



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

1 JFK Memorial Drive – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

October 28, 2014

**IN ATTENDANCE:** Stephen Karll, Chairman  
Richard McDonough, Member  
Michael Calder, Member  
Michael Ford, 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: 14-30**  
**Petitioner: James F. Radar, Manager of 400 West , LLC**  
**RE: 400 West Street**

Mr. Karll advised the Board that the petitioner has submitted a written request for a 30-day extension of the petition.

On a motion made by Mr. Karll and seconded by Mr. Calder, the Board voted 3-0 to grant a 30 day extension of the petition to be heard at the November 25, 2014 meeting.

- 2) **Petition Number 14-31**  
**Petitioner: Verizon Wireless**  
**RE: 340 Wood Road**

Present: Attorney Chris Swiniarski representing the petitioner

This is a petition filed by Verizon Wireless represented by Matthew Whitehead, McLane Law Firm, 900 Elm Street, Manchester, NH 03101. The petitioners seek to install a small cell wireless facility and 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 and seeks relief from Chapter 135 Sections 403, 407, 1603 (A)(1). The question is raised whether the proximity of a daycare facility to the proposed cite requires relief from the aforementioned section which prohibits cell towers near schools. The property in question is located on Assessors' Plan 2053C, Plot 0-1J contains approximately 4.31 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 scheduled for October 28, 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 Michael Ford.

### Evidence

The petition was presented by the counsel for the petitioners, Chris Swiniarski. The property is currently within a Highway Business District Zone as recorded on Assessors' Plan 2053C Plot 0-1J. The petitioner provided documentation in support of its application including plans, a drawing depicting the visual impact of the proposed structure, and a memorandum of law. The memorandum of law asserted that there are a number of statutory distinctions between a daycare facility and a school that in this case made the aforementioned zoning prohibition inapplicable. The petitioner also sought relief from the ordinance in the alternative.

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 accepted the petitioner's position that there is a distinction between a daycare center and a school and that the ordinance prohibiting the location of the proposed cellular facility did not apply. However, in order to resolve any ambiguity in the Petitioner's favor, the Board further found that the petitioner had demonstrated the need for relief. 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 motion made by Mr. Ford and seconded by Mr. Calder, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

- 3) Petition Number 14-32**  
**Petitioner: Gabriel and Alivia McHugh**  
**RE: 34 Thayer Road**

Present: Gabriel McHugh, petitioner

This is a petition filed by Gabriel and Alivia McHugh, the owners of 34 Thayer Road. They seek to alter a pre-existing nonconforming structure on a nonconforming lot by constructing a mudroom that would connect the existing garage and home, pursuant to Chapter 134 Sections 402 and 403. They seek relief from the dimensional and density standards in Section 135-701. The property in question is a single family residence located in a Residence B District as described on Assessor's Plan 3004, Plot 20. The lot contains approximately 9731 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 October 28, 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 owner, Mr. McHugh. He proposed to add a 9.7 foot wide by 10 foot deep mudroom adding approximately 100 square feet of living space. The addition will be only 6.1 feet from the front property line, where a 20 foot setback is normally required. The lot is narrow, but does comply with the side setback requirements. A driveway on the east side of the property and a large rock in the yard, limits the petitioner's options for the proposed addition.

The Planning Board voted 4-0-0 to take no position on the requested relief. No one spoke in opposition and the hearing was closed.

### Findings

The Board agreed with the petitioner that the lot shape and the soil conditions, namely the rock in the yard, 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 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.

### **OTHER BUSINESS:**

#### **4) Petition Number 14-4**

**Petitioner: 459 West Street, LLC**

**RE: 459 West Street**

Mr. Karll advised the Board that this matter was not anticipated at the time of the posting of the meeting. He advised that Donald DePico, representative for the 459 West Street, LLC has submitted a letter requesting a six month extension of the relief granted previously, as they are having trouble finding engineering help to complete the subdivision process.

On a motion made by Mr. Karll and seconded by Mr. Calder, it was unanimously voted 4-0 to grant the six month extension.

### **APPROVAL OF MINUTES:**

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted 4-0 to accept the meeting minutes of September 23, 2014.

The Board adjourned the meeting at 7:28pm.