



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

November 25, 2008

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings/Code Compliance Officer
Carolyn Murray, Town Solicitor

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

NEW PETITIONS:

- 1) Petition Number 08-42**
Thomas J. O’Keefe
RE: 105 Brookside Road

Present: **Thomas J. O’Keefe, applicant**

Petitioner requested a 60 day extension of this petition until the January 27, 2009 Zoning Board of Appeals meeting.

On a motion made by Mr. Gauthier, and seconded by Mr. Nuss, the Board voted unanimously to extend the petition to January 27, 2009.

- 2) Petition Number 08-50**
Braintree Property Associates, L.P. Agent for Nordstrom, Inc.
RE: 250 Granite Street

Present: Attorney Carl Johnson, representing petitioner
Michael Creighton, Project Manager for Nordstrom, Inc.

This petition was filed by Braintree Property Associates, agent for Nordstrom, Inc., regarding the South Shore Plaza property located at 250 Granite Street, Braintree, MA,. Petitioner requested relief from by-laws requirements under Chapter 135, Section 135-407, Article IX Section 135-904.2 for three wall signs which were

larger in number and size than provided under the Town's Sign By-laws. The property is located in a Highway Business zone and contains 111.67 +/- acres, as shown on Assessors' Map 2089, Lots 21 and 22 and Map 2039, Lot 93D.

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 October 28, 2008 and continued to November 25, 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, John Gauthier and Jay Nuss.

Evidence

The petitioner was represented by Attorney Carl Johnson and Michael Creighton, Project Manager for Nordstrom, Inc. Attorney Johnson explained to the Board that relief is necessary from the Sign By-law for visibility purposes, identification, circulation, traffic safety and public convenience. The Nordstrom building has three elevations with three public entrances and is located in the rear of the Plaza. Counsel also explained that other department stores located within the South Shore Plaza complex have similar, and in some cases more, signage. As an example, Attorney Johnson noted that Lord and Taylor, has three signs but only two entrances and is more visible from the Granite Street access.

The petitioner originally requested three wall signs at 217.5 square feet each, totaling 652.5 square feet; one wall sign was to be located on each elevation of the building. The original wall signs proposed 5 ft. high letters, which state "Nordstrom". At the November hearing, the petitioner revised its submission by reducing the size of the signs. The revised petition seeks two signs with dimensions of 4 ft. x 34 ft. 9 in. or 139 square feet to be located on the north and southeast elevations. The third sign measures 4 ft. 6 in. x 39 ft. 1 in. or 176 SF to be located on the east elevation. The total area of wall signs proposed is 454 SF. The lettering is bronze aluminum with backlit halo style lighting, which are designed to not produce glare on abutting properties. Signs are block letters containing name of the establishment only. The proposed signage is a 30% reduction from initial proposal.

According to Section 135-904.2 (A)(5)(a) of the Sign By-law, no wall sign shall exceed 150 SF in area. All of the petitioner's signs exceed this limit. Section 135-904.2(A)(5)(b), no wall sign shall exceed 4 feet in height. One of the petitioner's proposed signs measure 4 ft. 6 in. in height.

Section 135-904.2(A)(5)(e) limits sign area to one square foot of signage per linear foot of frontage, with frontage being the side of the building facing the access roadway. According to the Planning Board, Common Street is the closest access roadway, and the linear foot of frontage that faces Common Street is 217.5 linear feet, yet the petitioner proposes 454 SF of signage.

Further, Section 135-904.2(A)(5)(g) limits one wall sign per store or business occupying a building, with the aggregate total of all signage limited to 150 SF, unless otherwise approved by the Zoning Board. The Planning Board noted that multiple tenants occupy the South Shore Plaza, and the 150 SF aggregate signage is easily exceeded. However, the Planning Board noted that the petitioner's proposed signage is proportionate to the size of the Nordstrom building. The Planning Board also noted that, when compared to other signage at the Plaza, Nordstrom's signs are consistent with or more modest than other signs.

Nordstrom's three sides measure a total of 669 linear feet, and Attorney Johnson asserted that the proposed wall signs were proportionate to the size of the building. In fact, Attorney Johnson noted that the proposed wall signs are less than the one linear foot per wall length requirement of the Sign By-law.

Attorney Johnson explained that, due to the location of the Nordstrom's to the rear of the mall, the signage is necessary because Nordstrom does not front a major artery and is not visible from Granite Street or Route 128. There is however, a limited view from Common Street. Nonetheless, Attorney Johnson advised that the Nordstrom building is located several hundred feet from the nearest property lines and public ways; ranging from 370 feet from Common Street to 558 feet from other Residence B land owned by the South Shore Plaza. No ground sign is requested. Petitioner also stated that the proposed signage is in keeping with the scale and design of the building and that a denial of relief from the Sign By-law would inflict a substantial hardship.

The Petitioner submitted a plan entitled "Nordstrom South Shore, Braintree, MA, Elevation Signage", dated November 25, 2008, prepared by Callison Architecture, Inc..

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-1-0 in favor of the requested relief.

Findings

The Board found that the petitioner had demonstrated the need for relief due to the location of Nordstrom at the rear of the property and cannot be viewed from a major artery. Also, many of the other retail establishments located at the South Shore Plaza have similar or more signage. The Board also concluded that the proposed signs would increase visibility and improve traffic circulation on the site which would lead to safer traffic conditions and greater public convenience. The Board also concluded that the signage would not be substantially more detrimental to the neighborhood and that the requested relief and that 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.

Decision

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

3) Petition Number 08-52 Metro PCS RE: 1075 Washington Street

Mr. Forsberg advised the Board that the applicant submitted a letter requesting a withdrawal of the petition.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to accept the request to withdraw the petition.

4) Petition Number 08-53 Denis Lefas RE: 303 Grove Street

Present: Denis Lefas, applicant
Michael McCarthy, Yankee Woodcarvers

This petition was filed by Denis Lefas of 303 Grove Street, Braintree, MA regarding the same property. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Section 135-407 and 903 to install two wall signs. The property is within a Residential B District and contains 30,147 +/- square feet or land, as shown on Assessors' Map No. 1105, Plot 11.

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 November 25, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, members, John Gauthier and Joseph Mulligan, and alternate, Michelle Lauria.

Evidence

The petition was presented by the applicant, Denis Lefas, and Michael McCarthy of Yankee Woodcarvers, the sign company. The applicant seeks to affix two wooden signs to the building located at 303 Grove Street. One sign depicts a slice of pizza and states "Double GG, Pizzas, Subs, Calzones & More" with the business phone number; the proposed sign measure 6 feet from the crust of the pizza to its tip and is 8 feet wide, for a total of 48 SF. This slice of pizza sign is proposed to be located on the Grove Street side of the building, where there is no entrance to the restaurant. The other sign depicts a sub sandwich and states "Double GG, Subs – Pizza" beneath the sandwich; this sign measures 7 ft. long x 3 ft. for a total of 21 SF. The sandwich sign is proposed to be located on the northerly side of the building over the main entrance to the restaurant, which faces over the parking lot.

Michael McCarthy, the sign designer, noted that a sub shop has operated at this location since 1956, but it has been newly renovated with an expanded menu. Mr. McCarthy explained that the signage was necessary for identification purposes, to direct traffic on Grove Street safely to the site, and to direct customers to the main entrance. Mr. McCarthy also explained that the signs would be lit with 100 watt light bulbs. The gooseneck light fixtures will be placed above the signs and shine down at an angle on the sign with no internal lighting. Also, the lights would not be illuminated when the shop is closed at 9 p.m.

The Double GG sub shop is a pre-existing nonconforming use, and as such, the Zoning By-laws permit one sign not to exceed 10 SF. When the applicant submitted his original application, he proposed two wall signs, each measuring 48 SF, for a total of 96 SF. When the applicant appeared before the Planning Board, he had reduced the signs to a total of 71 SF. The applicant did not provide any detail as to the colors or materials of the signs. By a vote of 4-1, the Planning Board recommended unfavorable action on the relief requested.

The Board read a letter submitted by Janet Murphy of 32 Hickory Road, expressing her concerns over the lighting of the signs and stated that she believes the existing by-law allowance for signage is sufficient for the business to advertise. Ms. Murphy also questioned the lighting and the hours of operation, noting that the lack of trees on the site deprives the site of a buffer. Ms. Murphy also appeared at the hearing and requested to view the proposal. Ms. Murphy reiterated her concerns as to the size of the signs. The applicant also advised her that the business would close at its current hour of 9pm, and the lights would go off when closed.

The Petitioner submitted renderings of the proposed signs, prepared by Mr. McCarthy of Yankee Woodcarvers, dated November 24, 2008, but submitted a revised and undated proposal to the Zoning Board.

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. The Board concluded that the proposed signs would increase visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic off the road and into the parking lot. The Board also 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.

Decision

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

5) Petition Number 08-54
Paul Charette, Jr., applicant
RE: 43 Sampson Street

Present: Paul Charette, Jr., applicant

Petitioner requested a extension of this petition until the December 17, 2008 Zoning Board of Appeals meeting based on a recommendation from Chairman Karll.

On a motion made by Mr. Gauthier, and seconded by Mr. Mulligan, the Board voted unanimously to extend the petition to December 17, 2008.

6) Petition Number 08-55
John Coyne
RE: 87 Liberty Street

Present: John Coyne, applicant

This petition was filed by John Coyne of 87 Liberty Street, Braintree, MA regarding the same property for relief under the Zoning By-law requirements under Chapter 135-403, 407, 701 in order to construct an open deck over an existing garage. The property is within a Residential B District and contains 6,938+/- square feet of land, as shown on Assessors' Map 3026, Plot No. 7

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 November 25, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, members, John Gauthier and Michelle Lauria, and alternate, Joseph Mulligan.

Evidence

John Coyne, representing himself, addressed the Board. He explained that his dwelling is a pre-existing nonconforming structure and lot. He is seeking to construct a second story on an existing ranch style dwelling which is within the setback requirements. The proposed deck will be 22.8 feet by 10 feet and is proposed to be located over an existing one story garage that already encroaches into the required side yard setback. However,

the new construction will remain within the pre-existing non-conforming side yard setback and not create any new nonconformity, and therefore, no variance is required. The setback from the garage is 5.2 feet, whereas 10 feet is the required setback. The proposed deck on top of the garage will be located 6.2 feet from the side yard line, and therefore will not further encroach into the setback.

The Petitioner submitted a plan entitled "Plot Plan No. 87 Liberty Street, Braintree, MA" prepared by Donald G. Rosa, Registered Land Surveyor, dated October 12, 2008.

A vote of 5-0, the Planning Board recommended favorably upon the relief requested. No neighbors were present at the meeting. No one else spoke in favor or in opposition to the relief.

Findings

The Board found that the petitioner had demonstrated the need for relief from the by-law. The proposed second story is allowed as of right. There currently exists a one story garage that encroaches within the side yard setback, located 5.2 feet from the side lot line, whereas 10 feet is the required setback. The deck will be located 6.2 feet from the side yard, and therefore will no create any new nonconformities. The Board found that the addition of the deck to a pre-existing, non-conforming dwelling maintain the non-conforming set back is not substantially more detrimental to the neighborhood than the existing non-conforming dwelling.

Decision

On motion made by Mr. Gauthier and seconded Ms. Lauria, it was unanimously voted to grant the requested relief, subject to the plan presented.

7) Petition Number 08-56 Joann Ciarmataro RE: 14 Tingley Circle

Present: Joann Ciarmataro, applicant

This petition was filed by Joann Ciarmataro of 14 Tingley Circle, Braintree, MA regarding the same property. The petitioner seeks relief from the Zoning By-law requirement under Chapter 135, Sections 135-402, Sections 403, 701, in order to construct a second story in-law addition, a one story addition attached to the dwelling and a two story deck to the rear of the dwelling. The property is located within a Residential B District and contains 8,000+/- square feet of land, as shown on Assessors' Map No. 3012, Plot 92.

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 November 25, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, members, John Gauthier and Jay Nuss, and alternate, Joseph Mulligan.

Evidence

Joann Ciarmataro, representing herself, addressed the Board. She stated that her current house and lot are pre-existing, nonconforming as to lot size, lot width and the front yard setback. The lot contains 7,660 SF, whereas the Zoning By-law requires a minimum of 15,000 SF for this zoning district. The lot also offers 82 feet of
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width, while 100 ft. of width is required. In addition, the petitioner's house currently encroaches, although minimally, into the front yard setback, as the house is located 19.6 feet off the front yard lot line, while the Zoning By-laws requires a 20 ft. setback.

The petitioner wishes to construct a second story addition to her existing ranch style dwelling for her sister who is planning to live with her. The petitioner is also seeking to construct a one story addition on the southeasterly side of the home and a two-story deck to the rear of the property. The proposed alterations are allowed by right except for the encroachment of the second story front overhang. The proposed second story overhang will encroach into the front yard by two feet and six inches, which is two feet more than the existing structure. In addition, the second story overhang will encroach into the side yard setback by .9 feet, as the overhang will be located 9.1 feet off the property line, where a 10 foot setback is required. The petitioner requires a variance from the front yard and side yard setbacks.

As grounds for the variances, the petitioner noted the unusual shape of the lot, due to the fact that the front lot line curves inward towards the dwelling. Petitioner also noted that she had previously requested variances for this construction and was granted relief from the Zoning By-laws in 2006; however, the petitioner did not proceed with the construction at that time due to financial reasons. The variances have since expired and Petitioner is resubmitting the same proposal as that presented to the Board in 2006.

The petitioner submitted a plan entitled "Plan Showing Proposed Addition in Braintree, MA" prepared by Peter G. Hoyt. Professional Land Surveyor, dated January 24, 2006.

By a vote of 5-0, the Planning Board submitted a recommendation in favor of the requested relief. No neighbors were present at the meeting. No one else spoke in favor of or in opposition to the relief.

Findings

The Board found that the petitioner had demonstrated the need for relief from the by-law and that a literal enforcement of the by-laws would involve substantial hardship to the petitioner. The addition is of modest size and the decks comply with the required setbacks. The second story addition will be within the footprint of the existing dwelling except for a slight over-hang, which will encroach into the front and side yard setbacks, but the Board found these encroachments to be de minimus. The Board also found that the petitioner had presented a hardship based on the unusual shape of the lot and the placement of the dwelling on the lot, which does not affect other lots in the district, constitutes a hardship owing to shape, soil or topography. The Board also found that the addition is not substantially more detrimental to the neighborhood and granting relief will not nullify or substantially derogate from the intent or purpose of the by-law as the encroachment into the setbacks are minimal and only for the over-hang of the second story.

Decision

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

The meeting adjourned at 7:50 pm.

