



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

1 JFK Memorial Drive – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

August 26, 2014

IN ATTENDANCE: Stephen Karll, Chairman
Richard McDonough, Member
Michael Calder, Member

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Peter Morin, Town Solicitor

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

NEW BUSINESS:

- 1) Petition Number: 14-19**
Petitioner: John and Kimberly Tavares
RE: 23 Delta Road

Mr. Karll advised the Board that the petitioner has requested a 30 day extension of the petition.

On a motion made by Mr. Calder and seconded by Mr. McDonough, the Board unanimously voted 3-0 to grant a 30 day extension to be heard at the September 23, 2014 Zoning Board of Appeals meeting.

- 2) Petition Number: 14-20**
Petitioner: Adam T. Kurth, Esq, for New Cingular Wireless PCS, LLC ("AT & T")
RE: 1 Devon Commons Lane

Present: Adam T. Kurth, Esq. with Anderson & Kreiger, LLP for New Cingular Wireless PCS, LLC ("AT & T") and Franz Pierre.

This is a petition filed by Adam T. Kurth, Esq. Anderson & Kreiger LLP, One Canal Park, Suite 200, Cambridge MA 02141 for New Cingular Wireless PCS, LLC ("AT & T"), the Devon Wood Condominium Trust, NStar Electric (owner of the stanchion on which the antenna is to be placed) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 601, 1603 (C)(1)(a), 1603 (C)(2)(b), 1603 (C)(2)(h) to construct and operate a Wireless Communication Facility within and adjacent to an existing utility transmission structure located on property in the Cluster I/Cluster II Zoning District. The applicant seeks a permit, variance and or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located

at 1 Devon Commons Lane, Braintree, MA and is within Cluster I, II District, as shown on Assessors Map #1116, Plot 2 through 234 and contains a land area of approximately 185.072 acres.

Notice

Pursuant to notice duly published in a newspaper of 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 August 26, 2014, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on the petition were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The Applicant is seeking permission to construct a vertical power mount tower of 109.9 feet equipped with an antenna platform that contains six (6) mounted panel antennas in three (3) sectors, as well as twelve (12) tower mounted amplifiers (TMAs). A 12 foot by 24 foot equipment cabinet equipped with GPS features and a generator will be provided for on the ground along with all associated cables and connections. The proposed Tower will require a Use variance pursuant to the Telecommunications Act of 1996 (TCA), as the tower is not located in a Highway Business District, pursuant to the Braintree Zoning Bylaw Section 135-1603 (C) (1) (a). The Telecommunications Act allows wireless antennas to be placed in non-conforming districts if the applicant provides evidence that no alternate location would address a gap in coverage.

In addition to the TCA Variance, the applicant seeks relief from Zoning Bylaws 135-1603(C) (2)(b) distance between towers, 135-1603 (C)(d)(1) tower height and 135-1603(C)(2)(h) minimum distance from a residential dwelling.

The proposed equipment will be placed on top of an existing 99 foot tall NStar stanchion and will only add approximately 10 feet to the height of the structure. The applicant provided maps, diagrams depicting the visual impact of the new antenna, site search information, an environment report and evidence of an existing gap in service in the Braintree Highlands area that will be alleviated by this proposal.

The Planning Board recommended favorable action by a vote of 4-0-0.

No one spoke in opposition and the public hearing was closed.

Findings

The Board found that the petitioner had demonstrated the need for relief from the four previously cited subsections of 135-1603 (C) of the Zoning Bylaw and the use variance pursuant to the TCA based on the materials provided in support of the application including the identified gap in service that will be alleviated. The Board further concluded that the resulting structure is not substantially more detrimental to the neighborhood than the existing power stanchion and that relief could be granted without denigrating or nullifying the intent or purpose of the Zoning Bylaw.

Decision

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

3) Petition Number: 14-21
Petitioner: Keith and Kristen Walsh
RE: 89 Howie Road

Present: Keith Walsh, petitioner

This is a petition filed by the owners, Keith and Kristen Walsh of 89 Howie Road. They seek to build a second story on an existing portion of their home that is only 6.6 feet (at the closest portion) and 7.5 feet (at the furthest point) from the east side property line. The applicant requests relief from Zoning Bylaw Sections 135-403, 407 and 701. The applicant seeks a permit, variance and/or finding that the proposed construction is not more detrimental to the neighborhood. The property is located within a Residence B District as shown on Assessors' Plan 2061 Plot 29, which contains approximately 9832 square feet.

Notice

Pursuant to notice duly published in a newspaper of 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 August 26, 2014, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on the petition were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The petition was presented by the owners, Mr. and Ms. Walsh. The original home was built in 1947. In 1955, a permit was issued to construct a garage and breezeway. The garage was subsequently converted to living space. In 1982, the Zoning Board granted relief to allow the construction of a one-story addition on the rear section of the former garage. The current application seeks to place a second story over the former additions. The only expansion beyond the current footprint will be a five (5) by seventeen (17) foot porch. The porch complies with the front yard setback requirements. The petitioner provided plans of the proposed construction.

The Planning Board voted 4-0-0 in support of the requested relief. No one spoke in opposition and the hearing was closed.

Findings

The Board agreed with the petitioner that the lot shape, namely its tapering inward at some points, created a hardship requiring relief. Furthermore, the Board determined that the resulting structure would not be substantially more detrimental to the neighborhood and that relief could be granted without nullifying or denigrating the intent or purpose of the Zoning Bylaw.

Decision

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

4) Petition Number: 14-22
Petitioner: James Doogue
RE: 88 Stetson Street

Present: Keith Walsh, petitioner

This is a petition filed by James Doogue, who owns the property located at 88 Stetson Street with his wife Shirley Doogue. The petitioner seeks to construct a seven (7) foot by 31 foot Farmer's porch on the front of his dwelling. The applicant seeks a permit, variance and/or finding the proposed alteration is not more detrimental to the neighborhood. He seeks relief from Zoning Bylaw Sections 135-403, 407, and 701. The property is located at 88 Stetson Street and is within a Residential B District Zone as shown on Assessors' Map 3022, Plot 46, and contains a land area of approximately 8,819 square feet.

Notice

Pursuant to notice duly published in a newspaper of 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 August 26, 2014, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on the petition were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The petitioner seeks to add a Farmer's porch to the front of his property. He provided a hand drawing of his plan. The property has previously received Zoning Board approval for two additions. In 2003, approval was provided for an addition to the rear of the home. In 2004, approval was provided to add a second story to the home. The petitioner noted that the proposed porch would only invade the required front yard setback by less than two (2) feet.

The Planning Board voted 4-0-0 to recommend that the requested relief be granted. No one spoke in opposition and the hearing was closed.

Findings

The Board found that the petitioner had demonstrated the need for relief from the Zoning Bylaw. The Board found that the resulting structure would not be substantially more detrimental to the neighborhood and that the relief could be granted without denigrating or nullifying the intent or purpose of the Zoning Bylaw. The Board found that the lot shape and the soil conditions provided a basis for the relief.

Decision

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

- 5) Petition Number: 14-23**
Petitioner: Jennifer Doughty
RE: 35 Eleanor Drive

Present: Jennifer and Andrew Doughty, petitioner and property owners

This is a petition filed by Jennifer Doughty, who owns the property located at 35 Eleanor Drive with her husband, Andrew Doughty. This is a petition for relief from Bylaws 135-403, 407 and 701 to remove an existing single story dwelling and rebuild a new two-story dwelling in the same location. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The

property is located at 35 Eleanor Drive, Braintree, MA and is located within a Residence A Watershed District Zone as shown on Assessors' Map 2042 Plot 87 and contains a land area of approximately 20,000 square feet.

Notice

Pursuant to notice duly published in a newspaper of 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 August 26, 2014, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on the petition were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The petition was presented by Andrew and Jennifer Doughty, owners of the property. They provided a stamped site plan from 2007 and a set of architectural drawings describing their proposed two-story structure. The request for relief is based on the lot being undersized. Modifications have been made to the new dwelling's plans, so that front yard setback will not be invaded. It was noted that the existing neighborhood has seen expansion of other dwellings in close proximity. Additionally, most of the lots on the applicant's side of Eleanor Drive do not meet the 20,000 square foot lot requirement. The Watershed District Zone was implemented in 1982, well after the Eleanor Drive lots were created. Under Zoning Bylaw 609 the applicants are allowed to expand their dwelling structure provided that it does not exceed 50% of the lot size. In the applicant's case, they are not expanding on the original foundation.

The Planning voted 4-0-0 in favor of the proposed relief being granted provided that a plan to scale showing the dwelling and the required setbacks were provided prior to the Zoning Board issuing a decision. No one spoke in opposition

Findings

The Board found that the lot shape and soil conditions justified the granting of relief. The Board further found that the resulting structure would not be substantially more detrimental to the neighborhood and providing the requested relief would not denigrate or nullify the intent or purpose of the Zoning Bylaw.

Decision

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

- 6) Petition Number: 14-24**
Petitioner: Sean Woods
RE: 4 Paul Street

Present: Sean Woods, petitioner

This is a petition brought by Sean Woods, the property owner at 4 Paul Street, Braintree, MA, for relief from Zoning Bylaws 135-401, 403 and 701. The petitioner seeks to demolish an existing garage and rebuild a new larger garage and a second floor addition on his existing home. He also seeks to modify an existing deck to bring it within compliance of the Zoning Bylaw. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 4 Paul Street

Braintree MA and is within a Residence B Watershed Zoning District as shown on assessors' Map 1071 Plot 57 and contains approximately 7,676 square feet.

Notice

Pursuant to notice duly published in a newspaper of 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 August 26, 2014, before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on the petition were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The petitioner noted that his lot is located on a corner, and this often makes compliance with Residence B requirements difficult. The existing home was constructed in 1954 and had a deck subsequently added to it which invaded the 30 foot rear yard setback. While the rear yard setback will be invaded further by the proposal (an additional 10 feet, reducing the rear setback to 9.1 feet), even with the proposed expansion of the home, garage and driveway pavement, the lot coverage remains well below the allowed 50%. The present dwelling on the lot and the lot itself were created long before the 1982 implementation of the Watershed District.

By a vote of 4-0-0, the Planning Board recommended favorable action on the requested relief. No one spoke in opposition and the hearing was closed

Findings

The Board found that the lot shape, namely its location on a corner provided a basis for the requested relief. The Board also found that the proposed construction would not be more detrimental to the neighborhood and that granting the requested relief would not nullify or denigrate the intent or purpose of the Zoning Bylaw.

Decision

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

- 7) **Petition Number: 14-25**
Petitioner: Verizon Wireless
RE: 400 Washington Street

Present: Attorney Earl Duval, representing the petitioner.

This is a petition filed by Verizon Wireless represented by Duval & Klasnick, LLC 16 Olde Farms Road, Boxford MA 01921. The petitioners seek to install a total of twelve (12) building mounted antennas, a backup generator, equipment cabinet and associated cable and connections. The application is filed pursuant to Zoning Bylaw 135-1603(B) and the Telecommunications Act of 1996 Use Variance. There have been several wireless locations approved for this rooftop; see 04-76 modified by 12-39 Omnipoint, 04-84 Nextel (now Sprint), 08-03 Sprint, 09-34 Sprint/Clear Wireless LLC. The property in question is located on Assessors' Plan 2024 Plot 62.

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 August 26, 2014 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall. Sitting on this petition was Chairman, Steve Karll, and members Michael Calder and Richard McDonough.

Evidence

The petition was presented by the counsel for the petitioners Earl Duval. The property is currently within a General Business Zone as recorded on Assessors' Plan 2024 Plot 62. The petitioner provided documentation in support of its application including a description of the proposed facility, the improvements to coverage and capacity it would provide, the site search and selection process, site data coverage analysis and propagation plots and certification of non-interference. They also provided a number of diagrams and photographs illustrating the locus, and the visual impact of the proposed facility.

The Telecommunications Act allows wireless antennas to be placed in non-conforming districts, if the applicant provides evidence that no alternate location would address a gap in coverage. The Applicant's documentary submissions identified the coverage gap, namely a lack of capacity which deprives the community of service and supporting the selection of the site.

The Planning Board unanimously supported a favorable recommendation on the petition.

Findings

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. The Board further concluded that the resulting structure is not substantially more detrimental to the neighborhood than the existing roof structures and that relief could be granted without denigrating or nullifying the intent or purpose of the Zoning Bylaw. The Board found that the gap in service due to lack of capacity provided a basis for the requested relief.

Decision

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

- 8) Petition Number: 14-26**
Petitioner: Wood on Wood, Inc.
RE: 236-240 Wood Road

Present: Attorney Frank Marinelli representing the petitioner.

After review and consideration by both the Town of Braintree and Attorney Frank Marinelli, representative for the petitioner, it was mutually agreed upon that relief would not be required at this time, as was requested earlier.

On a motion made by Mr. Calder and seconded by Mr. McDonough, the Board unanimously voted 3-0 to grant the withdrawal of the petition without prejudice.

9) Petition Number: 14-27
Petitioner: Sam Fathalla representing F.X. Messina
RE: 539 Granite Street

Present: Haji Fathali, representing the business owner.

This is a petition filed by Sam Fathalla of 539 Granite Street Braintree MA on behalf of the owner F.X. Messina, 400 Franklin Street Braintree, in which the applicant is seeking relief from the Town of Braintree Zoning Bylaws 135 Sections 403, 407 and 904.2 (1) (d) seeking to install a second ground sign with cabinet dimensions of 36 inches by 80 inches. The applicant seeks a permit, variance and/or finding that the proposed signage is not more detrimental to the neighborhood. The property is located within a General Business District as shown on Assessors' Map 2042, Plot 01, which contains a land area of approximately .544 acres.

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 scheduled for August 26, 2014, 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 were Chairman Stephen Karll, Michael Calder and Richard McDonough.

Evidence

The petition was presented by Mr. Haji Fathali. The proposed signage is compliant with the dimensional criteria of 60 square feet for a ground sign in a General Business Zoning District and less than the allowed 20 feet in height. The request for relief is based on the property being shared by two businesses and the other business already has a sign. The proposed relief will assist motorists in identifying the business location in a highly trafficked intersection.

The Planning Board voted to unanimously recommend the requested relief, noting the unusual situation of two businesses on the same lot not sharing a signage pylon.

No one else spoke in favor of or opposition to the petition and the public hearing was closed.

Findings

The Board agreed with the Petitioner's assertions that that the property was unique due to lot shape and visibility issues, creating a hardship requiring signage to announce the location. The proposed signage is modest in height and appropriate for the property in density and square footage, when compared to other properties that have been granted relief. Further the Board determined that the proposed signage will not nullify or derogate the intent and purpose of the Zoning Bylaw.

Decision

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

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. McDonough, the Board voted unanimously to accept the meeting minutes of July 22, 2014.

The Board adjourned the meeting at 8:37pm.