



Joseph. C. Sullivan
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, MA
www.braintreema.gov

Zoning Board of Appeals (ZBA) Meeting Notes April 26, 2016

IN ATTENDANCE: Stephen Karll, Chair
Michael Ford, Member
Michael Calder, Member
Richard McDonough, Member

ALSO PRESENT: Carolyn Murray, Interim Town Solicitor
Jeremy Rosenberger, Zoning Administrator

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

OLD BUSINESS:

- 1) Petition Number: 15-10
Petitioner: Thayer Academy & Jay Hanflig
RE: 60-80 Campanelli Drive**

On a motion duly made and seconded that the proposed alterations would not be substantially more detrimental than the existing non-conforming structure, a unanimous vote was made by of the Zoning Board of Appeals to approve the above referenced Zoning Board of Appeals petition.

On a motion duly made and seconded that the proposed 70 off-street parking to be provided as part of the project, combined with a shared parking arrangement for the remaining 232 off-street parking spaces as part of the existing warehouse use was sufficient, a majority of the Zoning Board of Appeals voted to approve the above referenced Zoning Board of Appeals petition.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on April 26, 2016 to determine conditions as part of the granted approvals.

- 2) **Petition Number: 15-61**
Petitioner: Town of Braintree & BSC Partners LLC
RE: 128 & 0 Town Street

BSC Partners LLC has requested an extension of the petition, case number 15-61.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on May 24, 2016.

- 3) **Petition Number: 16-04**
Petitioner: Daniel O'Sullivan
RE: 1317 Liberty Street

Mr. Karll advised the Board that the petitioner has submitted a written request to withdraw the petition without prejudice.

On a motion made and seconded, the Board voted 3-0 to grant the petitioners request to withdraw the petition without prejudice.

NEW BUSINESS:

- 1) **Petition No. 16-06**
Petitioner: Mario and Joan Bertoni
RE: 0 Longwood Road, Braintree, MA

Attorney Carl Johnson, on the behalf of the petitioners, has requested an extension of the petition, case number 16-06.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on May 24, 2016.

- 2) **Petition No. 16-07**
Petitioner: Frank Fasoli
RE: 1259 Liberty Street, Braintree, MA

Present: Frank Fasoli and Frank Fasoli, Jr., Petitioners

Frank Fasoli, 1259 Liberty Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403, 407 and 701 to subdivide 840 sq. ft. of land from subject property and combine with 1265 Liberty Street; subdivision of subject property would create a lot of 14,558 sq. ft. that does not meet the minimum lot area. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 1259 Liberty Street, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 1098, Plot 01E, and contains a land area of +/- 15,398 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a

public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on April 26, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Michael Ford, Members.

Evidence

Frank Fasoli and Frank Fasoli, Jr., the petitioners, explained to the Board they are seeking to subdivide 840 sq. ft. of land from 1259 Liberty Street and combine it with 1265 Liberty Street. The petitioners were also joined by Michael Cotter, owner of 1265 Liberty Street. 1259 Liberty Street is currently owned by Mr. Fasoli and is 15,398 sq. ft. 1265 Liberty is owned by Mr. Cotter and is 21,200 sq. ft. The subdivision of 1259 Liberty Street would create a lot of 14,558 sq. ft. that does not meet the minimum lot area.

As grounds for a variance, the petitioner noted and presented evidence of existing ledge outcroppings in the rear yard of 1259 Liberty Street. Secondly, Mr. Fasoli stated the additional lot area will create a more usable front yard area for 1265 Liberty Street. The additional lot area for 1265 Liberty Street will provide 10 ft. to the front yard setback. The current front yard setback for 1265 Liberty Street is approximately 15 ft. and would increase to 25 ft. The resultant front yard would conform to the front yard setback requirement of 20 ft. Lastly, the petitioners expressed the proposed reduction in lot size for 1259 Liberty Street is extremely small.

The applicant presented the plan entitled "ZBA Plot Plan in Braintree, Massachusetts, 1259 Liberty Street" dated March 28, 2016 and prepared by Borderland Engineering, Inc. of Randolph, MA.

The Planning Board submitted a recommendation of denial.

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

Findings

The Board found that the reduction in lot size to 14,558 sq. ft., while less than that required under the Zoning By-law, was consistent with or larger than other lots in the immediate neighborhood. The Board also found that the applicant had proven the lot was unique in nature due ledge outcroppings in the rear of the property. In addition, the Board found by granting the relief, the resultant increase to the front yard area of 1265 Liberty Street would create a conforming front yard setback. Lastly, the Board found that the requested relief, determined as de minimis, 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 duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from the minimum lot area requirement, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 3) Petition No. 16-08**
Petitioner: Thomas and Christine Canavan
RE: 87 Trefton Drive, Braintree, MA

Present: Brian McGourty, Petitioner's representative

Brian McGourty/McGourty Company Inc., 2 Garden Park, Braintree, MA 02184 (owners, Thomas and Christine Canavan) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to construct a 6' x 30' addition to an existing rear deck, which would not meet the minimum rear yard setback. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 87 Trefton Drive, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 3039, Plot 11, and contains a land area of +/- 6,000 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on April 26, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

Evidence

Brian McGourty, representing the property owners, explained they are seeking to construct an additional 6 feet of depth to an unbuilt, approved 6' x 30' rear deck. Mr. McGourty explained the owners recently received ZBA approval (10/27/15) to demolish a fire damaged single family dwelling built in 1918 and construct a new 30 ft. x 40 ft., 2.5 story single family dwelling.

As far as the need for the variance, the proposal seeks to extend the depth of an approved rear deck of 6' x 30' by an additional 6'. The addition would result in a 12' x 30' rear deck. The newly built dwelling is 39 ft. from the rear yard lot line and the ZBA approved deck is to be 32.8 ft. from the rear yard lot line. The proposed deck addition would be 26.8 ft. from the rear yard lot line, where a minimum setback of 30 ft. is required. The applicant presented evidence of unique conditions related to the unique sloping topography of the property. In addition, the applicant stated the deck will be similar to existing decks in the immediate. Lastly, the applicant expressed the new single family under construction will dramatically improve the values of the neighborhood, and a high quality rear deck will not be detrimental to the immediate community.

The applicant presented the plan entitled "Foundation as Built in Braintree, Massachusetts, 87 Trefton Drive" dated March 14, 2016 and prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

The Planning Board submitted a recommendation of denial.

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

Findings

The Board found the petitioner had presented a hardship with respect to the narrow width and sloping topography of the lot. As a result of the hardship caused by the unique characteristics of the lot, the Board found the placement and the size of a rear deck is limited. In addition, the Board found the proposed deck extension would not adversely affect the neighborhood as the new single family dwelling and rear deck will significantly improve the values of the immediate

neighborhood. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from the minimum rear yard setback requirement, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 4) Petition Number: 16-09
Petitioner: Lawrence Graziano
RE: 214 Shaw Street**

After discussion with the Zoning Board of Appeals, Mr. Graziano requested to withdraw the petition without prejudice.

On a motion made and seconded, the Board voted 3-0 to grant the petitioners request to withdraw the petition without prejudice.

- 5) Petition Number: 16-11
Petitioner: Bart Steele (c/o Viewpoint Sign & Awning)
RE: 220 Forbes Road**

The petitioner has requested an extension of the petition, case number 16-11.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on May 24, 2016.

- 6) Petition Number: 16-12
Petitioner: Sharon McDonnell
RE: 22 Hamilton Road**

Present: Sharon McDonnell, petitioner

Sharon McDonnell, 22 Hamilton Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403 and 701, to remove the existing second story roof dormers and construct a full size second story with attic. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 22 Hamilton Street, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 2011, Plot 37, and contains a land area of +/- 9,946 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on April 26, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

Evidence

Sharon McDonnell, the petitioner, explained she and her husband are seeking to remove the existing second story roof dormers and construct a full size second story with attic. Ms. McDonnell stated the proposed alteration is 26' x 30', or 780 gross sq. ft. The alteration will be within the existing footprint of the dwelling. In addition, Ms. McDonnell explained the Zoning Administrator had asked for clarification with regard to the construction of the existing rear deck, above ground pool and sheds, which do not meet the existing dimensional setback requirements of the zoning bylaws. Mrs. McDonnell provided evidence to the Board of a contractor bill from 2004 for construction of the pool and deck structures. However, Ms. McDonnell could not provide evidence the pool, rear deck and sheds acquired building permits. The Zoning Administrator stated there were no building permits on file for the structures. Furthermore, the petitioner stated the existing rear shed is large and sits on a poured foundation. Moving the shed to meet the accessory setback of five feet would be a significant hardship and most likely result in damaging the shed. Lastly, Ms. McDonnell provided the board a petition of support from the three direct abutters.

The petitioner's lot is nonconforming, as it contains only 9,951 sq. ft., where 15,000 sq. ft. is required and provides only 58.6 feet of lot depth, where 100 feet is required. The petitioner's existing house is nonconforming as to the front yard setback; the house is located approximately 11.6 feet from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 feet. In addition, the petitioner's existing attached deck is nonconforming as to the side yard setback; the attached deck is located approximately 6 feet from the side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 feet. Also, the petitioner's existing attached pool is nonconforming as to the rear yard setback; the attached pool/structure is located approximately 9 feet from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 feet. Lastly, petitioner's existing rear detached shed is nonconforming as to the accessory structures setback requirements; the detached shed is located approximately 1 foot from the rear and side yard lot line, while the Zoning Bylaw requires a setback of 5 feet from a rear or side yard lot line. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the addition will be within the existing footprint and not generate any new zoning nonconformity. Secondly, the petitioner stated all the structures built without building permits were over ten years old and should be considered legal nonconforming structures pursuant to M.G.L. 40A Section 7, which governs illegal structures built within ten years. Furthermore, the petitioner noted the addition will be similar to the existing neighborhood characteristics and be an improvement to the neighborhood. Lastly, the petitioner provided evidence of abutter support for the proposed addition.

The applicant presented the plan entitled "Plot Plan of Land, 22 Hamilton Street, Braintree, Massachusetts", dated March 15, 2016 and prepared by Peter Nolan & Associates LLC of Brighton, MA. The applicant also presented plans and architectural renderings entitled "McDonnell Residence", labeled, "Existing Front Elevation", "Existing Side Elevation", "Proposed Front Elevation", and "Proposed Side Elevation", dated March 17, 2016 and no preparer listed.

The Planning Board submitted a recommendation of deferral.

Jack Foley, 13 Hamilton Street, spoke in support of the petitioner. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size, width, frontage and depth, as noted above. In addition, the Board found that the existing deck, pool and sheds are over ten years old. Therefore, the Board considered the deck, pool and shed to be legal nonconforming structures pursuant to M.G.L. 40A Section 7. As such, the Board found that deck is legal nonconforming in terms of the side yard setback. The Board also found the existing dwelling is pre-existing nonconforming in terms of front setback. The Board also found that the existing pool and attached deck are legal nonconforming in terms of the setback from the rear yard lot line. The Board further found that the detached shed is legal nonconforming in terms of the side yard lot line. The Board also found that the proposed addition to the single family dwelling will significantly improve the neighborhood and be within the existing footprint. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

- 7) **Petition Number: 16-13**
Petitioner: Blaine S. Brew
RE: 188 Franklin Street

Present: Blaine S. Brew, petitioner

Blaine S. Brew, 188 Franklin Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403, 407, 609 and 701 to construct a two-story addition that will not meet the minimum 10 ft. side yard setback. 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 188 Franklin Street, Braintree, MA 02184 and is within a Watershed Residential B District, as shown on Assessors Map 1020, Plot 1, and contains a land area of +/- 16,800 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on April 26, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Richard McDonough, Members; and Michael Ford, Alternate.

Evidence

The petitioner, Blaine S. Brew explained he is seeking to demolish the existing garage and sunroom of a single family dwelling and to construct additions of new living space on the first and second level, as well as a new garage and deck. Mr. Brew described the petition before the Board was the subject of an identical 2014 ZBA. The ZBA granted the requested relief on June 24, 2014 and was filed with the Town Clerk on July 8, 2014. However, he did not exercise the 2014 ZBA approval within one year, or register the decision with the Registry of Deeds.

The petitioner's lot is nonconforming, as it contains only 16,800 sq. ft., where 43,560 sq. ft. is required. Also, the lot provides only 65 feet of lot width, where 100 feet is required. In addition, the petitioner's existing rear yard shed is nonconforming as to the side yard setback; the detached shed is located approximately one foot from the side yard lot line, while the Zoning Bylaw requires a setback of 5 feet from a side yard lot line. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As far as the need for the variance, the petitioner was granted a variance in 2014 for an identical petition that was never acted on. The petitioner also was granted a Special Permit and Site Plan by the Planning Board for the proposed project. Furthermore, the property is a uniquely shaped lot and has a ten foot easement, limiting the placement of any reasonable addition without the need for relief from the ZBA. Lastly, the petitioner noted the proposed addition will greatly improve the neighborhood.

The applicant presented the plan entitled "Plot Plan of Land, 188 Franklin Street, Braintree, MA" dated April 4, 2014 and prepared by Hoyt Land Surveyors of Weymouth, MA. The applicant also presented site plans and architectural renderings entitled "Progress Set", labeled as A2, A2.1, A3, A3.1, A4, A4.1, A5, A5.1, A6, A7, A8, S1 and S1.1, dated April 4, 2014 and prepared by Baker Architectural Design.

The Planning Board submitted a favorable recommendation.

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

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size and lot width, as noted above. In addition, the Board found the highly irregular shape of the lot and side yard easement present significant hardship with regard to the expansion of the existing single family dwelling, significantly limiting its placement. The Board also found that the proposed addition to the single family dwelling will significantly improve the neighborhood. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and variances from side yard setback requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 3-0 to accept the meeting minutes of March 22, 2016.

The Board adjourned the meeting at 11:00 pm.