



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

December 27, 2011

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

**ALSO PRESENT:** Michael McGourty, Local Building Inspector  
Patricia Cantor, Town Solicitor representative from Kopelman & Paige  
Elizabeth Driscoll, Town Solicitor representative

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

#### OLD BUSINESS:

- 1) Petition Number 10-13**  
**T-Mobil**  
**RE: 197 Quincy Avenue**

Present: William Worth, Attorney

Mr. Karll advised the Board that the applicant has requested an extension of this petition for the monopole at 197 Quincy Avenue for six months.

Attorney Worth provided the Board with an update of where this case is legally.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, it was unanimously voted to extend the variance request for six months.

#### NEW BUSINESS:

- 2) Petition Number 11-51**  
**Peter J. Williams, Vine Associates, GZA representing the Metropolitan Yacht Club**  
**RE: 39 Vinedale Road**

Present: Peter Williams, petitioner

This is a petition filed by Metropolitan Yacht Club of 39 Vinedale Road, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407, 701 and 710 to build a 15' x 41' timber pier and to replace an existing ramp and deck with a 15.9' x 20' x 10' deck, all in accordance with the plans of record. The property is located in an Open Space Conservation District as shown on Assessors Map No. 3038, Plot 44 and contains +/-1.23 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 December 27, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition were Chairman, Stephen Karll, and members, Jack Gauthier and Jay Nuss with Michael Calder as an alternate.

### **Evidence**

The petition was presented by Peter Williams, Senior Project Manager of Vine Associates, a Division of GZA GeoEnvironmental, Inc. of Hingham, MA, on behalf of Metropolitan Yacht Club, which is located at 39 Vinedale Road, Braintree. Mr. Williams explained that Metropolitan Yacht Club is seeking permission to replace an existing timber pier bulkhead with a new stone revetment, to repair existing stone revetments, and to replace an existing grill deck. The applicant also proposes to install a new ramp and pier adjacent to the existing clubhouse deck, consisting of a 15' x 40' timber pier and a deck/grill area, measuring 15.9' x 20' x 10', that will replace an existing deck along the rear yard line that is need of repair.

The applicant's lot, structure and use are pre-existing nonconforming. As an initial matter, the use as a yacht club is not a use allowed in the Open Space Conservancy Zoning District, but the yacht club is grandfathered. The lot is also nonconforming, as 5 acres is the minimum lot size for an Open Space Conservancy District, yet the yacht club offers only 1.23 acres. The yacht club structure is also pre-existing nonconforming. The Zoning By-law requires a minimum lot depth of 200 feet, but this lot contains only 145 feet. The Zoning By-law limits building height to 20 feet, but the existing structure is 25 feet high. The Zoning By-law limits lot coverage to 20% of the lot; the existing structures cover 90% of the lot. The Zoning By-law also requires 80% open space, while the structures on this lot provide only 5% open space. Because the applicant seeks to alter a pre-existing nonconforming structure and use, a finding is required under G.L. Chapter 40A, Section 6.

In addition, under the Zoning By-law, the minimum rear yard setback for this zoning district is 100 feet, but the existing timber deck is located 11 feet from the rear lot line. For purposes of the zoning analysis, it should be noted that the yacht club structures are located along the water, and therefore, the rear lot line is based on the mean low water line. The proposed pier will provide a rear yard setback of 9 feet, and thus, the proposed deck will further encroach into the rear yard setback. Therefore the applicant requests a finding under G.L. Chapter 40A, Section 6 to alter the pre-existing nonconforming structure and use and a variance to encroach into the rear yard setback.

As grounds for a hardship, the Mr. Williams explained that the topography along the coast of the lot make it difficult to construct the pier elsewhere and the location of the Mean Low Water Line makes it impossible to construct a deck that would comply with the rear yard setback.

The petitioner submitted plans entitled "Bulkhead Replacement and Revetment Repair Project Metropolitan Yacht Club Braintree, Massachusetts," dated November 2011, prepared by Vine Associates, GZA of Hingham, MA, consisting of three sheets: "Existing Conditions Plan," "Proposed Work Plan," and "Proposed Pier Plan". The applicant also submitted a packet of materials in support of this project.

Richard McDermott, the Braintree Harbor Master asked if there would be any shoreline changes to which the petitioner responded there would be slight shore line changes. Mr. McDermott also asked if the Army Corps of Engineers has approved of the plan to which the petitioner responded the Army Corps of Engineers had a problem with the original plan, but that problem had been fixed and they now approved of the plan.

Paul King of East Braintree asked if this was a maintenance project or if it was intended to create more berths to which the petitioner replied that it was a maintenance project.

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

### **Findings**

The Board found that the applicant had demonstrated a hardship due to the topography of the coast and the shifting location of the Mean Low Water Line. The Board also found that the existing structure encroaches into the rear yard lot line by eighty-nine feet and the further encroachment of the proposed deck into the side lot line by two additional feet was deemed to be de minimus. The Board further found that the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure and use. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

### **Decision**

On motion made by Mr. Nuss and seconded by Mr. Gauthier, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

### **3) Petition Number 11-52 Chester Sherman, LLC representing Daniel J. Quirk RE: 444 Quincy Avenue**

Present: Attorney Frank Marinelli, on behalf of Chester Sherman, LLC and Quirk Chevrolet

This is a petition filed by Chester Sherman, LLC regarding the property located at 444 Quincy Ave in Braintree, which is the site of Quirk Chevrolet dealership. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 904.2(A) (5) (d) and (g) to replace two existing wall signs with three smaller wall signs. The property is located in a Highway Business District and contains +/- 12.36 acres of land, as shown on Assessors' Map No. 3049, Plots 6 and 8D.

### **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 December 27, 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 member Jay Nuss as an alternate.

### **Evidence**

The petition was presented by Attorney Frank Marinelli of Braintree, MA, on behalf of Chester Sherman, LLC and Quirk Chevrolet. The site is currently used as a Chevrolet dealership and has existing signage. The

applicant seeks to replace two existing wall signs with three new wall signs to be consistent with General Motors new sign program. However, the new signs will reflect a reduction in overall square footage of signage.

Currently, the site has the following wall signs which are proposed to be removed:

- One 70' x 49" wall sign that states "Quirk Chevrolet" with 49" lettering and measures 286 SF in area located on the northerly/front side of building above the main entrance.
- One 27' x 22" wall sign that states "Service Reception" with 22" lettering measuring 49.5 SF in area located on the northerly/front side of building above the service entrance.
- These two signs total 335.5 SF in area.

The applicant proposes replacing the above wall signs with the following new wall signs: are proposed for a total of 161.05 SF:

- Install one Chevrolet "bowtie" emblem measuring 36" in height by 9' 3 1/16" in length accompanied by "Chevrolet" lettering, measuring 36" in height by 24' 5 13/32" in length, for a wall sign of 101.12 SF in total area. This wall sign is proposed to be placed on the northerly/front side of the building above the entrance.
- Install one 28" high by 11' 2 3/8" long wall sign that states "Quirk" to be located on the northerly/front of the building to the left of the main entrance. The total area of this wall sign is 26.13 SF.
- Install one 22" high by 18' 5 1/4" long wall sign that states "Certified Service" to be located on the northerly/front of the building to the right of the main entrance above the garage doors. The total area of this wall sign is 33.8 SF.
- All three wall signs total 161.05 SF in area.

Section 135-904.2(A)(5)(d) of the Zoning By-laws provides that wall signs in a Highway Business District that are "visible to the major highway shall contain the name and address of the user of the property and contain no other advertising material or commercial message unless specifically authorized by the Zoning Board of Appeals." Since one of the proposed wall signs would state "Certified Service", a variance is required.

Section 135-904.2(A) (5)(g) of the Zoning By-laws provides that no more than one wall sign for each store or business occupying a building is permitted and that the aggregate total of all signage allowed must not exceed 150 SF. The three proposed wall signs total 161.05 SF in area, and thus, a variance is needed for the excess signage.

All three wall signs will be back lit with white LED lights. The petitioner indicated that the "Quirk" and "Certified Service" signs will be covered with blue film and that the "Chevrolet" sign will be covered with a white film. In response to questions from the Board, Mr. Marinelli explained that the applicant proposes that the signs be illuminated overnight because the illumination is needed for security of the vehicles in the lot, the safety of the security guard that patrols the lot nightly and to light the area for motorists who cut through the property because of the two bordering streets. Section 135-905 of the Zoning By-laws prohibits the illumination of signs between 1 a.m. and 6 a.m., unless the Board finds that the nature of the use on the premises is such that illumination would be in the public interest.

As grounds for the variances, Mr. Marinelli explained that the location of Quirk on heavily traveled Quincy Avenue along with the narrow frontage that results from the irregularly shaped lot necessitates the signage so that patrons may identify the business and so that the traveling public may be safely directed to the business.

Additionally, Mr. Marinelli noted that the new signage is part of the General Motors program and will result in significantly less signage than is there currently.

The petitioner submitted renderings of the proposed signs with their dimensions, prepared by Pattison Sign Group, Inc. of Knoxville, TN and dated May 11, 2011.

By a vote of 5-0-0, the Planning Board recommended favorably on this petition. 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 wall signs are necessary to identify the location of the business as it is located on heavily traveled Quincy Avenue and has narrow frontage, and therefore reduced visibility, due to the irregularly shaped lot. The Board found that the proposed wall signs would increase the business' 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 noted that the sign will not face any residential area. The Board also noted that the proposed signage reflects an overall reduction from the existing signage. With respect to the overnight illumination, the Board found that the petitioner had demonstrated a public safety need for overnight illumination. Finally, the Board 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. Gauthier and seconded by Mr. Calder, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

- 4) Petition Number 11-53  
Doug Merritt, Professional Permits representing K-Mart Corporation  
RE: 350 Grossman Drive**

Present: Doug Merritt, petitioner

This is a petition filed by K-Mart Corporation (K-Mart) regarding the property located at 350 Grossman Drive in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 904.2(A) (5) (b) and (g) to install two wall signs. The property is located in a Highway Business District and contains +/- 34.36 acres of land, as shown on Assessors' Map No. 2019, Plot 1.

### **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 December 27, 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 Jay Nuss with member Michael Calder as an alternate.

### Evidence

The petition was presented by Doug Merritt of Professional Permits of Mishawaka, IN, who has been hired to design and install the signs for K-Mart, which is located at 350 Grossman Drive, Braintree. This site contains a cluster of commercial buildings located within a single plaza. The existing K-Mart retail store will be subdivided into two separate retail stores, with the new retail space to be occupied by Ulta Beauty, a retailer owned by Sears Corporation, the owner of K-Mart. The proposed Ulta Beauty will be inside the walls of K-Mart's adjacent exterior garden center. Within the existing K-Mart store, Ulta Beauty will be located in the current health and beauty aid section.

Currently, the site has numerous signs for each of the businesses conducted on the site, including K-Mart, Sports Authority, and Pet Smart. The existing K-mart signs will remain in place, with Ulta Beauty proposing to install two new walls signs as follows:

- Install one wall sign measuring 6' high by 15' 9" in length that states "Ulta Beauty" to be located on the façade of the building above the store entrance. The letters of "Ulta" measure 4' in height, which is compliant with the Zoning By-laws. However, the sign contains a trademark "swoop" symbol that measures 6 feet in overall height. The total area of this wall sign is 94.55 SF.
- Install one wall sign measuring 4' in height by 10' 5 3/4" in length that states "Ulta Beauty" with the trademark "swoop" to be located on the northerly facing side of the building, for a total area of 41.91 SF.

Section 135-904.2(A) (5) (b) of the Zoning By-laws provides that no wall sign shall exceed four feet in overall height in a Highway Business District. Since the proposed height of one wall sign is 6 feet, a variance is required for the height of the sign. In addition, Section 135-904.2(A) (5) (g) of the Zoning By-laws provides that no more than one wall sign for each store or business occupying a building is permitted. Since there are existing signs for K-Mart on this building, a variance is required for these wall signs.

Both wall signs will be back lit with white LED lights. The petitioner indicated that the signs will be covered with a dual film that allows the signs to appear grey during the day and white at night. In response to questions from the Board, Mr. Merritt explained that the signs will not be illuminated or powered when the store is closed.

As grounds for the variances, Mr. Merritt explained that the K-Mart building is setback a great distance and is not visible from the direct access road (Union Street). Mr. Merritt also noted that this business is visible from the heavily traveled Route 3 highway, which necessitates the signage so that patrons may identify the business and so that the traveling public may be safely directed to the business. Also, due to the long, narrow shape of the lot with multiple businesses located on the same lot, the signage is needed to identify this business and to direct the traveling public to this business. Additionally, Mr. Merritt noted that the new wall signage is necessary as there is no room for an Ulta Beauty sign on the existing Pylon ground sign located off union Street at the main entrance way to this plaza, and therefore, there is no way to alert the traveling public at this intersection to this business. Further, Mr. Merritt indicated that several of the other businesses in the shopping area have signs that exceed 6' in height.

The petitioner submitted six sheets with renderings for "Ulta Beauty", entitled "Site Plan" B61836, "Storefront Elevation" B61487A and B61487C, "Right Side Elevation" B61487D, Extended Beauty layout B54455A, and B54455C, prepared by Kieffer & Co., Inc. of Lincolnshire, IL dated February 14, 2007, September 1, 2011 and October 28, 2011.

By a vote of 5-0-0, the Planning Board recommended favorably on this petition. 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 wall signs are necessary to identify the location of the business as it is setback from the direct access road and to direct the public traveling along the heavily traveled Route 3 highway. The Board also found that the petitioner had demonstrated a hardship due to the long shape of the lot with multiple businesses located at the site. The Board found that the proposed wall signs would increase the business' 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 noted that the sign will not face any residential area and 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. Nuss and seconded by Mr. Gauthier, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented and with the condition that the lights of the sign go off when Ulta Beauty closes.

### **APPROVAL OF MINUTES:**

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

### **EXECUTIVE SESSION:**

A motion was made and seconded by the Board to go into Executive Session.

A roll call vote was taken by the Board at 8:30 pm to go into Executive Session for the purpose of discussing strategy with respect to pending litigation regarding T-Mobil.

Roll Call Vote:        Stephen Karll-Yes  
                              Jack Gauthier-Yes  
                              Michael Calder-Yes

Jay Nuss-Abstained from this matter

The Board came out of Executive Session and adjourned the meeting at 8:40 pm.