



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

September 24, 2013

IN ATTENDANCE: Stephen Karll, Chairman
Michael Calder, Member
Michael Ford, Member

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

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

NEW BUSINESS:

1) Petition Number 13-33

Daniel Sullivan on behalf of Maura M. Flanagan and Anne Fitzsimmons, Trustees of Flanagan Family Irrevocable Trust
RE: 27 Bushnell Terrace

Present: Daniel Sullivan, petitioner

This is a petition filed by Daniel Sullivan on behalf of Maura M. Flanagan and Anne Fitzsimmons, Trustees of Flanagan Family Irrevocable Trust, owners of the property located at 27 Bushnell Terrace, Braintree, MA regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to build a second floor addition over an existing single family home and attached one-car garage, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 2062, Plot 52, which contains a land area of +/- 5,219 Sq. Ft.

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 on September 24, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Michael Calder and Michael Ford.

Evidence

The petitioner was represented by Daniel Sullivan of 1321 Liberty Street in Braintree, explained that the owners wish to add a second story over the existing single-family house and attached one-car garage, all within the footprint of the existing structure. The lot and the existing structure on the lot are nonconforming. The Zoning By-law requires a minimum lot size of 15,000 SF in a Residence B Zoning District, while this lot contains only 5,218 SF of area. The lot also lacks the minimum required 100 feet of lot depth and lot width, as the lot is only 55.17 feet deep and 75 feet wide. The existing structure violates the rear yard setback; the Zoning By-law requires a minimum rear yard setback of 30 feet, while the existing structure is located 7.8 feet from the rear lot line. The proposed addition will be within the existing footprint and will not create any new nonconformities; therefore, a finding under G.L. Chapter 40A, Section 6 is required.

As grounds for the requested relief, Mr. Sullivan noted that other houses in the neighborhood have second stories, so the proposed addition would not, in his opinion, be more detrimental to the neighborhood. The Planning Board also noted the vertical expansion of other houses in this neighborhood.

The petitioner submitted a plan entitled "Proposed Second Story Addition, #27 Bushnell Terrace, Braintree, MA." dated July 29, 2013, prepared by CCR Associates of Quincy, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board voted to recommend favorable action on the petition, based on the prior zoning relief.

Findings

The Board found that the proposed alteration of the existing structure by the addition of a second story over the existing dwelling and one-car garage would fall within the footprint of the existing dwelling and not create any further encroachments, and therefore, the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

- 2) Petition Number 13-34**
Achor Signs, Inc. on behalf of Here Comes There Goes, LLC
RE: 255 Grossman Drive

Present: Joe Thunderbrook of Anchor Signs, Inc., as agent for Here Comes There Goes, LLC

This is a petition filed by Anchor Sign, Inc. on behalf of Here Comes There Goes, LLC of 1266 Furnace Brook Parkway, Quincy, MA regarding the property located at 255 Grossman Drive, Braintree, MA. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.2 to install two wall signs, all in accordance with the plans submitted. The property is located in a Highway Business Zoning District and contains +/- 34.36 acres of land, as shown on Assessors' Map No. 2019, Plot 4-4.

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 on September 24, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Michael Calder and Michael Ford.

Evidence

The petition was presented by Joe Thunderbrook of Anchor Sign, Inc., as agent for Here Comes There Goes, LLC, who will be operating a retail store, Five Below, at the subject property, in a portion of the building currently occupied by The Guitar Center within the Kmart Marketplace. The petitioner seeks to install two wall signs, each consisting of a blue background with white letters stating "Five Below" to denote the name of the retailer. The two proposed wall signs are as follows:

1. One wall sign to be located on the front or northerly facing elevation of the building, just above the main entrance measuring 90" high by 31'9" long or 75.83 SF of area; and
2. One wall sign on the westerly elevation of the building, facing the internal access road and parking lot to the side of the building, measuring 42" high by 21'21/2" long or 63.63 SF of area.

Both signs will be internally lit with white LED lights.

According to Section 135-904.2.A(5)(b) of the Zoning By-law, "No wall sign shall exceed four feet in overall height." The sign on the northerly elevation is proposed to be 90" high. Therefore, a variance is required.

According to Section 135-904.2.A(5), "No wall sign shall be visible to the major highway, if a ground sign is permitted." The northerly facing wall sign will be facing Route 3. This shopping center also has a pylon sign at the entrance to the shopping center, and it is anticipated that the petitioner will have a slot on that pylon sign. Therefore, a variance is required for the wall sign facing Route 3.

Section 135-904.2.A(5)(e) limits sign area to one square foot of signage per linear foot of frontage. The sign on the north façade complies with this provision; however, the second wall sign on the west elevation exceeds the total area of permissible signage. Therefore, a variance is required.

Section 135-904.2.A(5)(g) limits each store or business to one wall sign, not to exceed 150 SF in area. The petitioner proposes two wall signs for a total area of 155.45 SF. Therefore, a variance is required.

As grounds for the variances, the petitioner noted the unique location of the retail store within this shopping center. While the shopping center is expansive and has visibility from Route 3 South, the shopping center cannot be accessed directly from Route 3. Instead, customers have to exit Route 3, on to Union Street and access the shopping at the intersection with Grossman Drive. The shopping center is not visible from this intersection, which is why the pylon sign is critical at the foot of Grossman Drive to direct the traveling public into the entrance of the shopping center. Once inside the shopping center, the business has no visibility along the internal loop road; instead, the public is directed along an internal road behind the business and to the far side of the business. A car traveling along this route will not see the sign for or location of Five Below until the car is on the opposite side of the loop road, heading towards the exit. As a result of this unique configuration of retail businesses within the shopping center, the wall sign over the northerly façade is needed for the public to identify the location of the business, and the wall sign on the westerly elevation is needed to

direct the traveling public to the westerly side parking lot for the business, located immediately adjacent to the entrance of the loop road.

With respect to the northerly facing sign, the petitioner explained that signs are customarily located above the main entrance to a business, but also, this sign alerts the traveling public on Route 3 to the location of the business. The petitioner also explained that the wall signage requested was proportional to the length of the building's elevations and in keeping with signs for other businesses in the shopping center.

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

The petitioner submitted five sheets of color renderings of the proposed signage prepared by Anchor Sign, Inc. dated 7/23/12 and revised through 8/12/13, depicting the two wall signs and details for Five Below, along with one color photograph of the westerly elevation of the building with an existing "For Lease" sign displayed.

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 signage was warranted based on the location of the business within the shopping center, the configuration of the internal loop road within the shopping center as it relates to the location of the business, and the fact that the shopping center has no visibility from a main access road. The Board further found that the proposed signage was necessary to identify the business and to safely direct the public traveling to the site, which, in turn would lead to safer traffic conditions and greater public convenience. The Board also concluded 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 Mr. Calder and seconded by Mr. Ford, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

3) Petition Number 13-35 Unibraint, LLC RE: 251 Union Street

Present: Attorney Frank Marinelli on behalf of UNIBRAINT, LLC

This is a petition filed by UNIBRAINT, LLC regarding the property located at 251 Union Street, Braintree, MA. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.5 to replace three existing ground signs and to replace three existing wall signs, all in accordance with the plans submitted. The property is located in a General Business Zoning District and contains +/- 13,770 SF of land, as shown on Assessors' Map No. 1001, Plot 2.

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 on September 24, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Michael Calder and Michael Ford.

Evidence

The petition was presented by Attorney Frank Marinelli on behalf of UNIBRAINT, LLC, who currently operates a Sunoco gas station on the site. The gas station is converting to a Citgo station, and as a result, all of the Sunoco signs need to be removed and replaced with appropriate Citgo signs, to denote the rebranding of the gas station.

The proposed ground signs are as follows:

1. Replace the existing 56 foot high ground sign bearing the Sunoco emblem, which measures approximately 306 SF for each side and is 56 feet high, with a “Citgo” emblem, measuring 196 SF on each side for a total of 392 SF of signage. This ground sign also contains a smaller 9 SF sign stating “Open 24 Hours” below the emblem sign, which will remain. This sign is located along the Braintree Highway Division property line and is visible from Route 3.
2. Replace the existing 21 foot high ground sign, consisting of a 20.8 SF two-sided price panel above a 20.8 SF two-sided logo sign that also includes the price of diesel. This ground sign is located within the landscaped island along Union Street. This ground sign is proposed to be replaced with a 25 foot high ground sign bearing the Citgo emblem and a changeable price for regular unleaded and diesel fuel, measuring 50 SF in total area.
3. Replace the existing 18 foot high ground sign along the entrance to the site abutting the entrance to the Town’s Highway Division barn, which currently bears a Sunoco emblem measuring 23.8 SF of signage per side plus a 20.8 SF per side price panel. The proposed sign bears the Citgo emblem and an changeable price panel for three grades of unleaded fuel and measures 48.5”high by 95.5” long, for an area of 33.43 SF per side.

The total area for all three double-sided Citgo logo ground signs is 475.42 SF, plus another 83.42 SF of area for price panels. The price panels are proposed to be changeable, illuminated numbers with red LED lights. A variance is required for the use of the red lights.

The proposed wall signs are as follows:

1. Replace the existing two wall signs along the easterly and westerly sides of the canopy over the fuel pumps, measuring 27 SF per side, with Citgo signs measuring 18.8 SF each, for a total of 37.6 SF of area.
2. Replace the existing wall sign over the main entrance to the main office/cashier, measuring 27 SF with a Citgo sign measuring 13.2 SF.

According to Section 135-904.5.A(1) of the Zoning By-law, gasoline service stations and garages located in a General Business Zoning District are allowed signs as permitted by the Board.

According to Section 135-904.5.A(1)(a)(i) of the Zoning By-law, only one ground sign containing the logo of the oil company is permitted in a General Business zone, provided such sign does not exceed 60 SF in area and 20 feet in height. This application presents three ground signs well in excess of what is allowed under the Zoning By-law; therefore a variance is required.

According to Section 135-904.5.A(1)(b)(i) of the Zoning By-law, one sign displaying the price of gasoline is permitted, provided the sign does not exceed 30 SF in area per face. In this application, the petitioner proposes two ground signs containing price panels and exceeds the 30 SF in total area. Therefore, a variance is required.

According to Section 135-905 of the Zoning By-law, illumination of signs is restricted to white lights. Therefore, a variance is required.

As grounds for the variances, Attorney Marinelli explained that the ground and wall signs currently at the site exceed what the Zoning By-law allows. The replacement signs are the result of rebranding, and the total signage requested as part of the rebranding reflects a net reduction in overall signage at this site. Attorney Marinelli also explained that there is a hardship due to the location of the gas station in relation to Route 3, which is at a higher elevation. The signage, particularly the 56 foot high ground sign is necessary to alert the public traveling along Route 3 of the location of the gas station and the fact that it is open 24 hours. Attorney Marinelli also noted that this site has been a 24 hour gas station for a number of years, with the existing signage and structures in place; therefore, replacing the facades of the existing signs to reflect the new brand name will not be substantially more detrimental to the neighborhood than the existing signs.

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

The petitioner submitted twelve sheets of color renderings of an aerial view of the overall site, the existing signage location and dimensions, and the proposed signage with dimensions, prepared by Sign Design of Brockton, MA, all undated.

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 signage was warranted based on the fact that the site has been used as a gas station for many years, the proposed signage will be in the same location as the existing signage, and the overall signage proposed reflects a net reduction in signage area. The Board also acknowledged the location of the gas station, located immediately off an exit from Route 3, yet set at a lower elevation from the highway, necessitating the height of the 56 foot high ground sign, as well as lower ground signs once the traveling public is on Union Street. The Board found the signs to be necessary for purposes of visibility, identification of the business and to safely direct the traveling public to the site, which, in turn would lead to safer traffic conditions and greater public convenience. The Board also concluded 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. Calder and seconded by Mr. Ford, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

OTHER BUSINESS:

4) Petition Number 13-32

James H. O'Leary, Trustee for Commercial Street Realty Trust
RE: 177-179 Commercial Street, Braintree, MA

CORRECTED DECISION

This corrected decision clarifies and corrects deficiencies noted in the Board's decision regarding this property, as approved by the Board on August 27, 2013 and filed with the Office of the Town Clerk on August 30, 2013. The original decision of the Board as filed with the Office of the Town Clerk on August 30, 2013 remains in full force and effect except as is expressly modified by this Corrected Decision.

Evidence

In addition to the relief requested by the petitioner and noted in the Board's decision dated August 27, 2013, the petitioner sought, in his original application to the Board, a variance from the density requirements of Section 135-705 of the Town's Zoning By-laws. While the Board's original decision stated that the Board voted to grant the requested relief, the applicant requested clarification of the relief requested. Specifically, Section 135-705 of the Zoning By-laws states, in part, that multifamily dwelling may be erected in a Residence C/Commercial Zoning District, but the number of multifamily units allowed is based on 5,000 SF for each one-bedroom or studio unit plus 1,000 SF for each additional bedroom in each unit. The applicant proposed a 5-unit multifamily dwelling, three of which are 1-bedroom units and two of which are 2-bedroom units. Based upon the Zoning By-laws, 27,000 SF of land area would be required to support this density, but the applicant's lot contains only 17,775 SF. Therefore, a variance is required.

Further, the original decision of the Board reflects a side yard setback of 27 feet from the westerly lot line; however, the correct distance for this setback is 21 feet, not 27 feet. The correct distance of 21 feet was properly noted on the plan submitted to the Board.

Findings

Pursuant to the authority granted to the Board under G.L. Chapter 40A and as interpreted by the Supreme Judicial Court, the Board has "'inherent power...to correct an inadvertent or clerical error in its decision so that the record reflects its true intention'...[but that] the board may not make a substantive amendment which changes the result of an original deliberate decision, or which grants relief different from that originally granted, without compliance with the relevant notice and hearing requirements." Tenneco Oil Company v. City Council of Springfield, 406 Mass. 658, 659-660 (1990) citing Huntington v. Zoning Board of Appeals of Hadley, 12 Mass. App. Ct. 710, 714 n. 4 (1981) quoting Selectmen of Stockbridge v. Monument Inn, Inc., 8 Mass. App. Ct. 158, 164 (1979).

In the present matter, the Board found that the original application for relief included the request for a variance from the density requirements per unit as stated in Section 135-705 of the Zoning By-laws. The Board also found that the westerly side lot line setback was accurately stated as 21 feet on the plan submitted. As no new zoning relief was being requested and as no substantive changes from the original application or from the Board's original decision were sought, the Board found that a corrected decision was appropriate.

Decision

On a motion made by Mr. Calder and seconded by Mr. Ford, it was unanimously voted to modify the decision as per the request of the petitioner.

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to accept the meeting minutes of August 27, 2013.

The Board adjourned the meeting at 7:35 pm.