



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

May 8, 2012

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

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

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

OLD BUSINESS:

- 1) Petition Number 12-11**
Barlo Signs, on behalf of Rodizio Grill
RE: 250 Granite Street

Present: Tim Sullivan, Barlo Signs

This is a petition filed by Barlo Signs of 158 Greeley Street, Hudson, NH, 03051 on behalf of Rodizio Grill regarding the property located at 250 Granite Street in Braintree. The property is owned by Braintree Property Associates c/o Simon Property Group, P.O. Box 6120, Indianapolis, IN. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.2 to install one wall sign and eight window wall signs. The property is located in a Highway Business District and contains +/- 111.645 acres of land, as shown on Assessors' Map No. 2089, Plot 22.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was scheduled for April 24, 2012, but was re-scheduled and held before the Zoning Board of Appeals on May 8, 2012 at 7 p.m. at Town Hall at One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michael Calder.

Evidence

The petition was presented by Tim Sullivan of Barlo Signs, who has been hired to design and install the signs for Rodizio Grill, which is located at 250 Granite Street, within the South Shore Plaza. This site contains a cluster of commercial buildings located within a single plaza. Rodizio Grill is a new restaurant to be located near the south parking facility, in the corner between Legal Seafoods and the Nordstrom's wing.

While Rodizio Grill is a national restaurant, this is its first location in the state. The signage proposed is consistent with the restaurant's national brand. The applicant seeks to place one wall sign over the exterior entrance to the restaurant. The sign states "Rodizio Grill" in green letters with "The Brazilian Steakhouse" in black letters beneath the name. Above the name is the outline of a bull in red. Mr. Sullivan explained that the unique shape of the sign exceeds the square footage allowed under the Town's By-law. According to Section 135-904.2(A)(5)(a) of the Zoning By-laws, a wall sign is limited to 150 SF in area, and pursuant to Section 135-904.2(A)(5)(g), a wall sign is limited to 4 feet in height. The proposed sign measures 21 ft. in length and 10 ft. in height, for a total of 210 SF of area, and therefore variance are required.

Acknowledging the Zoning By-law restrictions as to illumination of signs, Mr. Sullivan explained that the letters would be lit internally with white lights, under a green and red film, and submitted a rendering of the sign lit at night. In response to a question from the Board, the applicant noted that the sign is illuminated at dusk and typically shuts off one hour after closing.

The applicant also proposes to install eight smaller wall signs or window graphics on the glass panes surrounding the entrance. These window graphics consist of frosted vinyl in earth tones with "Rodizio Grill" and the bull logo in white letters. Each of the signs is approximately 2 SF, with all eight signs totaling 16 SF in area. According to Section 135-904.2(A)(5)(g) of the Zoning By-laws: "No 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 square feet of area. Sign permit may be issued only after written permission for said signs is authorized by the Zoning Board of Appeals." As noted in the Planning Department staff report, Rodizio Grill was previously approved for 23 SF of wall signage on a directory board on the south garage. This signage, combined with the 210 SF wall sign over the entrance and the eight window graphics brings the total wall signage for this establishment to 249 SF of area; therefore, a variance is required.

Mr. Sullivan noted that the restaurant has no access from inside the South Shore Plaza, so its only means of access is through this external entrance. In addition, the restaurant is not visible from any major artery. The lack of access and visibility from within the plaza, combined with the fact that the restaurant is tucked into a corner and partially obscured by the parking facility, requires signage sufficient for customers to locate the restaurant and be safely directed to it. With respect to the window graphics, Mr. Sullivan explained that these signs were needed for public safety reasons, namely to prevent people and birds from walking or flying into the vast window panes.

The petitioner submitted five sheets with renderings for "Rodizio Grill", numbered B-11-12-8866, sheets 1.0, 2.0, 2.1, 3.0, and 4.0, prepared by Barlo Signs of Hudson, NH, dated 12/16/11 with revisions dated 12/22/11 and 2/20/12.

By a vote of 4-0-0, the Planning Board voted to take no action 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 through the South Shore Plaza site. The Board also found that the petitioner had demonstrated a hardship due to the size of this lot with multiple businesses located at the site and based on the fact that the restaurant has no internal access from the Plaza and is tucked in a corner with little visibility. 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 signs 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. The Board also found that the window graphics will promote public safety.

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.

2) Petition Number 12-14

Ali Akshia

RE: 349 Liberty Street

Present: Ali Akshia, petitioner and Steve, DeRoche, surveyor

Mr. Karll advised Board that Mr. DeRoche, on behalf of the petitioner requested to withdraw the petition at this time without prejudice.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, it was unanimously voted to allow the petitioner to withdraw the appeal without prejudice.

3) Petition Number 12-15

Sprint Spectrum, L.P.

RE: 10-40 Plain Street/ 0 Hancock Avenue

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 10-40 Plain Street/0 Hancock Avenue, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135- 403, 407, 1603(b) and 1611. The applicant seeks a permit and/or finding to modify an existing wireless communication facility located on the roof of the existing building at 10-40 Plain Street/0 Hancock Avenue, Braintree, all in accordance with the plans of record. The property is located in a Commercial Zoning District as shown on Assessors Plan No. 1031, Plot 5 and contains +/-59,241 SF of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was scheduled for March 27, 2012, but was re-scheduled to April 3, 2012 and held before the Zoning Board of Appeals at Town Hall at One J.F.K. Memorial Drive, Braintree, MA. By mutual agreement, this matter was continued to May 8, 2012. Sitting on this petition was Chairman, Stephen Karll, and members, John 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 previously received relief from the Board under Sections 135-1603(B)(3) and 1603(B)(4) for these installations. With this application, the applicant is seeking permission to replace and upgrade five existing CDMA wireless communication panel antennas with three new panel antennas, for a net reduction of two installations. The applicant also seeks permission to install or modify related equipment located at the site, such as cables, remote radio heads below each antenna, a new GPS unit, and replacement of the related equipment cabinets, on the rooftop of the building. The petitioner seeks this modification to replace five existing panel antennas with three new panel antennas that work on a 4G Broadband network, as opposed to the older 3G technology network. All of the replacement equipment will be painted to match the color of the building so as to minimize any visual or aesthetic impact.

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 maximum height allowed for a penthouse is 12 feet beyond the roof, or 66 feet; however, this building's penthouse is 72 feet high. The maximum height allowed for the antennas is 10 feet beyond the roof, or 64 feet; however, the existing installation provide a height of 82 feet. 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 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 the number of installations on this building and the structural integrity of the site to support these installations, Attorney lacy confirmed that this information is provided to the Building Inspector prior to the issuance of a building permit. Nonetheless, Attorney Lacy agreed to continue the matter to allow the Board members an opportunity to conduct a site visit.

In addition to the packet of information, including the applicant's FCC License, the petitioner submitted twelve sheets entitled "Sprint Vision, Armstrong park, BS223XC481, 10-40 Plain Street, Braintree, MA 02184, Norfolk County", with sheets numbered T-1, GN-1, GN-2, C-1, A-1, A-2, A-3, A-4, S-1, E-1, E-2, and E-3, all dated February 9, 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 five antennas with three 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

NEW BUSINESS:

**4) Petition Number 12-20
Paul and Kristina Kippenhan
RE: 10 Candlewood Lane**

Present: Paul and Kristina Kippenhan, petitioners

This is a petition filed by Paul and Kristina Kippenhan regarding the property at 10 Candlewood Lane, Braintree, in which the applicants seek relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 701. The applicants are seeking a permit, variance and/or finding to construct a new detached two-car garage, measuring 24 ft. x 26 ft., which will violate the front yard setback requirement, all in accordance with the plans of record. The property is located in a Residential B Zoning District as shown on Assessors Plan No. 1088, Plot 9C and contains +/-15,300 SF of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was scheduled for April 24, 2012, but was re-scheduled and held before the Zoning Board of Appeals on May 8, 2012 at 7 p.m. at Town Hall at One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michael Calder.

Evidence

The property owners presented this petition to the Board, explaining that they currently have no garage. The applicants propose to construct a two-car garage, measuring 24 ft. x 26 ft. The applicants explained that they own a corner lot, which is also shaped like the letter "L", with their existing house located near the right-angle bend in the "L". The applicants propose to construct the garage on the short leg of the "L". As this is a corner lot, the detached garage is required to comply with a 20 foot front yard setback, but the proposed garage is located 10 feet from the front lot line. Therefore, a variance is required.

As grounds for the variance, the applicants noted the irregular “L” shape of the lot and the fact that the lot is narrow in the location where they propose to build the garage. In addition, the applicants advised of sloping topography and ledge in other locations on the lot, particularly on the side of the lot where the garage is to be located. The applicants submitted photos showing large rock outcroppings to the side of the house where the garage is proposed to be located. Due to the configuration of the house on the lot, the applicant’s backyard is behind the house and towards Peach Street. The logical location for the garage is to the side of the house on Candlewood Lane. This particular portion of the lot is only 48 feet deep; if the garage were located in compliance with the front yard setback, the garage would be located approximately 4 feet from the abutting neighbor’s yard, which would also require a variance. As proposed, the placement of the garage will have less of an impact on the abutting neighbor.

The applicants submitted a plan entitled “Variance Plan, 10 Candlewood Lane, Braintree, MA,” dated January 30, 2012, prepared by James E. McGrath, Land Surveyor. The applicants also submitted three pages of renderings of the proposed garage prepared by Wally McKinnon of Weymouth.

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

Findings

The Board found that the applicant had demonstrated a hardship based on the topography of the lot, specifically the visible rock outcroppings on the side of the house where the garage is proposed to be located, which would make it difficult to locate the garage further back from the front yard setback. The Board also found that the applicants had demonstrated a hardship based on the irregular “L” shape of lot and the placement of the existing house on the lot. 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 12-21

Scott MacLeod

RE: 20 Windemere Circle

Present: Scott MacLeod, petitioner

This is a petition filed by Scott Macleod regarding the property at 20 Windemere Circle, Braintree, in which the applicants seek relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, and 701. The applicant is seeking a permit, variance and/or finding to raise the roof of the existing garage, which will violate the side yard setback requirement, all in accordance with the plans of record. The property is located in a Residential B Zoning District as shown on Assessors Plan No. 2036, Plot 67 and contains +/-9,430 SF of land.

Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was scheduled for April 24, 2012 but was re-scheduled and held before the Zoning Board of Appeals on May 8, 2012 at 7 p.m. at

Town Hall at One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michael Calder.

Evidence

The property owner presented this petition to the Board, explaining that he proposes to raise the roof of the existing garage three feet and constructing shed dormers for nearly the full depth of the garage. In addition, the applicant seeks to construct a two-story addition along the rear of the existing dwelling, measuring 42 ft. wide with depths varying from 8 to 20 feet.

The applicant's lot and house are pre-existing nonconforming. The residence b Zoning District requires a minimum lot size of 15,000 SF, but this lot contains only 9,430 SF. The lot also lacks the required 100 feet of width, as it offers only 82 feet of width. The existing house with its attached garage encroaches into the side lot line. A 10 foot side yard setback is required under the Zoning By-laws, but this house is located 5.9 feet from the northerly side lot line. The proposed addition will maintain the existing side yard setback and will not create any further nonconformity. Therefore, the applicant requires a finding under G.L. Chapter 40A, Section 6.

The applicant explained that the proposed alterations are to provide additional living space. The applicant also stated that the neighbors on the northerly side, the Hannigans, are not opposed to this alteration. The applicant also noted the presence of ledge in the yard, protruding south of the proposed addition. The applicant submitted color photos of existing conditions of the backyard and location of the garage.

The applicant submitted a plan entitled "Location Plan, Showing Existing House with proposed Addition, 20 Windemere Circle, Braintree, MA," dated March 19, 2012, prepared by Steinbeck & Taylor, Registered Professional Engineers and Land Surveyors. The applicant also submitted six pages of renderings of the proposed addition prepared by Rockwood Design, Inc. of Marshfield.

The Planning Board voted 4-0-0 to recommend favorable action on the requested relief. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing dwelling encroaches into the northerly side lot line by providing only a 5.9 foot setback, where the Zoning By-law requires a 10 foot setback. The Board also found that the proposed addition will not further encroach into this setback or create any new nonconformity. Therefore, the Board found that the proposed alteration of the pre-existing nonconforming dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling. 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 presented.

APPROVAL OF MINUTES:

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to accept the meeting minutes of April 3, 2012.

The Board adjourned the meeting at 8:30pm.