



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

August 26, 2008

IN ATTENDANCE: Stephen Karll, Chairman
Jack Gauthier, Member
Michelle Lauria, Member
Jay Nuss, Member
Joseph Mulligan, Member

ALSO PRESENT: Russell Forsberg, Inspector of Buildings/Code Compliance Officer
Marybeth McGrath, Director of Municipal Licenses and Inspections
Carolyn Murray, Town Solicitor

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

1) Petition Number 08-36
Nicholas and Nicole Choukas
RE: 9 Peach Street

Present: Nicholas Choukas, applicant

This is a petition filed by Nicholas and Nicole Choukas of 9 Peach Street, Braintree, MA, regarding the same property, in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The petitioners seek a permit and/or variance to order to construct an extension of an existing rear deck. The property is located in a Residence B Watershed Zoning District as shown on Assessors Plan No. 1090, Plot 13 and contains 4,835 +/- 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 August 12, 2008 at 7 p.m. and continued to August 26, 2008 at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jack Gauthier and Jay Nuss, with Alternate, Michelle Lauria.

Evidence

The petitioners, represented themselves, explained to the Board that their house and lot are pre-existing nonconforming. The lot is undersized, providing 4,835 SF of area, where the Zoning By-law requires a minimum of 1 acre. The lot is also deficient as to lot width and depth, as the lot is 50 feet wide, where the Zoning By-laws requires 100feet, and the lot is 97.6 feet deep, where the Zoning By-laws requires 100 feet. In addition, the existing single family home on the lot is nonconforming, as it encroaches into the side yard setback, offering 2.2 feet of setback, where the Zoning By-law requires 10 feet. The house also encroaches into the rear yard setback, offering 27.3 feet of setback, where the Zoning By-law requires 30 feet.

The petitioners seek permission to rebuild an existing nonconforming deck located on the side of the house and to build a new deck measuring 21 feet wide by 12 feet deep to the rear of the dwelling. The new portion of the deck will further encroach upon the rear yard setback, as it would be located 15.2 feet from the rear lot line, and therefore, a variance is required. The existing portion of the deck measures 17.5 feet by 7.5 feet and currently encroaches into the rear and side yard setbacks, as it is located 27.3 feet from the rear yard line and 2.2 feet from the side yard line. However, since this deck is pre-existing nonconforming, the petitioners have a right to rebuild it. The proposed deck will be located 2.4 feet from the side yard setback, which is less intrusive than the existing deck. The petitioners also wish to expand the deck into the rear by adding a 21 ft. by 12 ft. extension, which will further encroach upon the rear yard setback, offering only 15.2 feet of setback.

As grounds for a hardship, the petitioners noted that their lot is severely undersized and the present location of the structure on the lot limits the placement of a proposed expanded deck.

The petitioner submitted a plan entitled "Plan Showing Proposed Deck in Braintree, Mass.," dated May 30, 2008, prepared by Hoyt Land Surveying of Weymouth, MA. By a vote of 4-0-0, the Planning Board recommended favorably that the relief be granted.

No one else spoke in favor of the petition. Ron Brodeur of 14 Cochetto Street, the abutter to the rear of the property spoke in opposition to the petition, noting that the expanded deck will significantly encroach upon his rear yard line and may decrease the value of his property. Mr. Brodeur also remarked that, with the expanded deck, the petitioners would be more likely to store their belongings, such as garbage cans, yard tools, and children's toys up against his property line. A brief recess was taken to allow the petitioners and Mr. Brodeur to discuss the proposal. After the recess, Mr. Brodeur indicated that he preferred the petitioners build a staircase off the existing deck and install a patio in the rear. The petitioners indicated they did not want a patio; they preferred a deck with lattice work underneath, which would provide a hidden storage area for their belongings. Mr. Gauthier asked Mr. Brodeur if he would be satisfied if the proposed deck was squared off with the bump out in the rear of the house, and Mr. Brodeur indicated he would be satisfied. With the agreement of the petitioners, the Board voted unanimously to table this matter to the next meeting, to allow the petitioners and Mr. Brodeur to reach a possible compromise.

At the continued hearing on August 26, 2008, the petitioners presented an amended plan entitled "Plan Showing Proposed Stairs in Braintree, MA." Dated August 22, 2008, prepared by Hoyt Land Surveying of Weymouth, MA. The petitioners explained that, with this amended plan, they are simply going to rebuild the existing deck on the side of the house, with a stairway leading to the back yard. This rebuilt deck will maintain the existing side yard setback of 2.2 feet, and the stairway into the rear yard will be located 23 feet from the rear lot line. Mr. Brodeur, the abutter to the rear did not appear at the continued hearing, but he submitted a letter to the Board indicating that he would have no objection to a revised deck that would line up with the cellar entry bump out in the rear of the house.

No one else spoke in favor of or opposition to the petition.

Findings

The Board noted that with the revised plan, no variance was required. The proposed deck will be of the same measurements as the existing nonconforming deck, with the only addition being the stairs leading to the rear of the yard. However, the Board noted that the Zoning By-law does not include the stairs for purposes of setbacks. Since the proposed deck will maintain the same size and setbacks as the pre-existing nonconforming deck, the Board determined that the relief requested would not be substantially more detrimental to the neighborhood than the existing deck.

Decision

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

2) Petition Number 08-38

MetroPCS

RE: 100 Grandview Road

Present: Richardo Souza, Attorney; Darren Goldsmith and Mike Johnson of MetroPCS

This is a petition filed by MetroPCS Massachusetts, LLC of 36 Prospect Street, Reading, MA regarding the property located at 100 Grandview Road in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-701 and 1603(B) and seeks a permit and/or variance to install six wireless communications antennae and ancillary equipment cabinets on the roof of an existing building, all in accordance with the plans of record. The property is located in a Highway Business Zoning District as shown on Assessors Plan No. 2053B, Plot 1T and contains 4.95 +/- 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 scheduled before the Zoning Board of Appeals on August 12, 2008 but, at the request of the applicant, was tabled to August 26, 2008 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, Jack Gauthier and Joseph Mulligan, with alternate, Michelle Lauria.

Evidence

The petitioner was represented by Attorney Ricardo Sousa of Prince, Lobel, Glovsky and Tye of Boston, who was accompanied by Darren Goldsmith, a radio frequency engineer, and Mike Johnson, who negotiates the lease agreements for MetroPCS. Attorney Sousa explained to the Board that the petitioner is a newcomer to the wireless telecommunication market and is seeking permission to add six antennae on the roof of the existing building with associated equipment cabinets to be located inside the screened wall on the roof. The six antennae are to be arranged in clusters of two in three different locations on the roof. The existing building is 50 feet high with existing screening on the rooftop for mechanical equipment, which extends an additional 11.3 feet above the roof line.

Attorney Sousa noted that the proposed locations on top of this building presented a challenge, as antennae of several other wireless carriers are currently located on this rooftop, and these providers were granted similar relief. Because of these multiple installations on the roof, the petitioner conducted a radio frequency study to determine where its equipment could be located without interfering with the signals of the other carriers, as required under the Federal Telecommunications Act. The petitioner's proposed locations on this roof are a direct result of that study. The petitioner had hoped to locate their antennae along the roof façade, but that location is already occupied by several other carriers. Instead, the petitioner proposes to locate two of the antennae along the rooftop screening wall on the northeasterly side of the building, where they will be flush with the wall and painted to blend in, and therefore, be less obtrusive. The four other proposed antennae are to be located on top of the screening; two of these are to be located on the front of the building on Grandview Road, one foot above the screen wall, and two are to be located towards the rear of the building, on the northwesterly corner of the building. These four antennae will be pipe mounted to disguise the antennae and to blend in with other rooftop equipment. These four antennae will measure 5.5 feet in height from the top of the screen wall to the top of the antennae, which Attorney Sousa noted, is a decrease of one foot from their original plan as presented to the Planning Board. The Zoning By-law limits the height of a wireless link to 10 feet. Since four antennae are to be located on top of the roof screening, which is already 11.3 feet beyond the height of the building, the total height of the building with the antennae will be 16.8 feet above the roofline, which requires a variance.

Attorney Sousa explained that the building is significantly set back from Granite Street and Forbes Road, up on a hill by the movie theatre. The building is situated among several other businesses and is not visible to any residences. The Chairman inquired as to whether the petitioner had explored other buildings within the area, such as the building owned by the Archdiocese of Boston. Attorney Sousa affirmed that the petitioner had contacted the Archdiocese, but the negotiations were likely to be lengthy and not meet MetroPCS' more immediate need for coverage.

Attorney Sousa explained that the use is allowed under the Town's Zoning Bylaws, subject to certain restrictions. Attorney Sousa noted that the Federal Communications Commission regulations which govern these installations prohibit local boards from discriminating against carriers and encourages co-location on existing structures, and this petition promotes this goal. In addition, the Telecommunications Act allows carriers to select their installation sites with a goal of eliminating gaps in coverage within a service area. The coverage area to be serviced by this network is from Worcester to Providence, RI to Manchester, NH within the Route 495 belt. The location of these antennae at this site is needed to service this area, as supported by a statement of Darren Goldsmith, the petitioner's a radio frequency engineer. Attorney Sousa advised that it would be a hardship to MetroPCS, if they were not allowed to located their antennae at this site, because there is no other viable location within this area for them to locate their antennae to satisfy this gap in coverage.

The petitioner submitted five sheets entitled "BOS0327C, Corcoran Building, Grandview, Braintree, MA", dated March 10, 2008 and revised through August 25, 2008, prepared by Atlantis Group of Newton Centre, MA.

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

Findings

The Board found that the petitioner had satisfied the goals of co-location as promoted under the Telecommunications Act and that the location of antenna on the existing building was needed to provide service to the area. The Board was also satisfied that the petitioner had sought alternate locations in the area and on this

roof and had demonstrated that the proposed installations were the least intrusive means necessary to address their gap in coverage. The Board also concluded that the requested relief would not be substantially more detrimental to the surrounding neighborhood than the existing building with its current wireless facilities and that the 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. Mulligan, it was unanimously voted to grant the requested relief, subject to the plans presented.

3) Comprehensive Permit- AS-BUILT APPROVAL (#03-91)

Address: 614 Pond Street

Applicant: Richardi Housing Associates, LLC

Plan Title: Site As-Built Plan in Braintree, Massachusetts, Richardi Housing LLC,
#614 Pond Street (Map 1069 K Lot 8)

Plan Date: September 21, 2006 revised to February 1, 2008

Present: Carl Johnson, Attorney representing applicant.

Sitting on this request was Chairman Stephen Karll, and members Jack Gauthier and Joe Mulligan, with Alternate Jay Nuss.

On August 26, 2008, on a motion duly made by Mr. Gauthier and seconded by Mr. Mulligan, the Zoning Board of Appeals voted unanimously (3-0) to grant "As-Built" Approval with no surviving Conditions for the above cited project. The Board previously voted, at their December 12, 2007 meeting, to approve a minor modification to the permit to allow the installation of fencing in lieu of garages, as shown on the original plan. The fencing approved by the Board is incorporated into the As-Built Plan. The Board also vote to release the surety bond of \$30,000.

4) Petition Number 08-39

William Alter and Kate Tangney

RE: 71 Hobart Street

Present: Kate Tagney, applicant

This is a petition filed by William Alter and Kate Tangney of 71 Hobart Street, Braintree, MA, regarding the same property, in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-407 and 701. The petitioners seek a permit and/or variance to order to construct a 24 ft. x 24 ft. garage on an existing driveway. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3010, Plot 62 and contains 6,627 +/- 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 August 26, 2008 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, Jack Gauthier and Joseph Mulligan, with Alternate, Michelle Lauria.

Evidence

The petitioner, Kate Tangney, represented herself and explained to the Board that they wish to construct a 24ft. x 24 ft. detached garage on their lot, behind their house, where the current paved driveway is located. Their house and lot are pre-existing nonconforming. The lot is undersized, providing only 6,627 SF of area, where the Zoning By-law requires 15,000 SF. The lot is also deficient as to lot width, as it provides only 60 feet of width, where the Zoning By-law requires 100 feet. In addition, the existing house encroaches into the front yard setback by one foot, providing 19 feet of frontage, where the Zoning By-law requires 20 feet. The existing house also encroaches into the side yard setback by 2 feet, offering a setback of 8 feet, where the Zoning By-law requires 10 feet. The proposed garage will encroach into the front yard setback, as it is proposed to be located 9 feet from the lot line, where the Zoning By-law requires a setback of 20 feet.

As grounds for a hardship, the petitioners noted that their lot is severely undersized and lacking in width. The lot is also unusual in that it technically “fronts” two streets, Hobart Street as the proper street address and Prospect Street in the rear. The current driveway exits onto Prospect Street. In addition, the site presents challenging topography, as the current location of the paved driveway sits 7 feet above her backyard and is built up by a retaining wall. The petitioner submitted photographs to the Board, showing the present location of the driveway, the retaining wall, and the changes in grade from the driveway to the backyard of the house. Due to the location of structures on the lot and the topography of the lot, the petitioner is limited as to where they could locate a garage. The petitioner also stated that there is significant ledge on this property.

The petitioner submitted a plan entitled “Plan of Land in Braintree, Massachusetts, 71 Hobart Street”, dated July 24, 2008, prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

By a vote of 5-0-0, the Planning Board recommended favorably that the relief be granted. Michael McGourty of 72-74 Hobart Street, Mike Tangney of 65 Prospect Street, Torrey Fuller of 65 Hobart Street, Betty Anne Tangney from across the street, and Jean Tangney of 65 Hobart Street all spoke in favor of the petition. No one spoke in opposition to the petition.

Findings

The Board noted that the petitioner had presented evidence of a hardship based on the small size of the lot, the unusual topography of the lot, and the presence of ledge, all of which make it difficult for the petitioner to comply with the Zoning By-laws. The Board also found that the relief requested could be granted without derogating from the intent or purpose of the Zoning By-laws.

Decision

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

5) Petition Number 08-40

Elizabeth Brown, Trustee of School Street Realty Trust
RE: 21 School Street West

Present: David Bowering, representing petitioner

This is a petition filed by Elizabeth Brown, Trustee of School Street Realty Trust, regarding the property at 21 School Street West, Braintree, MA, in which the petitioner seeks relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The petitioner seeks a permit and/or variance to order to construct a 12 ft. x 15 ft. dormer on the existing dwelling. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2026, Plot 25 and contains 8,990 +/- 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 August 26, 2008 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, Jack Gauthier and Joseph Mulligan, with Alternate, Jay Nuss.

Evidence

The petitioner, represented by David Bowering, explained to the Board that the petitioner wishes to construct a 15 ft. x 15 ft. shed dormer on the east side of the roof of the dwelling, which faces Stedman Avenue. The lot and current house are pre-existing nonconforming. The lot is located on the corner of School Street and Stedman Avenue. The lot is deficient in lot area, offering only 8,990 SF, where the Zoning By-law requires 15,000 SF. The lot also lacks the minimum lot width and depth, offering 91 feet of width, where the Zoning By-laws requires 100 feet, and providing only 97 feet of depth, where the Zoning By-law requires 100 feet. In addition, the house is pre-existing nonconforming, as it is located between 8.2 ft. and 12.5 ft. from the Stedman Avenue front yard lot line, while the Zoning By-law requires a front yard setback of 20 feet.

The proposed dormer will not create any new nonconformity and will be contained within the footprint of the existing house. Therefore, the petitioner needs a finding from the Board that the addition is not substantially more detrimental to the neighborhood than the existing structure. Mr. Bowering noted that the houses on both sides of this site have full second stories and are on similarly sized lots. The height of the proposed dormer will be less than the 35 ft. limit. Mr. Bowering also noted that no neighbors will be impacted by the dormer, as there is vacant land on the opposite side of the street, which abuts Route 3.

The petitioner submitted a plan entitled "Plot Plan of Land, 21 School Street West, Braintree, Massachusetts," dated March 31, 2008 and revised July 28, 2008, prepared by Keefe Associates of Pembroke, MA. The petitioner also submitted sheets A1.1 through A1.2, showing the proposed floor plan and proposed exterior elevations prepared by residential Design Group of Wrentham, MA dated April 22, 2008

By a vote of 5-0-0, the Planning Board recommended favorably that the relief be granted. No one else spoke in favor of or opposition to the petition.

Findings

The Board noted that the proposed addition will all be contained within the existing footprint of the house and not create any new nonconformities. The Board also noted that the addition would be in keeping with the surrounding neighborhood and would not be substantially more detrimental to the neighborhood than the existing nonconforming structure. The Board also found that the relief requested could be granted without substantially derogating from the intent or purpose of the Zoning By-laws.

Decision

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

6) Petition Number 08-41
Robert and Judith Fowkes
RE: 26 Miller Street

Present: Robert and Judith Fowkes, applicants

This is a petition filed by Robert and Judith Fowkes of 26 Miller Street, Braintree, MA, regarding the same property, in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The petitioners seek a permit and/or variance to order to construct a 16 ft. x 27.7 ft. deck to the rear of the existing dwelling. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2100, Plot 47 and contains 4,653 +/- 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 August 26, 2008 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, Jack Gauthier and Joseph Mulligan, with Alternate, Michelle Lauria.

Evidence

The petitioners, representing themselves, explained to the Board that they wish to construct a 16 ft. x 27.7 ft. deck to the rear of the existing dwelling. The dimensions of the deck include the stairs that frame the deck on three sides. The lot and existing house are pre-existing nonconforming. The lot provides only 4,653 SF of area, where the Zoning By-law sets a minimum lot size of 15,000 SF. The lot is also deficient as to depth and width, as it offers only 50 feet of width, where the Zoning By-law requires 100 feet, and provides only 92.5 feet of depth, where the Zoning By-law requires 100 feet. The existing house on the lot is also pre-existing nonconforming, as it encroaches .5 feet into the side yard setback by offering a 9.5 foot setback, as opposed to the required setback of 10 feet. The proposed deck will encroach into the rear yard setback, as it is proposed to be located 15 feet from the rear lot line, while the Zoning By-law requires a setback of 30 feet. The proposed deck also slightly exceeds the maximum building coverage of 35%; with the deck, the building coverage will increase to 35.3%.

As grounds for a hardship, the petitioners noted that their lot is irregularly shaped. The rear lot line is not square, but is angled; if the rear lot line was square, there would be no need for a variance, but the angle of the lot line slopes towards the house, which is where the deck encroaches. The petitioners also noted that they have a severely undersized lot, and the location of the existing structure on the lot makes it nearly impossible to locate a deck anywhere but to the rear of the house. The petitioners also affirmed the presence of ledge on the site.

The petitioners submitted a plan entitled "Plot Plan Showing a proposed Deck, 26 Miller Street, Braintree, MA," dated June 28, 2007 and revised on August 25, 2008, prepared by Donald G. Rosa, PLS.

By a vote of 5-0-0, the Planning Board recommended favorably that the relief be granted. No one else spoke in favor of or opposition to the petition.

Findings

The Board noted that the petitioner had presented evidence of a hardship based on the small size of the lot, the irregular shape of the lot, and the presence of ledge, all of which make it difficult for the petitioner to comply with the Zoning By-laws. The Board also found that the proposed deck would not be substantially more detrimental to the surrounding neighborhood than the current nonconforming structure. Finally, the Board found that the relief requested could be granted without derogating from the intent or purpose of the Zoning By-laws.

Decision

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

The meeting adjourned at 8:20pm

