5 SF in area Both the dishes and the panel antennas will be located within 10 feet of the height of the building, in compliance with the Zoning By-law, Section 135-1603.B (4). The current height of the building is 48 feet, 7 inches; the installations will add 10 feet to the height.

This petition is governed by the Federal Telecommunications Acts ("TCA"), which allows a municipality to reasonably regulate the placement of wireless communications installation, provided, such regulations do not have the effect of prohibiting wireless communications facilities. The TCA also encourages co-location on existing towers, and this petition promotes this goal. The Town's Zoning By-law also encourages that wireless

installations be able to accommodate other carriers. Attorney Malone noted that this site currently does accommodate multiple wireless carriers, and therefore, this application promotes the goals of the TCA and the Zoning By-law.

However, under Section 1603.B (3) of the Zoning By-law, a building-mounted wireless communication link must be set back 500 feet from a school, hospital, convalescent and nursing home or residential lot line. Since the proposed installation will be located less than 500 feet from a residential lot line, a variance is required. As grounds for the variance, Attorney Malone noted that a literal enforcement of the Zoning By-law would present a substantial hardship, as the applicant has a significant gap in coverage in the area surrounding the site. Attorney Malone also noted that the Zoning By-law encourages location of wireless facilities on existing structures, such as this existing tower, which the applicant maintains is the best available option from a radio frequency perspective, and since it would be located on the rooftop of an existing building, this location is the least visually intrusive option in the area. Attorney Malone also noted the unique location of the site as a basis for granting the variance. Specifically, Attorney Malone explained that wireless communications facilities require a clear line of sight in order to transmit voice or data, and therefore, the facilities must operate above the tree line. This particular site, on the rooftop of a building with existing wireless facilities, provides the needed height to accommodate the applicant's transmissions. Further, Attorney Malone stated that the proposed installation will be designed in a way to minimize any visual impact, and since the building is located in a Highway Business zoning district, amidst similar uses, this proposed installation will not be substantially more detrimental to the public. The applicant submitted an affidavit of radio frequency engineer, Ramon Zamora, who attested to the fact that there is a gap in coverage in this area, that there is a need to locate wireless communications links within a certain distance of each other so signals may be transmitted uninterrupted, and that the proposed site is the best location available to meet these needs.

The petitioner submitted a title sheet entitled "Clearwire, Site Name: 100 Grossman Drive, Site Number: MA-BOS 5251B, Address: 100 Grossman Drive, Braintree, MA 02184," dated February 17, 2010 with revisions through February 23, 2010, prepared by Pro Terra Design Group, LLC of Northampton, MA, along with Sheet Z-1 entitled "Plans and Notes" and Sheet Z-2 entitled "Elevation & Details". The applicant also submitted a package entitled "Clearwire Wireless Broadband Proposed Wireless Telecommunications Installation, MA-BOS5251, Grossman Building" prepared by Bay State Design, Inc., which included a visibility map, views of the existing conditions and views from the northwest, west and south with the proposed new installations.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 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 petitioner had proven a hardship as a basis for a variance, as the new antennas and dishes were needed to provide service to the area and upgrade the WiMAX capability. The Board also concluded that the proposed alteration of the site by the addition of three dishes and three antennas would not visually impact the neighborhood or be more intrusive than the existing installations on the rooftop. 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 Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

**3) Petition Number 10-13
T-Mobile Northeast, LLC
RE: 197 Quincy Avenue**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting a 30-day extension regarding this appeal.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to approve a 30-day extension until the next Zoning Board of Appeals meeting on May 25, 2010.

**4) Petition Number 10-14
Michael Krause
RE: 625 Washington Street**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting a 30-day extension regarding this appeal.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to approve a 30-day extension until the next Zoning Board of Appeals meeting on May 25, 2010.

**5) Petition Number 10-15
Joseph P. Molloy
RE: 100 Cain Avenue**

Present: Joseph and Janice Molloy, petitioners

This is a petition filed by Joseph Molloy of 100 Cain Avenue, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicant seeks a permit and/or variance to construct a second floor addition over the existing dwelling, to raze an existing single-car garage, and to construct a two-car garage with connecting breezeway to the house, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1073B, Plot 95 and contains 13,140 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 April 27, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Michael Calder, with alternate, Michelle Lauria.

Evidence

Joseph and Janice Molloy presented their petition to the Board, explaining that they propose to construct a 1,190 SF addition to the southeasterly side of their home, consisting of an attached two-car garage and breezeway plus a second story over the existing dwelling. The proposed addition will encroach into the side yard setback. The Zoning By-law requires a 10 foot side yard setback, yet the proposed addition will be located 7.4 feet at its closets point to the side yard line; therefore, a variance is required. The portion of the proposed addition that will be closest to the side yard line is the two-car garage, and the petitioners explained that they cannot alter the dimensions of the garage and still be able to accommodate two cars. The petitioners explained

that the proposed addition faces the back yard of their abutter, Josephine Libertine of Selwyn Road, who has indicated to the petitioners that she is not opposed to the addition.

As grounds for the variance, the petitioners noted the irregular and angled shape of the lot and the fact that their house is not square with the lot lines. Mr. Molloy also noted the presence of rocks in the area, indicating possible ledge.

The petitioner submitted a plan entitled "Cain Avenue, Plan Showing Proposed Addition in Braintree, MA," dated March 25, 2010, prepared by Hoyt Land Surveying of Weymouth.

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

Findings

The Board found that the applicants had presented a hardship based on the irregular shape of the lot, with its angled lot lines, the topography of the site, particularly the presence of ledge in the area, and the positioning of existing structures on the lot, making it difficult to construct an addition without encroaching into setbacks. The Board also found that the side yard setback of 7.4 feet as opposed to the required 10 feet was de minimus. 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. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

6) Petition Number 10-16

The Marketplace at Braintree Condominium Trust c/o Key Point Partners, LLC

RE: 255-500 Grossman Drive

Present: Carol Kuseman, Key Point Partners representing the petitioner

This petition was filed by The Marketplace at Braintree Condominium Trust c/o Key Point Partners, LLC, One Burlington Woods Drive, Burlington, MA regarding the property located at 255-500 Grossman Drive, Braintree, MA. The petitioner requests relief from the Sign By-law requirements under Chapter 135, Article IX Section 135-904.2(A) (1)(g) in order to install one ground sign advising customers and visitors of the property manager's tow policy. The property is located in a Highway Business Zoning District and contains 1,496,727 +/- SF, as shown on Assessors' Map 2019, Plot 4 1-8.

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 April 27, 2010 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, Jack Gauthier and Michelle Lauria, with alternate, Michael Calder.

Evidence

The petitioner was represented by Carol Kuseman of Key Point Partners, the property manager of this site. Ms. Kuseman explained that, due to the site's convenient location to public transportation and major highways, specifically Route 3, the property manager has observed that people would park their cars and leave the site, prompting the property manager to implement a tow policy over one year ago to tow any vehicles whose owners park and then leave their vehicles on the site. In order to alert the public of this policy, the property manager wishes to erect a sign measuring 3 ft. high by 5 feet wide on the easterly side of the Borders Books building, where the loop road intersects with the main parking area. The sign will consist of white lettering on a red background, which will state: "CUSTOMER PARKING ONLY WHILE SHOPPING" with a warning below that states: "Your car is subject to towing if you leave the property and your vehicle is on the premises." Ms. Kuseman advised that the sign is needed to inform and adequately warn the public of this policy.

Under Section 135-904.2(A) (1) (g) of the Sign By-laws:

One secondary ground sign may be permitted by the Zoning Board of Appeals if it determines that the nature of the use of the premises, the architecture of the building, or the location with reference to the street or way is such that additional ground signs should be granted in the public interest. The total of all ground signs visible to the access road shall not exceed 150 square feet in area.

The site already has two ground signs: one visible from Route 3 and another at the intersection of Union Street and Grossman Drive. Together, these two ground signs already exceed the 150 SF limit under the By-law, and therefore a permission is required under the Sign By-law.

The Petitioner submitted a reduced copy of the Location and Zoning Plan for the entire Marketplace site, indicating the location of the proposed sign, along with a photo of the proposed sign in its proposed location, entitled "Keypoint Partners Braintree Mall Graphic Standards," prepared by FASTSIGNS.

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

Findings

The Board found that the petitioner had demonstrated that the sign served the public interest by informing the public of the tow policy. The Board also noted that the sign was for informational rather than advertising purposes. With the sign's modest size and location on the easterly side of Borders Books, the Board noted that the sign would not be visible to the traveling public along Route 3 or Union Street; rather, the sign will only be seen by the public accessing The Marketplace loop road. The Board also concluded that the signage would not be substantially more detrimental to the neighborhood and that the requested relief and that relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

Decision

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

APPROVAL OF MINUTES:

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to accept the meeting minutes of March 23, 2010.

The meeting adjourned at 7:55 pm