



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

February 28, 2012

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Elizabeth Driscoll, paralegal with the Town Solicitor's office

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

OLD BUSINESS:

- 1) Petition Number 12-3
Win-Win Properties, LLC
RE: 165 Hancock Street**

Present: Aaron Katz, petitioner

This is a petition filed by Win-Win Properties, LLC ("Win-Win") regarding the property located at 165 Hancock Street in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 901, 904.1(A) (5) (a) and (b) to install one wall sign and one ground sign. The property is located in a General Business District and contains +/- 3,660 SF of land, as shown on Assessors' Map No. 1008, Plot 35.

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 24, 2012 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. After discussion concerning the proposed signs, the parties agreed to continue the matter to a meeting held at the same time and location on February 28, 2012. Sitting on this petition at the continued hearing was Chairman, Stephen Karll, and members John Gauthier and Michael Calder.

Evidence

At the January meeting, the petition was presented by Aaron Katz and Jeremy Gavin, co-owners of Win-Win, which is located at 165 Hancock Street, Braintree. The petitioners explained that this site contains a free-standing building that will be used as the main office for Win-Win and will also continue to house another business, Proactive Realty. The applicant seeks to install one sign to the existing ground sign and one wall sign to identify the location of Win-Win.

Currently, the site has the following ground sign which will remain:

- One pylon ground sign that measures 110” in overall height x 60” in overall width. This ground sign has two panels. One measures 28” in height x 60” in width and reads “165, Hancock” on two lines of text. The other panel measures 12” in height x 60” in width and reads “Proactive Realty”.
- The entire pylon ground sign is a total of 45.8 SF. The “165 Hancock” panel is a total of 11.6 SF and the “Proactive Realty” panel is a total of 5 SF.

At the January meeting, the applicant proposed to install the following additional panel sign on the existing ground sign:

- Install one panel sign on the existing ground sign that measures 24” in height x 60” in width and reads “We Buy Ugly Houses, HomeVestors, WinWin Properties, LLC, 781-843-7250” on four lines of text. The sign has a bright yellow background color and also contains the HomeVestors logo and the We Buy Ugly Houses signature caveman caricature.
- This sign is a total of 10 SF.

Also at the January meeting, the applicant proposed the following wall sign:

- Install one wall sign that measures 48” in height x 87” in width and reads “We Buy Ugly Houses, HomeVestors, WinWin Properties, LLC, 781-843-7250”. The wall sign has a bright yellow background color and also contains the HomeVestors logo and the We Buy Ugly Houses signature caveman caricature.
- The wall sign is a total of 29 SF and was proposed to be located on the southerly side of the building.

The applicant stated that the proposed signs conformed to the Zoning By-law in terms of dimensions, but explained that the proposed sign applications were denied by the Building Inspector based on the aesthetics of the signs. Members of the Board indicated that the bright yellow background and the signature caveman caricature portrayed on them were not in keeping with the standards imposed by the Zoning By-law or the characteristics of the surrounding neighborhood. The Board listed other sign applications for national chains that the Board has previously modified on the basis of aesthetics. The applicant proposed a white background as an alternative, but the Board still expressed concern about the size and need for a 29 SF sign on the southerly side of the building. After some discussion, the Board and the petitioner agreed to a continuance until the February meeting at which time the petitioner would present an alternative sign scheme.

At the February meeting, the petitioners presented a revised sign scheme. Regarding the ground sign, the petitioners proposed that the panel to the ground sign have the same dimensions as presented in January but proposed to remove the bright yellow colored background and replace it with white. The petitioner also proposed to remove the signature caveman caricature from this sign. With respect to the originally proposed

wall sign, the petitioner proposed to eliminate this sign and substituted one sign on the front of the building, hanging from the porch roof, just above the entrance. The sign would measure 20” in height x 88.5” in width for a total of 12.29 SF. The petitioner also proposed to remove the bright yellow colored background and replace it with white and to remove the signature caveman caricature.

Section 135-904.1(A) (5) (a) of the Zoning By-laws provides that, in a General Business District, no wall sign shall exceed four feet in overall height and that a wall sign shall not exceed the lesser of 150 SF or one square foot in area for each linear foot of frontage for each business. Since the newly proposed height of the wall sign is only 1.6 Ft., the sign is compliant in this respect. Also, since the sign is 12.29 SF, it does not exceed the lesser of 150 SF or the linear square footage which is 42.5 Ft., and is therefore compliant in this respect as well.

Section 135-904.1(A) (5) (b) of the Zoning By-laws provides that, in a General Business District, not more than one exterior wall sign shall be permitted for each business. As the petitioner seeks to install only one exterior wall sign, the proposed wall sign is compliant.

As grounds for the relief sought, the petitioner explained that the Win-Win building is located on heavily traveled Hancock Street, which necessitates the signage so that patrons may identify the business and so that the traveling public may be safely directed to the business.

The petitioner submitted three unlabeled and undated sheets with renderings of the proposed signs for the Win-Win business.

By a vote of 4-0-0, the Planning Board recommended favorable action on the 24” in height x 60” in width panel to the ground sign and the 48” in height x 87” in width wall sign, provided that both signs had a white background and that the signature caveman caricature was removed. No one else spoke in favor of or opposition to the petition.

Findings

With regard to dimensions of the signs, the Board found that the signs proposed at the February meeting are compliant with the Zoning By-law. With regard to aesthetics, the Board found that the white background and the elimination of the caveman caricature were consistent with the aesthetics standard of the Zoning By-law. The Board also found that the petitioner had demonstrated the need for relief from the Zoning By-law in that the proposed ground sign and wall sign are necessary to identify the location of the business as it is located on heavily traveled Hancock Street. The Board found that the proposed ground sign and wall sign 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 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. Calder and seconded by Mr. Gauthier, it was unanimously voted 3-0 to grant the requested relief, subject to the revised plans presented at the February meeting.

NEW BUSINESS:

- 2) **Petition Number 12-7**
Karma Trustee, LLC, Trustee of Karma Nominee Trust
RE: 20-60 Forbes Road

Present: Attorney Frank Marinelli, representing the petitioner; Peter Diana, Vice President and General Counsel of Carpenter and Co., and Jim Puopolo, Project Architect from Cambridge Seven Architects.

This is a petition filed by Karma Trustee, LLC, Trustee of Karma Nominee Trust regarding the property located at 20-60 Forbes Road in Braintree, which is the site of the Hyatt Place Hotel and Conference Center along with several retail stores and restaurants. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 904.2(A) (1) (a), (b), (c), (d), (e), (f) and (g) as well as 904.2(A)(5)(a), (b), (c), (d), (e), (f) and (g) to install fourteen wall signs and three ground signs and to modify an existing ground sign. The property is located in a Highway Business District and contains +/- 10.21 acres of land, as shown on Assessors' Map No. 2043, Plots 1 and 1A.

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 28, 2012 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.

Evidence

The petition was presented by Attorney Frank Marinelli of Braintree, MA, Peter Diana, Vice President and General Counsel of Carpenter and Co. and Jim Puopolo, Project Architect from Cambridge Seven Architects and preparer of the sign plans, on behalf of Karma Trustee, LLC. The site was purchased by Carpenter and Co. in 2009. The site is the location of the former Sheraton Hotel, currently under redevelopment, known as South Shore Place. The site will include a Hyatt Place Hotel and +/-39,190 SF of retail space. The site is scheduled to open this spring. The applicant seeks to install fourteen wall signs and three new ground signs and to modify an existing ground sign to be consistent with the Hyatt Place brand and the retail brands that will occupy the available retail space.

Ground Signs

Currently, the site has one double-panel ground sign located at the site's southeasterly curb cut measuring a total of 107 SF, which will remain. The bottom capping of this sign is 7 ft. 4 in. from the ground. The applicant proposes to modify the existing ground sign to read "Hyatt Place" on two lines of text with the Hyatt Place circles logo to the side of the lettering. The dimensions of this sign are 8ft. 11 in. x 12 ft. with lettering measuring 2 ft. 11 in. Below this sign will be a separate panel stating "Braintree", which measures 3 ft. 9 in. x 12 ft.

In addition, the applicant proposes to install three new ground signs as follows:

- One 20 ft. high sign, whose face measures 10 ft. x 15 ft. (total of 150 SF) ground sign at the easterly curb cut, containing multiple panels. The top panel measures 8 ft. x 2 ft. 7 ¾ in. and states "South Shore Place" on two lines of text. Below this panel, the applicant seeks permission for eleven equally divided directory panels, which will contain the names of retail stores. The bottom capping of the sign is 8 ft. from the ground. (This sign was originally proposed to be 96 SF in area, but was increased in size at the recommendation of the Planning Board.)
- One 20 ft. high sign, whose face measures 10ft. x 15 ft. (total of 150 SF) ground sign at the northwesterly curb cut, containing multiple panels. The top panel measures 8 ft. x 2 ft. 7 ¾ in.

- and states “South Shore Place” on two lines of text. Below this panel, the applicant seeks permission for thirteen equally divided directory panels, which will contain the names of retail stores, the health club and deliveries. The bottom capping of the sign is 8 ft. from the ground. (This sign was originally proposed to be 96 SF in area, but was increased in size at the recommendation of the Planning Board.)
- One 10 in. high ground sign, whose face measures 3 ft. 6 in. x 8 ft. (total of 28 SF), located south of the hotel near its entry. The sign will state “Hyatt Place” on two lines of text contain the Hyatt Place circles logo. The bottom capping of the sign is 2 ft.
- The total of all the proposed ground signs is 435 SF.

Section 135-904.2(A) (1) (d) of the Zoning By-law provides “[n]o more than one ground sign visible to the major artery for a lot shall be permitted.” The petitioner is proposing one directory ground sign at the main entrance as well as two hotel signs at the sites’ various elevations, in addition to the existing ground sign along Forbes Road. The site is located at the intersection of Granite Street and Forbes Road, just south of the ramps to Route 93. The buildings are set back at some distance from Granite Street, so as not to be immediately visible. In addition, the directory signs are not visible throughout the site due to the curve of Forbes Road. Attorney Marinelli explained that only one ground sign, that being the existing ground sign near the main entrance sign, is truly visible to the main artery of Granite Street, and the Planning Board concurred that no relief is required from this section.

Section 135-904.2(A)(1)(e) of the Zoning By-laws provides: “A sign visible to the major artery shall contain the name and address of the user of the property and contain no other advertising material or any commercial message unless specifically authorized by the Zoning Board of Appeals.” Two of the directory signs contain language other than that allowed under the Zoning By-law, and those are the two directory panels, each located on the 96 SF ground signs that inform trucks of where to enter the site for deliveries, and therefore, a variance is requested for these signs.

Section 135-904.2(A) (1) (f) of the Zoning By-laws provides: “One ground sign visible to the road or way which provides direct access to the property may be permitted. Said ground sign shall be no larger than 60 square feet in area and be no more than 20 feet in overall height. Bottom capping of a sign shall be no less than 24 inches above ground level.” The petitioner is proposing a total of three new ground signs and the modification of an existing 107 SF ground sign. All of the signs comply with the ground height capping requirements. The existing 107 SF ground sign proposed to be retrofitted and the two new 150 SF directory signs exceed the 60 SF zoning requirements, and thus a variance is required for these signs.

Section 135-904.2(A) (1) (g) of the Zoning By-laws provides: “One secondary ground sign may be permitted by the Zoning Board of Appeals if it determines that the nature of the use of the premise, the architecture of the building, or the location with reference to the street or way is such that additional ground signs visible to the access road shall not exceed 150 square feet in area.” Since the petitioners seek to install three new ground signs and retrofit an existing ground sign, the site would contain four ground signs and, therefore permission of the Board is required.

Wall Signs

The applicant proposes to install the following fourteen wall signs:

- Ten wall signs to be located along the first floor level of the building, above each entrance of retail space, to denote the names of future retailers or restaurants at 30 Forbes Road. Each sign will measure 2’4” in height x 12’ in width for a total of approximately 28 SF each.

- Two upper level, second floor, wall signs for retail space at 30 Forbes Road, one on the easterly façade of the building and one on the southerly façade, each measuring 3 ft. in height x 20 ft. in width for a total of 60 SF each. The signs will display the company name and logo, if any, of the retail space occupants on the second level. Following the Planning Board meeting, the applicant agreed to reduce these signs to 48 SF each.
- Two wall signs for the hotel at 50 Forbes Road, one to be mounted on the northerly façade of the hotel and one to be mounted on the easterly façade of the hotel, each measuring 4ft. 2 5/8in. in height by 15 ft. 8in. in width for a total of 66 SF each. The signs will read “Hyatt Place” on two lines of text with 1’8” lettering for “Hyatt” and 1’ 2 ½” lettering for “Place” and contain the Hyatt Place circles logo.
- The total of all the proposed and revised wall signs is 508 SF.

Section 135-904.2(A) (5) (b) of the Zoning By-laws provides that “[n]o wall signs shall exceed four feet in overall height.” The two hotel wall signs that the petitioners propose will be 4’ 2 5/8” in height and thus a variance is required.

Section 135-904.2(A) (5) (c) of the Zoning By-laws provides that “[n]o wall sign shall be visible to the major highway, if a ground sign has been permitted.” Since a ground sign exists on the site and the applicant proposes wall signs that may be visible from Route 93, a variance is required.

Section 135-904.2(A) (5) (e) of the Zoning By-laws provides that “[s]ign area is further limited to one square foot of signage per linear foot of frontage. Said frontage shall be the linear feet of the building which faces the access roadway.” The Planning Board indicated that these figures have not been provided. At the Zoning Board meeting, Attorney Marinelli indicated that retail spaces will offer 300 linear feet of frontage. Since 532 SF of total wall signage is requested, a variance is required.

Section 135-904.2(A) (5) (f) of the Zoning By-laws provides that “[w]all signs for businesses occupying other than the first floor may be permitted by the Zoning Board of Appeals. Said permit shall require the written permission of the owner of the property. Secondary wall signs shall not exceed 48 SF in area. No more than two such secondary wall signs shall be allowed for any building.” As the petitioner has agreed to reduce the size of the second floor wall signs from 60 SF to 48 SF in area, relief is not required from this section.

Section 135-904.2(A) (5) (g) of the Zoning By-laws provides that “[n]o more than one wall sign for each store or business occupying a building shall be permitted. The aggregate total of all signage allowed shall not exceed 150 SF in area. Sign permit may be issued only after written permission for said signs is authorized by the Zoning Board of Appeals.” Since the hotel will have more than one wall sign and the aggregate square footage of the walls signs is 508 SF, a variance is required.

As grounds for the variances, Mr. Marinelli explained that the topography of Forbes Road including three bends in the road, sloping topography from the west to Granite Street and the irregular shape of the 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 hotel signage is part of the Hyatt national brand and the retail spaces will also contain signage consistent with the national brand of occupant.

In response to a Board member’s inquiry as to whether all the pylon signs are the same overall height, the petitioners responded that they were all 20’ in overall height. In response to the Chairman’s inquiry as to whether the existing athletic club would have a sign, the petitioners responded that the athletic club sign would be on the directory ground sign located at the third curb cut. Attorney Marinelli noted that the Highway Business District is designed for lots that are 25,000 SF and that this lot is 40 times that size, yet the petitioners

are not asking for 40 times the signage. The Chairman reminded the petitioner that the wall signs must be back lit with white LED lights but that a colored film may be used to be consistent with the national brands of the retail space occupants.

The petitioner submitted four plans. One plan contained two pages, SN-1 and SN-2, and was titled "Braintree Hotel & Site, 37 Forbes Road, Braintree, MA, Site Signage Plan, Key & Detail" prepared by Cambridge Seven Associates, Inc. of Cambridge, MA and dated January 19, 2012. Another plan contained two pages, A2.01 and A2.02 and was titled "Braintree Hotel & Suite, 37 Forbes Road, Braintree, MA, Elevations-South and East: Hotel" prepared by Cambridge Seven Associates, Inc. of Cambridge, MA and dated April 1, 2011. Another plan contained three pages and each separately titled "New Monument-240156m2", "Replacement Faces-240156m3", and "New Channels Letters-240156m4" prepared by Enseignes Transworld: Transworld Signs of Montreal, Quebec and dated February 21, 2012 with revisions dated February 27, 2012, February 28, 2012 and February 23, 2012. Another plan contained one page, SN-2, and was titled "Pylon Sign A and B Alternate Size, Braintree Hyatt Place Retail" prepared by Cambridge Seven Associates, Inc. of Cambridge, MA and dated February 10, 2012.

By a vote of 5-0-0, the Planning Board recommended favorable action with the second floor retail wall signs at 48 SF or less and the modified directional pylon ground sign being 150 SF and only white lighting of any kind be used for the signs. 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 and ground signs are necessary to identify the location of the businesses as the topography of Forbes Road includes three bends in the road, sloping from West to Granite Street and an irregularly shaped lot, all resulting in reduced visibility. The Board found that the proposed wall signs and ground 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 neither the wall signs nor the ground sign will face any residential area. 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 and as modified per the recommendations of the Planning Board and as agreed to by the applicant at the Board meeting. Further, the Board's approval is subject to the condition that all wall signs be back lit with white LED lighting.

3) Petition Number 12-8

Robert Berry

RE: 37 Town Street

Present: Robert Berry, petitioner and owner; and Carl Dumus, Builder

This is a petition filed by Robert Berry of 37 Town Street, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The applicant is seeking a permit and/or finding to construct a second story shed dormer in the rear of the house and three gable dormers in the front of the house, all in accordance with the plans of record. The

property is located in a Residence B Watershed Zoning District as shown on Assessors Plan No. 1043, Plot 4A and contains +/-9.14 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 28, 2012 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.

Evidence

Robert Berry, the property owner, and Carl Dumas, the builder, presented this petition to the Board, explaining that Mr. Berry proposes to construct a second story shed dormer in the rear of the existing house and three gable dormers in the front of the house in order to create a master bedroom and two additional bedrooms on the second story of his cape style home.

The applicant's lot and existing dwelling are pre-existing nonconforming. The Residence B Watershed District requires a minimum lot size of 1 acre, but this lot contains only +/-25,656 SF of land. The structure on the lot also fails to conform to the zoning by-law requirements. The zoning by-law requires a front yard setback of 20 feet, but the house is located 14.3 feet from the front lot line. The gable dormers on the front side of the house would be located 16-16.5 Ft. from the front lot line. Therefore, the applicant requests a finding under G.L. Chapter 40A, Section 6 for the front gable dormers. The rear shed dormer does not require any relief.

The applicant explained that he would like to use the second story addition for additional bedroom space for his family and that the second story addition would be within the existing footprint. The applicant explained that the house, with the new dormers, would still consistent with the characteristics of the houses in the neighborhood.

Mr. Berry indicated that he had written a letter to his neighbors explaining the proposed work on his house and that several of his neighbors had signed this letter signifying their support of the construction. Mr. Berry offered this letter to the Board, signed by Mary Hobart of 38 Town Street, Mark Woodard of 24 Town Street, and Lisa Litterio of 44 Town Street.

In response to the Chairman's question about the distance between the structure with the dormers and the rear yard lot line, Mr. Berry replied that there is a 215 Ft. rear yard setback.

The petitioner submitted a plan entitled "Plot Plan Showing Proposed Dormers, 37 Town Street, Braintree, MA," dated December 12, 2011, prepared by Don Rosa, PLS of Randolph, MA.

The Planning Board voted 4-0-0 to recommend favorable action on the petition.

Findings

The Board found that the existing structure is pre-existing nonconforming as it encroaches into the front lot line and the proposed alteration would not create any new nonconformity. The Board noted that the second story front dormers are a vertical addition and within the footprint the existing structure. Additionally, the Board found that no relief is required for the rear shed dormer as it will not encroach upon the rear yard setback. Therefore, the Board found that the granting of the requested relief would not be substantially more detrimental

to the neighborhood than the pre--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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

4) Petition Number 12-9 Sealcoating, Inc. RE: 825 Granite Street

Present: Attorney Frank Marinelli, representing the petitioner; Richard Goodick, an owner of Sealcoating, Inc. and Attorney John Reedy

This is a petition filed by Sealcoating, Inc. of 120 Industrial Park Drive, Hingham, MA regarding the property located at 825 Granite Street, Braintree, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403(A), 701(1) and 702(B). The applicant is seeking a permit, variance and/or finding to alter and renovate the existing building and site as approved by the Braintree Planning Board Decision No. 11-08, all in accordance with the plans of record. The applicant is also seeking a finding that the lot and structure do not violate the front yard setback and buffer zone requirements for the zoning district in which they are located. The property is located in a Commercial Watershed Zoning District as shown on Assessors Plan No. 1032, Plot 3B and contains +/-9.14 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 28, 2012 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.

Evidence

Attorney Frank A. Marinelli presented this petition to the Board on behalf of the petitioner, along with Richard L. Goodick, an owner of Sealcoating and Attorney John Reidy, who represents the petitioner regarding purchase of the property from Coca Cola. Attorney Marinelli explained that the property is the site of a former Coca Cola plant constructed on or about 1963, where Coca Cola warehouse, distribution, trucking and office activity occurred for decades. Coca Cola has moved its operations, and the property is currently vacant. Attorney Marinelli explained that Sealcoating is purchasing the property from Coca Cola with the intention of using it as a contractor's yard, with associated offices and headquarters.

Attorney Marinelli explained that Sealcoating is a contractor whose work includes repair of public road cracks and bridge work, with such use qualifying as a contractor's yard, a use by right in the Commercial Watershed District under the Zoning By-laws. After public hearings, Sealcoating received three (3) final special permits and site plan review approval (135-711) from the Braintree Planning Board, Decision No. 11-08, for operation of its business and improvement of the property and building in accordance with the plan and Planning Board Decision No. 11-08 in the Wetlands and Floodplain District (135-608), the Watershed Protection District (135-609) and for use of a 100-foot transition area from the Residence B/Commercial District dividing line for

contractor's yard use and for renovating the building and making other improvements on the property. Attorney Marinelli also represented that Sealcoating received a final Order of Conditions from the Braintree Conservation Commission.

The proposed alterations to the site include the addition of 14,800 SF of pavement, primarily to accommodate vehicle and equipment storage, as well as a new parking configuration. The bulk of the additional pavement will be located in the northwest area of the lot, as shown on the plan submitted. The applicant also proposes to install tanks for gasoline and diesel fuel as well as a state of the art fueling facility at the westerly portion of the property. A propane tank will also be added on the westerly side of the property. In addition, the applicant proposes to install two liquid asphalt tanks and a 50 ton hopper, all of which comply with the height restrictions under the Zoning By-laws and which will be located within a concrete containment wall on the westerly side of the property. The applicant will also construct some material stockpile bins in this same westerly side of the property. The applicant also proposes the removal of a small bump-out at the northeasterly portion of the building and installation of overhead doors on the northerly side of the building.

The existing structure on the lot is pre-existing nonconforming. The Commercial Watershed District requires a minimum front yard setback of 35 Ft., but the structure is located only 31.1 Ft. from the front lot line. Also, the Zoning By-law requires a 100 Ft. buffer zone between the Commercial Watershed District and the bordering Residential B District, but the location of the structure on the lot offers no buffer zone. Although structures on the site are located approximately 34.20 feet from the Residential B Zoning District boundary line, pavement on the site extends to the zoning district boundary line. Therefore, the applicant requests a finding under G.L. Chapter 40A, Section 6 regarding the front yard setback and buffer zone.

Regarding the front yard setback, the Braintree Zoning By-laws section 135-701(1), provides that “[i]n an established neighborhood, the front setback may be the average of the setbacks of the other buildings within 200 Ft. of the locus on the same side of the street.” The existing building on the site offers a 31.1 Ft. front yard setback from Lundquist Drive. The closest building within 200 feet is the Herb Chambers facility at 75 Lundquist Drive, which the Planning Board noted is closer to the street than the applicant's building, and therefore, Attorney Marinelli asserted that the building setback is conforming, based on the average setbacks of building within 200 feet. To the extent that averaging as allowed under Section 135-701(1) is complicated by a lack of more buildings within 200 feet, Attorney Marinelli suggested as an alternative that the Board could grant a finding to allow the continuation of the pre-existing nonconforming setback.

Regarding the buffer zone requirement, the required setback is 100-feet under section 135-702(B) (1) (a) of the Zoning By-law. The building, constructed circa 1963, precedes the Town's adoption of a 100-foot buffer zone or transition area. Section 135-702(12) of the Zoning By-law allows the Planning Board to grant a special permit to “modify the transition area requirements...” The Planning Board, in Decision No. 11-08, granted a special permit to allow use of the buffer zone for the contractor's yard use per the plan and conditions of Planning Board Decision No. 11-08. Planning Board Decision No. 11-08, granting the special permit(s), states, in pertinent part, at page 7: “[T]he existing structures and paved surfaces located within 100 ft. of the Residential B Zone line are proposed to remain and be slightly modified to the extent as shown on the Record Plan. The granting of this Special Permit authorizes the continued use of this area and it is therefore no longer considered nonconforming in nature and is subject to the uses and features as depicted, described and conditioned in this Decision.” The special permit is, therefore, considered both a special permit for the use of the transition area and a dimensional special permit to allow the location of the existing building, pavement and related features in the transition area as shown on the plan.

For the above reasons, Attorney Marinelli requested that the Zoning Board find: (1) that the front yard setback from Lundquist Drive is conforming; and (2) that use of the 100-foot transition area for a contractor's yard and location of the existing/renovated building and related features within the transition area as set forth on the plan

(and in Planning Board Decision 11-08) is conforming where the Planning Board granted a special permit for such use and location of structure(s). Additionally, should the existing building be considered a nonconforming structure in any respect, Attorney Marinelli requested that the Board find under 135-403(A) of the Zoning By-law, that alteration, if any, to the existing structure(s) is not substantially more detrimental to the neighborhood than the existing nonconforming structure or use.

In response to a Board member's question inquiring whether Sealcoating already owned the building, Attorney Marinelli responded that Sealcoating was under contract with Coca Cola for the purchase of the property and that the closing was to take place in approximately one month. Also, in response to a Board member's question regarding whether a variance was being sought, the Building Inspector, Russell Forsberg, responded that if the building were constructed today a variance would be required for the buffer zone, however as the building was constructed before the adoption of the buffer zone requirement, a variance is not required. In response to a Board member's question as to whether the decision of the Zoning Board of Appeals regarding the buffer zone would be binding on all successors in interest to Sealcoating, Russell Forsberg responded that it would be binding.

The applicant filed with the Zoning Board a plan entitled "Proposed Office and Operations Center, Site Layout and Materials Plan C002," dated October 14, 2011 as revised November 3, 2011 and December 7, 2011, prepared by Highpoint Engineering, Inc., Douglas J. Hartnett, P.E. of Bridgewater, MA.

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

Findings

The Board found that, based on the Planning Board's Special Permit decision (No. 11-08) and the representations of the Building Inspector, that the front yard setback from Lundquist Drive is conforming and that a contractor yard use of the 100 Ft. buffer zone and location of the existing building and related features as set forth on the plan submitted by the applicant is conforming where the Planning Board has granted a special permit for such use and location of such structure(s). In the event that there is a challenge as to the conformity of the building relative to the front yard setback and use of the buffer zone, the Board found that the proposed alterations to this site are not substantially more detrimental to the 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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Petition Number 12-10 Pam and Robert Cosgrove RE: 58 Mass Avenue

Chairman Karll advised the Board that the petitioners have submitted a letter requesting a deferral of this request.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to grant a 60-day deferral of this request. However, the petitioners may appear at the March 2012 meeting regarding this petition.

6) Petition Number 12-11

Barlo Signs

RE: 250 Granite Street

Chairman Karll advised the Board that the petitioner has submitted a letter requesting a deferral of this request.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to grant a 60-day deferral of this request. However, the petitioner may appear at the March 2012 meeting regarding this petition.

7) Petition Number 12-12

Sprint Spectrum, L.P.

RE: 639 Granite Street

Present: Attorney Scott Lacy of Prince, Lobel, Tye, LLP of Boston, representing the petitioner

This is a petition filed by Sprint Spectrum, L.P. ("Sprint") of 9 Crosby Drive, Bedford, MA 01730, regarding the property located at 639 Granite Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407, 701, and 1603(b) (4). The applicant seeks a permit and/or finding to modify an existing wireless communication facility located on the roof of the existing building at 639 Granite Street, all in accordance with the plans of record. The property is located in a Residence B/Commercial Watershed Zoning District as shown on Assessors Plan No. 2048, Plot 15A and contains +/- 160,489 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 28, 2012 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Michael Calder.

Evidence

Attorney Scott Lacy of Prince, Lobel, Tye, LLP of Boston appeared on behalf of the petitioner and explained to the Board that the petitioner's equipment is already located on the rooftop of this building. The applicant is seeking permission to replace and upgrade the nine existing wireless communication panel antennas with new panel antennas and to install or modify related equipment located, such as cables and the related equipment cabinet, on the rooftop of the building. Specifically, the petitioner seeks to replace all existing nine panel antennas with nine new panel antennas that work on a 4G network, as opposed to the older 3G technology network. The petitioner also seeks to install nine Remote Radio Heads behind the panel antennas to further enhance the 4G technology. Further, the petitioner seeks to replace Sprint's GPS unit at the site, install cabling and replace/modernize an existing equipment cabinet within the equipment room in the basement of the building.

The building at this site is pre-existing and nonconforming as to height. The building height is 54 Ft., while the Zoning By-law limits building heights in this zoning district to 50 Ft. The current and proposed antennas are 7 Ft. in height, which brings the total height of the building and antennas to 61 Ft. Neither the building height nor the antenna height will be altered during the modifications the petitioner now seeks to make. The petitioner was previously granted a variance (07-58) for the installation of the wireless communications antennas and

related equipment at this site. Since the applicant is seeking to modify a pre-existing and nonconforming structure, a finding is required under G.L. c. 40A, Section 6.

In addition, the wireless communication link is located within 500 feet of a school, hospital or residence, which is not allowed under Section 135-1603(B) (3) without the permission from the Zoning Board. Attorney Lacy explained that the applicant was previously granted relief from this section to install the antennas. Therefore, the applicant is seeking a modification of its previously granted permit. Attorney Lacy noted that the proposed antennas will not alter the setbacks of the building or the wireless communications facility from the nearest residence. Attorney Lacy also explained that the modifications will minimize the visibility of the facility

As grounds for the finding, the petitioner explained that Sprint is in the process of upgrading their wireless communications facilities to provide services on the new 4G technology network. These modifications and installations will address a gap in coverage and provide adequate and reliable 4G wireless communications services in and around Braintree. The petitioner stated that the new installations will look very similar to the antennas currently located on the building and will have little visual impact to the surrounding neighborhood. Attorney Lacy also stated that the location and height of this particular building is uniquely situated to allow the applicant to address its gap in coverage.

In response to a question from the Board as to whether the 3G technology equipment will be removed when the 4G technology is installed, Attorney Lacy responded in the negative and stated that the antennas that support the 4G technology will also support the 3G technology.

In addition to the packet of information, including the applicant's FCC License, the petitioner submitted four sheets entitled "Sprint Vision, Five Corners BS73XCO83, 639 Granite Street, Braintree, MA, 02184, Norfolk County", sheets numbered T-1, C-1, A-1, and A-2, dated August 24, 2011 and revised September 29, 2011 and January 25, 2012, prepared by Daniel Doherty, P.E. of EBI Consulting of Burlington, MA.

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

Findings

The Board found that the requested relief was necessary in order to fill a gap in coverage and provide the Town with the most recent cellular technology in the form of a 4G wireless communications network. Further, the Board found that replacing the existing nine antennas with nine new antennas of the same height would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

Decision

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

8) Petition Number 12-13 Sprint Spectrum, L.P. RE: 300 River Street

Present: Attorney Scott Lacy of Prince, Lobel, Tye, LLP of Boston, representing the petitioner

This is a petition filed by Sprint Spectrum, L.P. ("Sprint") of 9 Crosby Drive, Bedford, MA, 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 135-402, 403, 701, and 1603 (b)(4). The applicant seeks a permit and/or finding to modify and upgrade three wireless communication panel antennas and to install three new additional wireless communication panel antennas and to install or modify related equipment located on the wireless communications tower at 300 River Street, all in accordance with the plans of record. The property is located in an Open Space Conservancy Zoning District as shown on Assessors Plan No. 2009, Plot 14 and contains +/- 46 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 28, 2012 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Michael Calder.

Evidence

Attorney Scott Lacy of Prince, Lobel, Tye, LLP of 100 Cambridge Street in Boston appeared on behalf of the petitioner, and explained to the Board that the petitioner is seeking permission to upgrade three existing wireless communication panel antennas, to install three additional antennas and to install or modify related equipment located on an existing wireless communications tower at 300 River Street, Braintree. Specifically, the petitioner seeks to replace the three existing panel antennas with three new panel antennas that work on a 4G network, as opposed to the older 3G technology network. The petitioner also seeks to install three additional new panel antennas that will also support a 4G network. The petitioner seeks to install Remote Radio Heads behind each of the six antennas to further enhance the 4G technology. Further, the petitioner seeks to replace Sprint's GPS unit at the site, install cabling and replace/modernize an existing equipment cabinet.

The tower at this site is a pre-existing nonconforming structure and use. The existing tower is 130 Ft. in height and the antennas are located on the tower at 115 Ft. in height. The Zoning By-law limits the maximum height of a structure in this zoning district to 20 feet, but the tower is 130 feet in height. The existing frontage on the site is +/-50 Ft., but the Zoning By-law requires 100 Ft. of frontage. The site does not meet the required 500 Ft. fall back zone in that it is located within 500 Ft. of a residential and school lot line. Neither the height, frontage nor setbacks would be altered as a result of the proposed modifications. The petitioner was previously granted a finding (04-85) for the installation of the wireless tower and related equipment. Since the applicant is seeking to modify a pre-existing and nonconforming structure, a finding is required under G.L. c. 40A, Section 6.

As grounds for the finding the petitioner explained that Sprint is in the process of upgrading their wireless communications facilities to fill a gap in coverage and provide services on the new 4G technology network. These modifications and installations will provide adequate and reliable 4G wireless communications services in and around Braintree. The petitioner stated that the new installations will look very similar to the antennas currently located on the tower and will have little visual impact to the surrounding area.

The petitioner submitted five sheets entitled "Sprint Vision, Crown Castle Tower BS43XC841, 300 River Street, Braintree, MA, 02184, Norfolk County," Sheet Numbers T-1, C-1, A-1, A-2, and A-3, dated August 22, 2011 and revised September 27, 2011, October 5, 2011, October 11, 2011 and January 25, 2012, prepared by Daniel Doherty, P.E. of EBI Consulting of Burlington, MA.

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

Findings

The Board found that the requested relief was necessary in order to fill a gap in coverage and provide the Town with the most recent cellular technology in the form of a 4G wireless communications network. Further, the Board found that replacing the existing three antennas with three new antennas of the same height and installing an additional three antennas also of the same height would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent and purpose of the Zoning By-law.

Decision

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

APPROVAL OF MINUTES:

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of December 27, 2011.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of January 24, 2012.

Chairman Karll announced that the Zoning Board of Appeal Meetings will now be held at Town Hall, 1 JFK Memorial Drive in Fletcher Hall, Lower Level starting in March 2012.

The Board adjourned the meeting at 8:15 pm.