



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

February 22, 2011

IN ATTENDANCE: Stephen Karll, Chairman
Jack Gauthier, Member
Michael Calder, 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 10-38**
Thichthien Hue
RE: 155 Quincy Avenue

Present: Diane Evers, of D.P. Evers Architecture representing petitioner from

Based on a recommendation by Chairman Karll, the applicant requested a 60 day extension in order to evaluate a possible change in the height and location of the proposed archway.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted to approve a 60 day extension of the petition until the Zoning Board of Appeals meeting on March 22, 2011.

NEW BUSINESS:

- 2) Petition Number 11-05**
Patricia J. O'Connor
RE: 169 Cedar Street

Present: Patricia J. O'Connor, petitioner

This is a petition filed by Patricia O'Connor of 169 Cedar Street, 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 remove a 10 ft. x 10 ft. deck and a 14 ft. x 30 ft. raised patio in order to construct a new 337 foot 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. 2006, Plot 32F and contains +/- 0.221 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 February 22, 2011 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 Jay Nuss, with alternate, Michael Calder.

Evidence

The applicant, representing herself, explained to the Board that she is seeking permission to add a one-story addition to the rear of her existing dwelling, measuring 10 ft. x approximately 38.9 ft. for a 337 SF addition, which will add living space to her living and dining rooms. The applicant's existing dwelling and lot are both pre-existing nonconforming. The lot is undersized, containing only 9,640 SF of land, while the Zoning By-law requires a minimum lot size of 15,000 SF, and the lot lacks the 100 foot minimum lot depth, as it offers only 92 feet of depth, while the Zoning By-law requires a depth of 100 feet. The existing dwelling on the lot is also nonconforming as the dwelling currently encroaches into the side yard setback; the house is located 9.5 feet from the northwesterly side line (abutting Lot 2 on the plan submitted), but the Zoning By-law requires a setback of 10 feet. The existing 14 ft. x 30 ft. deck encroaches into the rear yard setback, as it is located 21 feet from the rear lot line; the Zoning By-law requires a rear yard setback of 30 feet. However, the applicant obtained a variance from the Zoning Board of Appeals for the construction of this deck. The applicant also has an existing 10 ft. x 10 ft. deck on the rear of the dwelling, which also encroaches into the rear yard setback; the applicant sought a variance for this deck in 1998, but this relief was denied. Nonetheless, the applicant constructed this deck. The applicant now proposes to remove the existing 10 ft. x 10 ft. deck and the 14 ft. x 30 ft. deck in order to construct the addition. The addition will encroach into the rear yard setback; at its closest point, the addition is proposed to be located 15.9 feet from the rear lot line, which is approximately 5 feet closer to the rear lot line than the existing deck. Therefore, a variance is required. Since the proposal also involves the alteration of a pre-existing nonconforming structure, a finding under G.L. Chapter 40A, Section 6 is also required.

The applicant's original proposal also included the construction of a large "L" shaped raised patio/deck, which would also require a variance due to its proposed encroachment into the rear yard setback. After discussing this with the Planning Board, the applicant decides to construct a ground-level patio, which does not require a variance.

As grounds for the hardship, the applicant noted the irregular shape of her lot, with angled lot lines, as well as the location of the existing dwelling on the lot. The applicant explained that the addition is intended to add living space to her existing living and dining rooms, which can only be accomplished by adding on to the rear. The applicant also explained that adding to the front of the house is not possible, due to the configuration of the interior, specifically, the location of her kitchen and a staircase; therefore, the rear is the only place to locate an addition.

The Chairman asked if the addition could be made flush with the garage, which is the portion of the dwelling that currently bumps into the rear yard. In so doing, the addition's encroachment into the rear yard setback would be reduced to approximately 23 feet. The applicant agreed to reduce the width of the addition by three

feet, so that the addition would be flush with the garage at the point closest to the garage. The applicant also offered to reduce the width of the addition on the end farthest from the garage from 7.1 feet to 5 feet, so the encroachment of the addition into the rear yard setback would taper to 25 feet.

Responding to an issue raised in the Planning Board's report, the Board questioned the building coverage on this lot. Inspector of Buildings, Russell Forsberg, advised that 35% building coverage is allowed under the Zoning By-law; the current proposal amounts to approximately 1,942 SF of lot coverage, which is less than 35%, so no variance is required.

Ann Hanson of 24 Russell Road owns the lot to the rear of this property. Ms. Hanson asked if the addition was to be used as an in-law apartment, to which the applicant responded in the negative. Ms. Hanson also asked how close the addition would come to her lot line, and the Chairman advised her that the setback would be 23 feet. No one else spoke in favor of or opposition to the petition. By a vote of 3-0-0, the Planning Board submitted an unfavorable recommendation on the basis that the applicant had failed to present a hardship.

The applicant submitted a plan entitled "Plan Showing Proposed Improvements in Braintree, MA," dated December 16, 2010, prepared by Hoyt Land Surveying of Weymouth, MA.

Findings

The Board found that, by reducing the width of the proposed addition by 3 feet so that the addition will be flush with the existing garage and be setback 23 feet from the rear lot line, the proposed alteration of the pre-existing nonconforming structure will maintain the existing setbacks and not create any new nonconformities under the Zoning By-law. The Board also found that granting the relief requested, as amended by the Board, would not be substantially more detrimental to the existing neighborhood than the existing structure. 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the following conditions:

1. That the width of the addition be reduced to 7.1 feet so that the addition will be flush with the existing garage and be located 23 feet from the rear lot line;
2. That the dimensions of the addition will be 38.9 feet long by 7.1 feet wide;
3. That there will be no deck constructed, but a patio at ground level, which does not require a variance; and
4. That the applicant submits a revised plan that complies with the conditions of this decision.

3) Petition Number 11-06 Dr. Ann-Marie Roche RE: 141 Edgehill Road

Chairman Karll advised the Board that the applicant submitted a letter requesting a 30 day extension of this petition.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted to approve the 30 day extension of the petition until the Zoning Board of Appeals meeting on March 22, 2011.

4) Petition Number 11-07

Robert LeVini on behalf of Harbor Freight Tools

RE: 727 Granite Street

Present: Pam Jagiello of Signs by J representing the applicant.

This is a petition filed by Robert LeVini on behalf of Harbor Freight Tools of 26541 Agura Road, Calabasas, CA regarding the property located at 727 Granite Street, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407, 135-904.2 to install one internally illuminated wall sign measuring 165.75 SF, all in accordance with the plans of record. The property is located in a Highway Business Zoning District, as shown on Assessors Plan No. 2048, Plot 32 and contains +/- 13.130 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 February 22, 2011 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 Michael Calder, with alternate, Jay Nuss.

Evidence

Pam Jagiello of Signs by J appeared on behalf of the applicant. The sign was designed by Urban Neon Electric Sign Company and depicts two rows of red channel letters, the first row reads "Harbor Freight" and the second row states "Tools". The letters were originally proposed to be illuminated by red internal lights, but at the Planning Board meeting on this matter, the applicant agreed to change the illumination to internal white lights.

The original application stated that the sign measured 165.75 SF. Under Section 135-904.2(A) (5) (a) of the Zoning By-laws, no wall sign may exceed 150 SF in area. When the Planning Department staff reviewed this application, it was determined that, by applying the definition of "sign area" to this proposal, the sign area is actually less than 150 SF in area, and therefore, no variance is required under this provision. Ms. Jagiello confirmed that the actual sign area is 72 SF, well below what is allowed under the Zoning By-law.

Section 135-904.2(A) (5) (e) of the Zoning By-law also limits sign area to one square foot per linear foot of frontage of the building facing the access roadway. The Planning Board staff noted that the linear frontage of the building is 84 feet, and therefore, the wall sign would be limited to 84 SF in area. Since Ms. Jagiello confirmed that the sign area would be 72 SF, no variance is required under this provision of the By-law.

Section 135-904.2(A) (5) (b) limits the height of a wall sign to 4 feet. As proposed, the applicant's sign measures 5 feet 7 inches in height, requiring a variance. As grounds for the variance, Ms. Jagiello noted that this store is located in a retail plaza that is set back some distance from Granite Street, and therefore, larger letters are needed for the traveling public to safely identify the location of the store.

No one else spoke in favor of or opposition to the petition. By a vote of 3-0-0, the Planning Board recommended favorable action of the petition, provided the sign is illuminated by white lights and the letters are reduced to 2.5 feet in height.

The petitioner submitted a plan entitled "Harbor Freight Tools, Braintree, MA," dated 11/23/10, prepared by Urban Neon Electric Sign Company of Holmes, PA.

Findings

The Board found that the petitioner had proven a hardship as a basis for the relief for the wall sign, as the Board found that the wall sign, with a height of 5 ft. 7 in. and overall area of 72 SF was reasonable and necessary to identify and safely direct the public to the business. The Board also found that this wall sign was not excessive and served the public need in terms of directing them to or informing them of the location of the store on the site, particularly in this exclusively retail plaza.

Decision

On a motion made by Mr. Gauthier and seconded by Mr. Calder, it was unanimously voted to approve the relief, subject to the condition that the height be limited to 5 ft. 7 in. and the overall area of the sign be limited to 72 SF.

**5) Petition Number 11-08
Eric Wagner of Dunkin Donuts of Massachusetts, Inc.
RE: 589 Granite Street**

Present: Attorney Carl Johnson representing the petitioner;
Eric Wagner, Manager of Store Planning for Dunkin' Brands;
Dana Altobello, P.E., of Merrill Associates, Inc.

This is a petition filed by Eric Wagner of Dunkin' Donuts of Massachusetts, Inc. of 589 Granite Street, 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, 701 and 903. The applicant seeks a permit and/or variance to extend a pre-existing nonconforming use to construct an accessory parking structure, to upgrade an existing on-premises sign, and to erect three flagpoles, all in accordance with the plans of record. The property is located in a Commercial/Watershed Protection District and Residence B/Watershed Protection District as shown on Assessors Plan No. 2048, Plots 14, 14D and 15B and contains 64,745 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 22, 2011 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 Jay Nuss, with alternate, Michael Calder.

Evidence

The applicant, represented by Attorney Carl Johnson, appeared along with Eric Wagner, Manager of Store Planning for Dunkin' Brands, and Dana Altobello, P.E., of Merrill Associates, Inc. Attorney Johnson explained to the Board that the subject site is currently operated as Dunkin' Donuts University Training Center and is used by Dunkin' Brands for training of employees. This site straddles an Industrial, now known as Commercial, Zoning District and Residence B Zoning District, with the Residence B section of the site being that portion fronting along Granite Street for a distance of 200 feet from the street line.

Attorney Johnson submitted a memorandum in support of the requested zoning relief, along with nine exhibits detailing the zoning history and uses of this site. A building permit was issued on December 11, 1967 allowing the construction of a 100 ft. x 120 ft. manufacturing plant and two-story office space building measuring 50 ft. x 40 ft. At the time the building was constructed, the Zoning By-laws did not address lots in more than one district. Shortly thereafter, Section I.2 of the Zoning By-laws dated December 31, 1967 stated that for lots located in more than one zoning district, “the regulations for the less restricted portion shall not extend more than thirty feet into the more restricted portion” and Section VIII Area Regulations, 2. side yards, provided that no building within an Industrial Zoning District shall be located within seven feet of the side lot line. The existing site and structures are pre-existing nonconforming as follows:

1. Parking associated with the 1967 building is located in the Residence B Zoning District, which is currently not allowed under Section 135-805(c) of the Zoning By-law;
2. The parking associated with the 1967 building in the Industrial (now Commercial) extends 40 ½ feet into the residence B Zone, which is more than the thirty feet limit set by the 1967 Zoning By-law and is in violation of the current by-law referenced above;
3. Fifteen parking spaces in the rear of the site encroach onto Town of Braintree property and do not provide adequate site circulation; and
4. The building encroaches into the 7 foot side yard setback as established by the 1967 Zoning By-law, as it is located 3.6 feet from the side yard lot line.

The applicant proposes to eliminate the fifteen parking spaces to the rear of the property that currently encroach onto Town of Braintree property. In addition, the applicant proposes to add 25 parking spaces which will extend 131 feet into the residentially zoned portion of the lot, thus expanding the nonconforming use and requiring a finding pursuant to G.L. Chapter 40A, Section 6. The reconfigured parking area will meet the design and landscaping requirements of Article VIII of the Zoning By-laws as well as provide a compliant number of parking spaces to service the site as office space and training facility. The parking area will also include a full storm water management system to provide on-site infiltration that will satisfy the purpose of the Watershed Protection overlay district.

The expansion of the pre-existing nonconforming parking use in the residentially zoned portion of the lot requires analysis under Powers v. Building Inspector of Barnstable, 363 Mass. 648 (1973). In Powers, the Supreme Judicial Court established the criteria to be applied when determining whether a pre-existing nonconforming use has been so substantially altered as to forfeit its pre-existing nonconforming grandfathered status. Specifically, the Powers test requires the following analysis:

1. Whether the use of the property reflects the “nature and purpose” of the use prevailing when the zoning by-law took effect;
2. Whether there is a difference in the “quality or character, as well as the degree of use”; and
3. Whether the proposed use is “different in its kind or its effect” on the neighborhood.

Applying this test to the applicant’s proposed expansion of the parking use, Attorney Johnson noted that the use will remain the same; the residentially zoned land was used as parking when the building was constructed in 1967 and will continue to be used for parking. Attorney Johnson further asserted that the quality and character of the use will be greatly enhanced by the applicant’s proposal in that site circulation, layout, landscaping, and storm water management will be improved. Parking to be added will also comply with the requirements of Article VIII of the Zoning By-laws. Attorney Johnson also maintained that the proposed expanded parking is of identical use as the grandfathered use. A review of the surrounding neighborhood reveals that the area is essentially commercial in nature with some multifamily dwellings and an assisted living facility; the area is not primarily residential in nature, and therefore, the expanded parking use will not have a detrimental effect on the neighborhood. Rather, the circulation and storm water management improvements to the site would have a

beneficial impact on the neighborhood. When analyzing the expanded parking proposal under the Powers test, the Planning Board concluded, by a vote of 3-0-0, that the expanded parking would not be substantially more detrimental to the neighborhood than the existing parking.

Attorney Johnson explained to the Board that the applicant is also seeking permission to remove and replace a freezer to the rear of the property. The freezer is proposed to be located 33 feet from the rear lot line; however, the Zoning By-law requires a rear yard setback of 35 feet, and thus a variance is required. By removing eleven parking spaces to the rear of the building, the applicant will add two freezers, one of which encroaches into the rear yard setback. The removal of the existing freezer and placement of the new freezers will not interfere with site circulation improvements noted above. As grounds for a variance, Attorney Johnson noted the narrow configuration of the rear lot line at the southwest corner, which is angled closer towards the building at this corner, thus making it difficult to comply with the rear yard setback. The addition of the freezers to the building also requires a finding under Chapter 40A, Section 6, as an alteration of the pre-existing nonconforming building. Since the encroachment into the rear yard setback is 2 feet, Attorney Johnson asserted that the encroachment was de minimus in nature. The Planning Board concurred with the applicant relative to the proof of hardship and the minimal impact of the encroachment.

In addition, the applicant is seeking permission to replace an existing 21 SF monument sign, which is located in the residentially zoned portion of the lot but serves the commercial use on the site; thus, the sign is not conforming under Section 135-903 of the Zoning By-law. The applicant presented two options: one measuring 4 feet in height and 6 feet 10 inches in width for a total of 28 SF and the other measuring 3 feet 6 inches in height and 6 feet in width for a total of 21 SF. The sign would be internally illuminated with white lights and would be located between two stone columns. The sign will read "Dunkin' Brands University" and "589 Granite Street". The applicant will also surround the sign with landscaping. The applicant submitted a color photo depicting the proposed sign, along with two sketches detailing the dimensions of the two sign options. The applicant also submitted a schematic entitled "Baskin Robbins/Dunkin' Donuts, 589 Granite Street, Braintree, MA, Preliminary (Retrofit) Layout." The Planning Board recommended favorably as to the larger sign.

Finally, the applicant proposes to erect three flagpoles behind the sign, one of which will be 20 feet high and fly the American flag and the other two will be 15 feet high and will fly the organization colors for Dunkin' Donuts and Baskin Robbins, which comprise Dunkin' Brands. Section 135-903(A)(10) of the Zoning By-law permits a ground flagpole up to a maximum height of 35 feet to fly "any state, national or organization colors" within a residential zoning district. The applicant was not certain whether flying the Baskin Robbins and Dunkin' Donuts flags constituted "organization colors" within the meaning of the Zoning By-law, so the applicant seeks any zoning relief necessary for these flagpoles. After consulting with the Town Solicitor, it was determined that the term "organization colors" as used in the Zoning By-law did include such corporate flags, and thus, the applicant's proposal conforms to the Zoning By-law and does not require any separate relief.

The applicant submitted plans entitled "Plan of Land, 589 Granite Street, Braintree, Massachusetts," dated January 3, 2011, prepared by Merrill Associates, Inc. of Hanover, MA, which included: Sheet 1 of 1, Exterior Elevations and Schedule A-1, Proposed Floor Plan X-1, Second Floor Plan A-1, as well as a plan entitled "Site Plan, 589 Granite Street, Assessors Map 2048, Block 0, Lot 14D, Braintree, Massachusetts," sheets 1 of 5 through 6 of 5, dated October 25, 2010 with revisions through January 12, 2011, prepared by Merrill Associates, Inc.

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

Findings

In applying the Powers test to the applicant's proposed expansion of the pre-existing nonconforming parking, the Board found that:

1. the expanded parking into the residentially zoned portion of the site was of identical nature and purpose of the parking as when it was constructed in 1967;
2. the proposed parking will improve the quality, character and degree of use, as the number of parking spaces will comply with Article VIII of the Zoning By-laws, site circulation will be improved, landscaping will be added, and a storm water management system will be installed; and
3. in light of the site improvements noted in paragraph 2 above, the expanded parking will not be different in kind in its effect on the surrounding neighborhood, which is predominantly commercial in nature.

Thus, the Board found that the expanded parking would not be substantially more detrimental to the neighborhood than the existing parking use.

With respect to the freezer to be added to the rear of the nonconforming building, the Board found that the 2 foot encroachment into the rear yard setback was de minimus in nature and that the alteration to the building would not be substantially more detrimental to the neighborhood than the existing structure.

Finally, the Board that granting a variance from the Sign By-law to allow a 21 SF sign, where a 20 SF sign is permitted, was a de minimus variation. Given the setback of the sign and facility from Granite Street, a heavily traveled street, the Board found that the applicant had provided proof of a hardship warranting a larger sign. The Board also found that the proposed sign furthered the purposes of the Sign By-law to alert the traveling public as to the location and to guide the public safely to the site.

With respect to all of the relief requested, the Board found that granting the relief requested, as amended by the Board, would not be substantially more detrimental to the existing neighborhood than the existing structures and uses. 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. Gauthier and seconded by Mr. Nuss, it was unanimously voted to grant the following relief subject to the plans submitted:

1. to grant the expansion of the parking lot into the residentially zoned portion of the site, as presented on the plans, subject to the condition that additional plantings and landscaping be installed between Granite Street and the edge of the expanded parking lot in order to screen the view of the parking;
2. to allow the freezer in the rear of the building to encroach 2 feet into the rear yard setback; and
3. to grant a variance from the Sign By-law to permit a 21 SF sign to replace the existing sign, with the sign to be surrounded by three flagpoles: the 20 ft. high flagpole to display a 6 ft. x 8 ft. American flag and the two 15 ft. flagpoles to display two 4 ft. x 6 ft. flags of the organization's colors.

**6) Petition Number 11-09
New Cingular Wireless PCS, LLC d/b/a AT & T Mobility
RE: 100 Grandview Road**

Present: Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI representing the petitioner;
Paul DeCoste, AT & T Mobility

This is a petition filed by New Cingular Wireless PCS LLC d/b/a AT&T Mobility, c/o Edward D. Pare, Jr., Esq., Brown Rudnick, LLP, 121 South Main Street, Providence, RI 02903, regarding the property located at 100 Grandview Road in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 1603 and seeks a permit and/or variance to install three (3) additional panel antennas and ancillary equipment cabinets on the roof of an existing 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. 2053B, Plot 1T and contains 200,000 +/- 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 scheduled before the Zoning Board of Appeals on February 22, 2011 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 Michael Calder, with no alternate.

Evidence

The petitioner was represented by Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI. Attorney Dolan explained to the Board that the petitioner currently has wireless communications installations at this site, but is seeking to add three panel antennas on the roof of the existing building with associated equipment cabinets to be located inside the screened wall on the roof. The three antennae are to be flush mounted to the sides of the screen wall, along the southeast, east, and north sides of the building on AT&T's existing mounting brackets. The building is 50 feet high with an additional 11.3 feet for screening on the rooftop for mechanical equipment. The antenna will be mounted on the roof at a height of 59 feet or 9 feet above the height of the building. This installation will not increase the height of the existing screen wall at the site. The installation also includes remote radio heads, surge arrestor, fiber and coax conduits, with associated electronic equipment along the northerly side of the roof and within the existing AT&T equipment shelter on the roof.

Under Section 135-701 of the Zoning By-laws, the maximum building height is 50 feet, and under Section 135-1603(B)(4), a building-mounted wireless communication link shall not exceed 10 feet above the existing height of the building. Since the three antennae are to be located on the screen wall, which is already 11.3 feet beyond the permissible height of the building, a finding under Chapter 40A, Section 6 is required to alter this pre-existing nonconforming structure.

The Planning Board also questioned whether a day care facility is located within 500 feet of this building, and if so, a variance would be required under Section 135-904(B)(3). Attorney Dolan could not confirm whether a day care facility was within 500 feet of the building, but upon further discussion among the Board members and the Inspector of Buildings, it was determined that the closest daycare facility, Kinder Care, was further than 500 feet from the building.

Attorney Dolan noted that several other wireless carriers, including AT&T, are currently located on this rooftop, and these providers were granted similar relief. Because of these multiple installations on the roof, the petitioner confirmed that its equipment could be located without interfering with the signals of the other carriers, as required under the Federal Telecommunications Act. Attorney Dolan also explained that the additional antennas are necessary to satisfy a gap in coverage and to upgrade existing technology to provide "4G" high speed data services. The location of these antennae at this site is needed to service this area, as supported by a report of Kevin Breuer, a radio frequency engineer. Mr. Breuer also attested that the antennas are located at the minimum height necessary to ensure adequate coverage and service.

In furtherance of the goals of the Federal Telecommunications Act and Article 16 of the Town's Zoning Bylaw, AT&T is using existing installation sites, to avoid the need to erect new towers and facilities. The location of these three antennas at this site promotes this goal of co-location. Attorney Dolan explained that the building is significantly set back from Granite Street and Forbes Road, situated among several other businesses and is not visible to any residences. In addition, the three new antennas will be located at the same height as AT&T's existing installations on this roof, thereby minimizing any visual impact to the neighborhood. Cables will be located in the same area as existing cables, and the equipment cabinets will be housed within AT&T's existing equipment shelter on the roof. Moreover, Attorney Dolan noted that this site is the only feasible and available existing wireless communications facility upon which AT&T can locate these three antennas to fill its gap in service. Therefore, Attorney Dolan posited that the proposed installations will not be substantially more detrimental to the neighborhood than the existing building and installations.

The petitioner submitted a packet of materials in support of their application, which included the report of the radio frequency engineer, their FCC license, color photos of the site depicting the proposed installations, and plans entitled "AT&T, Site Number MA1173, Site Name: Braintree 2," Title Sheet T-1, General Notes GN-1, Plot Plan C-1, Roof & Equipment Plan A-1, Elevations A-2, Elevations and Details A-3, and Plumbing Diagram and Details G-1, dated September 7, 2010 and revised through December 8, 2010, prepared by Hudson Design Group of North Andover, MA.

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 Article 16 of the Town's Zoning By-laws and that the location of antenna on the existing building was needed to provide service to the area. The Board was also satisfied that the proposed installations were the least intrusive means necessary to address their gap in coverage. The Board also concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing building with its current wireless facilities and that the 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 plans presented.

7) Petition Number 11-10 New Cingular Wireless PCS, LLC d/b/a AT & T Mobility RE: 531 Pond Street

Present: Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI, representing the petitioner;
Paul DeCoste, AT & T Mobility

This is a petition filed by New Cingular Wireless PCS LLC d/b/a AT&T Mobility, c/o Edward D. Pare, Jr., Esq., Brown Rudnick, LLP, 121 South Main Street, Providence, RI 02903, regarding the property located at 531 Pond Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 1603 and seeks a permit and/or variance to install three (3) additional panel antennas and ancillary equipment on an existing wireless communications tower, all in accordance with the

plans of record. The property is located in a Commercial Watershed Protection District as shown on Assessors Plan No. 1038, Plot 10 and contains 5.91 +/- 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 February 22, 2011 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 Jay Nuss, with alternate, Michael Calder.

Evidence

The petitioner was represented by Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI. Attorney Dolan explained to the Board that the petitioner currently has wireless communications installations at this site, but is seeking to add three panel antennas on the existing tower with associated cables and equipment cabinets to be located inside the existing AT&T equipment compound at the base of the tower. The three antennae are to be mounted on the tower at the same elevation as AT&T's existing antennas at 77 feet, 6 inches. The tower is currently 95 feet high and contains installations of multiple wireless carriers, and this installation will not increase the height of the tower. Under Section 135-1603.C(2)(d)(2), a tower is limited to 100 feet in height. The installation also includes remote radio heads, surge arrestor, fiber and coax conduits, with associated electronic equipment to be located within the AT&T equipment compound located at the base of the tower. Under Article 16 of the Town's Zoning By-law, towers are not allowed within a Commercial Zoning District, therefore, this is a pre-existing nonconforming structure. Alteration of this structure requires a finding under Chapter 40A, Section 6.

Attorney Dolan noted that several other wireless carriers, including AT&T, are currently located on this tower, and these providers were granted similar relief. Because of these multiple installations on the tower, the petitioner confirmed that its equipment could be located without interfering with the signals of the other carriers, as required under the Federal Telecommunications Act. Attorney Dolan also explained that the additional antennas are necessary to satisfy a gap in coverage and to upgrade existing technology to provide "4G" high speed data services. The location of these antennae at this site is needed to service this area, as supported by a report of Kevin Breuer, a radio frequency engineer. Mr. Breuer also attested that the antennas are located at the minimum height necessary to ensure adequate coverage and service.

In furtherance of the goals of the Federal Telecommunications Act and Article 16 of the Town's Zoning Bylaw, AT&T is using existing installation sites, to avoid the need to erect new towers and facilities. The location of these three antennas at this site promotes this goal of co-location. Attorney Dolan explained that the tower is located within a Commercial Zoning District, situated among several other businesses. In addition, the three new antennas will be located at the same height as AT&T's existing installations on this tower, thereby minimizing any visual impact to the neighborhood. Cables will be located in the same area as existing cables, and the equipment cabinets will be housed within AT&T's existing equipment shelter at the base of the tower. Moreover, Attorney Dolan noted that this site is the only feasible and available existing wireless communications facility upon which AT&T can locate these three antennas to fill its gap in service. Therefore, Attorney Dolan posited that the proposed installations will not be substantially more detrimental to the neighborhood than the existing building and installations.

The petitioner submitted a packet of materials in support of their application, which included the report of the radio frequency engineer, their FCC license, color photos of the site depicting the proposed installations, and plans entitled "AT&T, Site Number MA1227, Site Name: Randolph Pond Street," Title Sheet T-1, General

Notes GN-1, Plot Plan & 300' Abutters Plan C-1, Compound & Equipment Plan A-1, Details and Elevation A-2, Elevations A-3, and Plumbing Diagram and Details G-1, dated November 11, 2010 and revised through December 6, 2010, prepared by Hudson Design Group of North Andover, MA.

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 Article 16 of the Town's Zoning By-laws and that the location of antenna on the existing tower was needed to provide service to the area. The Board was also satisfied that the proposed installations were the least intrusive means necessary to address their gap in coverage. The Board also concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing tower with its current wireless facilities and that the 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.

8) Petition Number 11-11

New Cingular Wireless PCS, LLC d/b/a AT & T Mobility

RE: 300 River Street

Present: Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI representing the petitioner;
Paul DeCoste, AT & T Mobility

This is a petition filed by New Cingular Wireless PCS LLC d/b/a AT&T Mobility, c/o Edward D. Pare, Jr., Esq., Brown Rudnick, LLP, 121 South Main Street, Providence, RI 02903, regarding the property located at 300 River Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 1601 et seq. and seeks a permit and/or variance to install three (3) additional panel antennas and ancillary equipment on an existing wireless communications tower, all in accordance with the plans of record. The property is located in an Open Space Conservancy District as shown on Assessors Plan Nos. 2009 and 2080, Plot 14 and contains 46.19 +/- 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 February 22, 2011 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 Michael Calder, with alternate, Jay Nuss.

Evidence

The petitioner was represented by Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI. Attorney Dolan explained to the Board that the petitioner currently has wireless communications installations at this site but is seeking to add three panel antennas on the existing tower with associated cables and equipment cabinets to be located inside the existing AT&T equipment compound at the base of the tower. The three antennae are to be mounted on the tower at the same elevation as AT&T's existing antennas at an antenna centerline height of 122 feet. The tower is currently 137 feet high and contains installations of multiple wireless carriers; this installation will not increase the height of the tower. Under Section 135-1603.C(2)(d)(2), a tower is limited to 100 feet in height. The installation also includes remote radio heads, surge arrestor, fiber and coax conduits, with associated electronic equipment to be located within the AT&T equipment compound located at the base of the tower. Under Article 16 of the Town's Zoning By-law, towers are not allowed within an Open Space Conservancy Zoning District, therefore, this is a pre-existing nonconforming structure. Alteration of this structure requires a finding under Chapter 40A, Section 6.

Attorney Dolan noted that several other wireless carriers, including AT&T, are currently located on this tower, and these providers were granted similar relief. Specifically, the Board granted relief to AT&T to attach equipment to the tower via Decision 01-22 and 09-21. Because of these multiple installations on the tower, the petitioner confirmed that its equipment could be located without interfering with the signals of the other carriers, as required under the Federal Telecommunications Act. Attorney Dolan also explained that the additional antennas are necessary to satisfy a gap in coverage and to upgrade existing technology to provide "4G" high speed data services. The location of these antennae at this site is needed to service this area, as supported by a report of Kevin Breuer, a radio frequency engineer. Mr. Breuer also attested that the antennas are located at the minimum height necessary to ensure adequate coverage and service.

In furtherance of the goals of the Federal Telecommunications Act and Article 16 of the Town's Zoning Bylaw, AT&T is using existing installation sites, to avoid the need to erect new towers and facilities. The location of these three antennas at this site promotes this goal of co-location. Attorney Dolan explained that the tower is located within an Open Space Conservancy Zoning District, adjacent to East Middle School. In addition, the three new antennas will be located at the same height as AT&T's existing installations on this tower, thereby minimizing any visual impact to the neighborhood. Cables will be located in the same area as existing cables, and the equipment cabinets will be housed within AT&T's existing equipment shelter at the base of the tower. Moreover, Attorney Dolan noted that this site is the only feasible and available existing wireless communications facility upon which AT&T can locate these three antennas to fill its gap in service. Therefore, Attorney Dolan posited that the proposed installations will not be substantially more detrimental to the neighborhood than the existing building and installations.

The petitioner submitted a packet of materials in support of their application, which included the report of the radio frequency engineer, their FCC license, color photos of the site depicting the proposed installations, and plans entitled "AT&T, Site Number MA1393, Site Name: Braintree River St." Title Sheet T-1, General Notes GN-1, Plot Plan C-1, Compound & Equipment Plan A-1, Elevations A-2, Elevations A-3, Antenna Layout and Details A-4, and Plumbing Diagram and Details G-1, dated October 4, 2010 and revised through December 7, 2010, prepared by Hudson Design Group of North Andover, MA.

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 Article 16 of the Town's Zoning By-laws and that the location of antenna on the existing tower was needed to provide service to the area. The Board was also satisfied that the proposed

installations were the least intrusive means necessary to address their gap in coverage. The Board also concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing tower with its current wireless facilities and that the 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 plans presented.

9) Petition Number 11-12

New Cingular Wireless PCS, LLC d/b/a AT & T Mobility

RE: 45 Braintree Hill Office Park

Present: Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI representing the petitioner

Attorney Dolan advised the Board that the petitioner is requesting to withdraw the petition without prejudice.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted to approve the requested withdrawal of the petition without prejudice.

10) Petition Number 11-13

New Cingular Wireless PCS, LLC d/b/a AT & T Mobility

RE: 150 Grossman Drive

Present: Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI representing the petitioner;
Paul DeCoste, AT & T Mobility

This is a petition filed by New Cingular Wireless PCS LLC d/b/a AT&T Mobility, c/o Edward D. Pare, Jr., Esq., Brown Rudnick, LLP, 121 South Main Street, Providence, RI 02903, regarding the property located at 150 Grossman Drive in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 1601 et seq. and seeks a permit and/or variance to install three (3) additional panel antennas and ancillary equipment cabinets on the roof of an existing 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. 2019B, Plot 1N and contains 34.31 +/- 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 February 22, 2011 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 Michael Calder, with no alternate.

Evidence

The petitioner was represented by Attorney Michael Dolan of Brown Rudnick, LLP of Providence, RI. Attorney Dolan explained to the Board that the petitioner currently has wireless communications installations at this site but is seeking to add three panel antennas on the roof of the existing building with associated

equipment cabinets to be located on existing roof mounts at an elevation of 61 feet at the antenna centerline. The three antennae are to be mounted on the roof on AT&T's existing mounting brackets. The installation also includes remote radio heads, surge arrestor, fiber and coax conduits, with associated electronic equipment along the northerly side of the roof and within the existing AT&T equipment cabinet located inside the building.

Under Section 135-701 of the Zoning By-laws, the maximum building height is 50 feet, and under Section 135-1603(B)(4), a building-mounted wireless communication link shall not exceed 10 feet above the existing height of the building. Since the three antennae are to be located on the roof on existing AT&T mounting brackets at an elevation of 12 feet 6 inches above the roofline, a finding under Chapter 40A, Section 6 is required to alter this pre-existing nonconforming structure.

The Planning Board also noted that the proposed installation is located within 500 feet of the nearest residential condominium complex, so a variance is required under Section 135-904(B)(3).

Attorney Dolan noted that several other wireless carriers, including AT&T, are currently located on this rooftop, and these providers were granted similar relief. Because of these multiple installations on the roof, the petitioner confirmed that its equipment could be located without interfering with the signals of the other carriers, as required under the Federal Telecommunications Act. Attorney Dolan also explained that the additional antennas are necessary to satisfy a gap in coverage and to upgrade existing technology to provide "4G" high speed data services. The location of these antennae at this site is needed to service this area, as supported by a report of Kevin Breuer, a radio frequency engineer. Mr. Breuer also attested that the antennas are located at the minimum height necessary to ensure adequate coverage and service.

In furtherance of the goals of the Federal Telecommunications Act and Article 16 of the Town's Zoning Bylaw, AT&T is using existing installation sites, to avoid the need to erect new towers and facilities. The location of these three antennas at this site promotes this goal of co-location. Attorney Dolan explained that the building is situated among several other businesses and is adjacent to the MBTA red line. Although the site is situated at least 393 feet from the nearest residence, the installation is not visible to any residences. In addition, the three new antennas will be located at the same height as AT&T's existing installations on this roof, thereby minimizing any visual impact to the neighborhood. Cables will be located in the same area as existing cables, and the equipment cabinets will be housed within AT&T's existing equipment shelter inside the building. Moreover, Attorney Dolan noted that this site is the only feasible and available existing wireless communications facility upon which AT&T can locate these three antennas to fill its gap in service. Therefore, Attorney Dolan posited that the proposed installations will not be substantially more detrimental to the neighborhood than the existing building and installations and warranted a variance.

The petitioner submitted a packet of materials in support of their application, which included the report of the radio frequency engineer, their FCC license, color photos of the site depicting the proposed installations, and plans entitled "AT&T, Site Number MA1134, Site Name: Braintree," Title Sheet T-1, General Notes GN-1, Plot Plan C-1, Roof & Equipment Plan A-1, Elevations A-2, Antenna Layout and Penetration Details A-3, and Plumbing Diagram and Details G-1, dated September 7, 2010 and revised through October 4, 2010, prepared by Hudson Design Group of North Andover, MA.

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 Article 16 of the Town's Zoning By-laws. The Board also found that the

petitioner had presented proof of hardship based on a gap in coverage and that the location of antennas on the existing building was needed to provide service to the area. The Board was also satisfied that the proposed installations were the least intrusive means necessary to address their gap in coverage. The Board also concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing building with its current wireless facilities and that the 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 plans presented.

OTHER BUSINESS:

- 11) Petition Number 10-08
A & B Properties
RE: 40, 60 and 80 Campanelli Drive**

Present: Attorney Frank Marinelli representing the petitioner

Attorney Marinelli advised the Board that the petitioner is requesting to extend the relief previously granted by the Board, for an additional six months due to financial constraints which did not allow the applicant to exercise the relief granted.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to approve the request for a six month extension of the relief granted to expire on August 23, 2011.

APPROVAL OF MINUTES:

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to accept the meeting minutes of February 3, 2011.

The meeting adjourned at 9:43 pm