



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

March 22, 2011

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

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

Mr. Karll called the meeting to order at 7:03pm.

OLD BUSINESS:

- 1) Petition Number 10-38**
Thichthien Hue on behalf of the Samanta Bhadra Buddhist Center
RE: 155 Quincy Avenue

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

This is a petition filed by Thichthien Hue on behalf of the Samanta Bhadra Buddhist Center located at 155 Quincy Avenue in Braintree regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 and seeks a permit and/or variance to construct an ornamental fence and gate, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3042, Plot 3 and contains +/- 53,561 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 November 23, 2010, February 22, 2011 and March 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.

Evidence

The applicant was represented by Diane Evers, an architect from Rehoboth, MA, who explained to the Board that the Buddhist Center sought to construct a fence and gate along the Quincy Avenue street line, the purpose of which is to minimize traffic, noise and other distractions and to create a calm and peaceful entry way to the center, in keeping with the Buddhist tradition. The gate is designed to line up with the door to the temple, and the fence is intended to enclose a meditation area. Ms. Evers explained that the gate marks the ceremonial and spiritual entrance into the temple. The gate is proposed to be 24 feet high, and the fence is proposed to be 11 feet high. The fence will run the full frontage of the property along Quincy Avenue, with the ornamental gate centered in the middle. At its closest point, the fence would be located 2 feet off the street, thus providing no front yard setback. Although the Buddhist Center qualifies for certain religious exemptions from zoning under G.L. Chapter 40A, Section 3, the Town may impose reasonable setbacks on religious structures, and in the opinion of the Building Inspector, the fence did not provide a reasonable setback.

Ms. Evers noted the location of the temple and parking lot on the site and explained that the proposed location of the gate and fence were designed to maximize the internal space, to provide for a meditation area. Ms. Evers also explained that the fence was proposed to be located as close as possible to the sidewalk so as not to interfere with the existing parking area, which is also used as an area where a tent is erected for certain spiritual celebrations.

At the November hearing, the Board expressed concern about the size of the structure and its placement so close to Quincy Avenue, which is a busy thoroughfare. The Board also suggested that the applicant contact the East Braintree Civic Association and neighbors to design a structure that is safe and in keeping with the neighborhood. The applicant agreed to meet with the civic association and neighbors and to continue this matter to a future date.

At the February 22, 2011 Board meeting, Ms. Evers informed the Board that the applicant met with the East Braintree Civic Association, who were in favor of a revised plan. Ms. Evers explained that the proposal had been revised by reducing the height of the gate from 24 feet to 21 feet and its design is proposed to be a solid geometric square. Ms. Evers also advised that the fence and gate were now proposed to be located 8 feet from the street, whereas the prior proposal set the gate and fence 5 feet 6 inches from the street. Still, the Board expressed concern about such a large structure being set only 2.5 feet from the sidewalk, where the Zoning By-law typically requires a 20 foot front yard setback. Again the Board asked the applicant to reconsider its proposal, and the applicant agreed to appear before the Board at its March meeting.

At the March 22, 2011 meeting, Ms. Evers reported that the applicant had further revised its plan with the gate and fence set back 15 feet from the front lot line. Since the last meeting, the Board received a letter from Town Councilor Bowes from District 3 in support of the petition. David Oliver, Chairman of the East Braintree Civic, and Lee Dingee, a member of the civic association, both spoke in favor of the petition. No one else spoke in favor of or opposition to the petition.

The applicant submitted a plan entitled "Existing Conditions Plan Showing proposed Entryway, 155 Quincy Avenue, Braintree, Massachusetts," dated September 24, 2009, prepared by A.S. Elliott Associates, Land Surveyors, of Hopedale, MA. The applicant also submitted three architectural renderings of the proposed gate and fence, all of which are undated.

By a vote of 5-0-0, the Planning Board submitted a favorable recommendation.

Findings

The Board found that the proposed gate and fence setback 15 feet from the sidewalk and street was a reasonable regulation under G.L. Chapter 40A, Section 3. The Board also noted the placement of existing structures on

the lot and the parking area, which restricted the placement of the gate and fence. The Board also noted that the irregular, rhomboidal shape of the lot presented a hardship. 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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the applicant submitting a revised plan with the gate located 15 feet from the sidewalk, as discussed herein.

2) Petition Number 11-01
Tony D. Tran
RE: 51 Somerville Avenue

Present: Tony D. Tran, petitioner

This is a petition filed by Tony D. Tran of 51 Somerville 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 legitimize a 26' x 10.4' deck 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. 3053, Plot 33 and contains +/- 6,400 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 March 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 himself, explained to the Board that he is seeking permission to legitimize a 26 ft. wide x 10.4 ft. deep deck to the rear of his existing dwelling, which was constructed in the spring of 2010 without the benefit of a building permit. The applicant explained that this new deck replaced a prior deck which was removed because it was unsafe. The applicant did not apply for a building permit to replace the deck because he did not know that a building permit was required. The new deck encroaches into the rear yard setback, as it is located 22.8 feet from the rear lot line, while the Zoning By-law requires a rear yard setback of 30 feet. Therefore, a variance is required.

As grounds for a hardship, the applicant noted the undersized area of the lot and the location of existing structures on the lot which make it difficult to locate the deck elsewhere on the lot. The applicant also noted that the lot is lacking the required depth, as it offers on 80 feet of depth, whereas the Zoning By-law requires a depth of 100 feet. Finally, the applicant noted the presence of ledge in the soil, limiting the placement of a deck.

The applicant submitted a plan entitled "As Built Plot Plan of Land in Braintree, Massachusetts at 51 Somerville Avenue," dated December 10, 2010, prepared by Vancura & Brennan Land Surveyors of

Newburyport, MA. The applicant also submitted a petition signed by seven neighbors and/or abutters, all of whom are in favor of the requested relief.

Mr. Gauthier asked if the Building Department had had an opportunity to inspect the deck and determine whether it was construction according to the Building Code, to which Mr. Forsberg, the Inspector of Buildings, advised that the Building Department had inspected the structure and was satisfied.

John McNeil of 16 Wellington Circle, the abutter to the rear of the applicant's property, addressed the Board and stated that the newly constructed deck is an improvement to the applicant's property. Mr. McNeil also expressed his opinion that the new deck is the same size as the old deck, so that the old deck was approximately 10 feet deep and the same distance from his property line.

Nancy Daly of 45 Somerville Avenue, an abutter on the westerly side of the applicant's property, spoke in favor of the applicant and revealed that her deck and porch are closer the applicant's property line than his deck would be to the rear property line.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted an unfavorable recommendation, finding that the applicant failed to support a hardship for the variance.

Findings

The Board found that, in order for the applicant to comply with the rear yard setback, his deck would have to be 2 feet wide, which is not practical. The Board also found that the applicant had demonstrated a hardship based on the shape, soil and topography of the lot. Specifically, the Board found that the applicant had supported a hardship due to the small size of the lot, the placement of structures on the lot, the pre-existing nonconforming depth of the lot, and the presence of ledge in the soil. 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. Nuss and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan submitted.

3) Petition Number 11-02

Roger Aiello, Trustee of Roger E. Aiello Revocable Trust

RE: 531-533 Pond Street

Present: Attorney David Kellem, of Kellem, Kellem and Kellem, LLC representing petitioner
Roger E. Aiello, petitioner
Darlene Aiello, wife of petitioner

This is a petition filed by Roger Aiello, Trustee of the Roger E. Aiello Revocable Trust, of 24 Fabiano Drive, Braintree, MA regarding the property located at 531-533 Pond Street in Braintree. The applicant appeals a decision of the Inspector of Buildings denying Mr. Aiello's request for zoning enforcement relative to alleged zoning violations at 531 Pond Street, which is owned by RMT Braintree, LLC. Mr. Aiello alleges that the uses at 531 Pond Street violate the Town's Buffer Zone By-law and Watershed Protection District By-law, as well as certain provisions of a Special permit issued by the Planning Board relative to this same site. The property is located in a Commercial Zoning District as shown on Assessors Plan No. 1038, Plot 10 and contains +/- 5.98 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 January 25, 2011, but due to a lack of a quorum, the meeting was continued to February 3, 2011 and March 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.

Evidence

The applicant, represented by Attorney David Kellem of Kellem, Kellem and Kellem, LLC of 100 Recreation Park Drive in Hingham, MA, explained to the Board that he is seeking zoning enforcement relative to alleged zoning violations at 531 Pond Street. The site was formerly occupied by Ainslie Corporation, a company that manufactured components for the federal government's Patriot Missile defense system, until approximately 2003, when the property was sold to RMT Braintree LLC ("RMT"), who uses the site to repair and maintain contracting equipment used by McCourt Construction. In addition, RMT leases portions of the site to Stanley Steamer, a carpet cleaning company, and JBL Bus Lines, who uses the site for the repair and maintenance of its buses. Mr. Aiello's property abuts that of 531 Pond Street, but is located in a residential zoning district.

Currently, Section 135-702B of the Zoning By-law requires a 100 foot buffer zone between commercial and residentially zoned properties and prohibits the use of the buffer zone for buildings, structures and parking; however, until 1986, the buffer zone was only 50 feet, and until 1993, parking was not prohibited within the buffer zone.

In 1981, the Town adopted the Watershed Protection District By-law, Section 135-609, which created an overlay district, designed to protect water bodies and wetlands. Uses not allowed in the underlying zoning district are not allowed in the Watershed Protection District. This by-law also prohibits certain uses not germane to this petition, while also allowing certain uses subject to the issuance of a special permit.

In 1994, Ainslie Corporation was issued a variance by the Zoning Board of Appeals and a Special Permit by the Planning Board, both of which allowed an addition to the building to be located within the buffer zone. In 2009, the Planning Board issued a decision modifying this 1994 Special Permit and removing conditions numbered 18 and 31, but this modification had been appealed by Mr. Aiello. In 2004, the Zoning Board of Appeals granted RMT permission to alter a pre-existing nonconforming building to partition the rear addition to create five spaces for tenants.

Mr. Aiello alleges that RMT's use of the property violates the terms of the 1994 Special Permit granted by the Planning Board, claiming that condition number 18 limited the use of the interior of the building within the buffer zone to storage of material associated with Ainslie Corporation's uses and RMT is using the interior of the building for uses other than the storage of material. Mr. Aiello also alleges that RMT's use of the property violates condition number 31 of the 1994 Special Permit, which prohibited the permanent outdoor storage of material or equipment, as RMT uses the buffer zone outside of the building for parking of construction equipment and vehicles. To the extent that RMT's use of the property may have been afforded pre-existing nonconforming use status under G.L. Chapter 40A, Mr. Aiello asks the Board to consider the standard set forth in Powers v. Building Inspector of Barnstable, 363 Mass. 648 and asserts that RMT's use of the property is different in nature, character and kind than that of Ainslie Corporation and that RMT's use of the property is a more intense use, thereby defeating any grandfathered status that it may have enjoyed.

In a letter dated August 30, 2010 to the Inspector of Buildings, Mr. Aiello requested zoning enforcement action against 531 Pond Street. Specifically, Mr. Aiello alleged that 531 Pond Street, owned by RMT Braintree LLC and occupied by McCourt Construction and other tenants, are violating the Zoning By-laws as follows:

1. That the interior uses of the building by RMT and their tenants and the exterior uses of the buffer zone area are contrary to the use limitations of the Buffer Zone By-law (Section 135-702B), which establishes a 100 foot buffer zone between the Commercial and abutting Residentially Zoned District, in that the buffer zone contains a portion of a building upon it and the exterior portion of the buffer zone is used for parking;
2. That the interior uses of the building by RMT and their tenants and the exterior uses of the buffer zone area are contrary to the use limitations of the Watershed Protection District By-law (Section 135-609), whose purpose is to protect and preserve the water table, water recharge areas, and water supply for public health and safety; and
3. Mr. Aiello requested that RMT be required to apply for and obtain zoning relief before RMT or any of its tenants are allowed to use the interior of the building located within the buffer zone or the exterior portion of the building that lies within the buffer zone in any manner.

In a letter dated November 16, 2010, the Inspector of Buildings denied Mr. Aiello's request for enforcement. A copy of the Inspector of Building's letter denying this request for enforcement is incorporated herein by reference. Now, Mr. Aiello appeals the decision of the Inspector of Buildings to the Zoning Board of Appeals.

At the February 3, 2011, Attorney Kellem presented the above requests, along with a three-ring binder of materials, which included copies of applicable zoning by-laws, special permit and variance decisions, and photographs of activities conducted by RMT and/or his tenants at the site. The Chairman stated that the Board should have an opportunity to review these materials before rendering a decision, whereupon, this matter was mutually continued to March 22, 2011.

Michael Manning of 46 Regis Road commented on noise levels coming from the vicinity of 531 Pond Street, but conceded that he could not ascertain from which site the noise was generated. District Councilor Charles Kokoros noted his support for the applicant and agreed that the current use of the property is more intrusive than Ainslie Corporation's use of the site.

Russell Forsberg, the Inspector of Buildings, referred the Board to his November 16, 2010 decision as containing a full explanation of his decision not to take any zoning enforcement.

Attorney Jeffrey Tocchio appeared at both hearings on behalf of RMT. Attorney Tocchio noted that the uses at 531 Pond Street are all allowed as of right under the Zoning By-law, and therefore are not prohibited by the Watershed Protection District By-law. Attorney Tocchio also noted that the pavement and parking within the buffer zone are pre-existing grandfathered uses of the buffer zone, dating back to Ainslie Corporations use of the property. At the March 22, 2011 hearing, Attorney Tocchio submitted a memorandum addressing issues contained in Attorney Kellem's February 3, 2011 submission. Specifically, Attorney Tocchio provided the Board with excerpts from the deposition of Eric Sandquist, the former president of Ainslie Corporation, which supports that Ainslie used the property for multi-tenant purposes, outdoor storage of large assemblies of equipment, that flat bed trucks frequented the site, and large machinery, such as lathes and welding stations were used inside the building, thus belying any benign or bucolic use of the site as portrayed by Mr. Aiello.

John Wells of 86 Regis Road questioned when the Town would address the zoning violations at this site, to which the Chairman reminded him that the Board had yet to determine whether any zoning violations in fact were occurring.

The Chairman advised the parties that the Board would like the opportunity to review Attorney Tocchio's submission prior to rendering a decision and asked to continue this matter to the April meeting. However, the petitioner refused to continue the matter to another meeting. Attorney Kellem then submitted a brief response to Attorney Tocchio's submission.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board voted to take no action, based on the petitioner's failure to appear at the Planning Board meeting on this matter.

Findings

The Board was not afforded the opportunity to fully consider all information presented relative to this appeal. Accordingly, the Board was unable to make any findings as to the merits of this appeal. However, the Chairman and Mr. Gauthier noted that they were inclined to agree with the Building Inspector's determination that there were no zoning violations at the site. With respect to those alleged zoning violations pertaining to the 2009 Special Permit modification decision, the Chairman noted that that decision was under appeal and that the Land Court, or a higher Court, would ultimately decide those matters.

Decision

Mr. Karll made a motion to maintain the status quo, which Mr. Gauthier seconded. By a vote of 2 in favor and 1 opposed (Mr. Nuss), the applicant failed to obtain the required quantum of vote needed to overturn the decision of the Inspector of Buildings, and therefore, the Inspector of Buildings' decision stands.

**4) Petition Number 11-04
Dennis Malloy
RE: 20 Judson Street**

Present: Dennis Malloy, General Contractor authorized to act on behalf of the property owners Stephen and Sarah Freel.

This is a petition filed by Dennis Malloy of 10 Song Sparrow Lane, Duxbury, MA 02332, regarding the property located at 20 Judson Street in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 and seeks a permit and/or variance to construct a full second story addition to an 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. 2036, Plot 34 and contains +/- 5,388 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 March 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 applicant is the general contractor authorized to act on behalf of the property owners, Stephen and Sarah Freel. Mr. Malloy explained to the Board that the owners are seeking permission to add a full second story over an existing dwelling such that the finished dwelling will be 2 ½ stories, converting a Cape style house into

a Colonial. The second story will be constructed within the existing footprint of the building and will not create any new zoning nonconformities; therefore, a finding under Chapter 40A, Section 6 is required.

Currently, the dwelling and lot are pre-existing nonconforming. The lot lacks the 15,000 SF of area required under the Zoning By-laws, as the lot contains only 5,388 SF. The lot also lacks the required 100 feet of depth and width, offering only 79 feet of width and 67 feet of depth. The existing dwelling on the lot is also nonconforming. Under the Zoning By-law, a setback of 20 feet is required for the front yard, yet the existing dwelling is located 14.5 feet from the front lot line. In addition, the Zoning By-law requires a rear yard setback of 30 feet, yet the existing dwelling is located 21.5 feet off the rear lot line.

In support of the petition, Mr. Malloy presented a photo of another house in the neighborhood that was converted into a Colonial and explained to the Board that the proposed alteration of this dwelling would be similar.

The applicant submitted a plan entitled "Plot Plan, Judson Street, Braintree, Mass.," dated December 17, 2010, prepared by Robert C. Bailey Co., Land Surveyors of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted a favorable recommendation.

Findings

The Board found that the proposed alteration to the pre-existing nonconforming structure, which would maintain the footprint of the existing dwelling and not create any new nonconformities would not be substantially more detrimental to the neighborhood than the existing nonconforming 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 plan submitted.

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

Mr. Karll advised the Board that the petitioner has submitted a letter of request to withdraw the petition without prejudice.

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

NEW BUSINESS:

- 6) Petition Number 11-14
Nicole Pretorius of Pretorius Electric & Sign on behalf of Game Stop
RE: 500 Grossman Drive**

Present: Richard Pretorius of Pretorius Electric & Sign

This is a petition filed by Pretorius Electric & Sign of 267A South Main Street, West Bridgewater, MA on behalf of Game Stop regarding the property located at 500 Grossman Drive in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 135-407, 904.2(A)(5) and 905 to install one additional exterior wall sign measuring 2'3" x 14' 7 1/4" or 32.85 SF in area. The property is located in a Highway Business District and contains 34.36 +/- acres of land, as shown on Assessors' Map No. 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 March 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, members, John Gauthier and Michael Calder, with no alternate designated.

Evidence

The petition was presented by the applicant, Richard Pretorius of Pretorius Electric & Sign, the company hired to install the sign on behalf of Game Stop. The petitioner explained that the existing Staples building within the Marketplace plaza has been internally divided, and Game Stop is occupying this space. Game Stop has one exterior wall sign on the façade of the building, over the main entrance, which measures 19.87 SF. The proposed sign, measuring 32.85 SF in area, would be located on the north/side elevation of the building. According to Section 135-904.2(A)(5)(g) of the Zoning By-laws, no more than one wall sign is allowed for each business occupying a building, and the aggregate total of all signage allowed shall not exceed 150 SF in area. Staples, as the other occupant of this building, has a wall sign over the entrance which measures 588 SF, if the red backing area is included or 180 SF of area for the letters. Thus, the existing signage already exceeds the amount allowed under the Zoning By-law, and therefore, a variance is required for any additional signage. The petitioner also proposes to use red LED lights to illuminate the word "Stop"; however, Section 135-905 of the Zoning By-laws prohibit the use of anything but white lights.

As grounds for the variance, the petitioner explained that Game Stop is a new tenant at this site, and signage is necessary for the traveling public to identify the store and to safely travel to it. Mr. Pretorius noted that there is no room on the existing pylon sign at the entrance to the Marketplace to alert the public as to the location of Game Stop on this site. Game Stop feels that the second wall sign, which is visible from Route 3 South, will provide the exposure that Game Stop needs and assist the public in locating the only means of access and egress to the store.

Mr. Gauthier questioned the need for another sign and queried whether this second wall sign would truly be visible from Route 3. Mr. Pretorius confirmed that the sign is visible from Route 3 South and would provide the traveling public with sufficient notice to exit off Route 3 into the Marketplace. In addition, Mr. Pretorius noted that all of the other tenants in this plaza have significantly more signage. The Chairman questioned the need for red LED lights, and Mr. Pretorius advised that white lights would be used. The Chairman also questioned the time that the sign is turned off at night, and Mr. Pretorius advised that the sign would go off between 10:30 and 11 pm, the same time as all other signs at the plaza.

The petitioner submitted two renderings and one specification sheet of the proposed sign, prepared by Triangle Sign & Service of Baltimore, MD for Game Stop at 500 Grossman Drive in Braintree, dated March 12, 2010, with sheets numbered 3 of 6, 5 of 6, and 6 of 6.

By a vote of 5-0-0, the Planning Board recommended unfavorably on this petition, due to the size of the sign and the red LED lighting. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. Specifically, the Board found that the proposed sign, as a secondary exterior wall sign, was necessary to identify the location of the store within the larger expanse of the Marketplace, particularly since there is no available space on the pylon sign to alert the public as to the location of this business at the Marketplace. The Board found that the proposed sign would increase the store's visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic to the site. The Board also concluded that the requested 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. Karll and seconded by Mr. Calder, it was voted 2-1 (Mr. Gauthier in the negative) to grant the requested relief, subject to the plans presented and with the conditions that the petitioner use white LED lights and that the sign go off at 11 pm.

7) Petition Number 11-15
Joanne Maggio
RE: 33 Marshall Street

Present: Chris Conant from Conant Brothers Construction representing the petitioner

This is a petition filed by Joanne Maggio of 33 Marshall Street in Braintree regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 and seeks a permit and/or variance to construct a deck on 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. 2011, Plot 87 and contains +/- 5,743 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 March 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 was represented by Chris Conant from Conant Brothers Construction of Marshfield. Mr. Conant explained to the Board that the owner is seeking permission to add a 14 ft. deep x 20 ft. wide deck to the rear of the existing dwelling. The deck would encroach into the rear yard setback, as it is proposed to be located 22.4 feet off the rear property line, whereas the Zoning By-law requires a rear yard setback of 30 feet. Therefore, a variance is required.

The applicant's lot and existing dwelling are pre-existing nonconforming. The lot lacks the minimum size of 15,000 SF, as it offers only 5,743 SF. The lot also lacks the required depth and width of 100 feet, as it is only

90 feet deep and 39 to 90 feet wide. The existing dwelling on the lot encroaches into the front and side yard setbacks as follows: the dwelling is located 10.2 feet from the front lot line, whereas the Zoning By-law requires a setback of 20 feet; and the dwelling is located 9.5 feet from the westerly lot line, whereas the Zoning By-law requires a setback of 10 feet.

As grounds for the variance, Mr. Conant noted that if the deck complied with the rear yard setback, it would only be 6 feet deep, which is not sufficient for its use. Mr. Conant also described the irregular, pie shape of the lot, noting that the lot is narrower towards the rear of the property where the deck is proposed to be located. The Chairman noted that the lot could be considered rhomboidal in shape.

The applicant submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 33 Marshall Street," dated November 22, 2010, prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board voted to take no action on this petition due to the applicant's failure to appear at the Planning Board meeting. Mr. Conant explained that he would have appeared before the Planning Board, had he known about the meeting.

Findings

The Board found that the applicant had demonstrated a hardship due to the shape, soil or topography of the site. Specifically, the Board found that the irregular, rhomboidal shape of the lot made it difficult to locate an addition to the rear of this property without encroaching into the rear yard setback. 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. Nuss and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan submitted.

**8) Petition Number 11-16
Eric Kubicki
RE: 322 Commercial Street**

RE: Eric Kubicki, petitioner

This is a petition filed by Eric Kubicki of 322 Commercial Street, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 and seeks a permit and/or variance to construct two full dormers and to construct a roof over an existing side deck and entry door, all in accordance with the plans of record. The property is located in a Residence C Zoning District as shown on Assessors Plan No. 3016, Plot 13 and contains +/- 4,371 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 March 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 applicant, representing himself, explained to the Board that he is seeking permission to add two full dormers on the second story of an existing dwelling and to construct a roof over an existing side deck and entry door to shield the entrance from the weather. The second story and roof over the deck and door will be constructed within the existing footprint of the building and will not create any new zoning nonconformities. However, the addition will alter a pre-existing nonconforming structure, and therefore, a finding under Chapter 40A, Section 6 is required.

Currently, the dwelling and lot are pre-existing nonconforming. The lot lacks the 43,560 SF of area required under the Zoning By-laws, as the lot contains only 4,371 SF. The lot also lacks the required 200 feet of depth and width, offering only 54 feet of width and 81 feet of depth. The lot also lacks the minimum required frontage of 100 feet, as it offers only 54 feet of frontage. The existing dwelling on the lot is also nonconforming. Under the Zoning By-law, a setback of 50 feet is required for the front yard, yet the existing dwelling is located 11.8 feet from the front lot line. In addition, the Zoning By-law requires a rear yard setback of 50 feet, yet the existing dwelling is located 44.7 feet off the rear lot line. Finally, the existing dwelling encroaches into the side yard setback on both sides of the property, as the house is located anywhere from 13.5 feet to 17.9 feet from the side lot lines.

The applicant submitted a plan entitled "Plot Plan, 322 Commercial Street, Braintree, Mass.," dated September 17, 2010, prepared by AGH Engineering of Stoughton, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board voted to take no action, finding that the application was incomplete. The Planning Board also suggested that a deck on the property also required variances. The Board inquired of the Building Inspector as to whether the deck did require any variances, and Mr. Forsberg advised that the newly constructed deck was built within the same footprint of a previous deck that was deemed to be unsafe, and therefore, no variance were required.

Findings

The Board found that the proposed alteration to the pre-existing nonconforming structure, which would maintain the footprint of the existing dwelling and not create any new nonconformities, would not be substantially more detrimental to the neighborhood than the existing nonconforming 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 plan submitted.

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of February 22, 2011.

The meeting adjourned at 8:53 pm