



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 Minutes May 21, 2018

IN ATTENDANCE:

Michael Ford, Member
Richard McDonough, Member
Stephen Sciascia, Associate
Gary Walker, Associate

ALSO PRESENT:

Jeremy Rosenberger, Zoning Administrator

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

OLD BUSINESS:

- 1) **Petition Number: 17-43**
Petitioner: K. Ingber, Tr. Wood Road Nominee Trust and Wood Road Realty LLD
RE: 290 Wood Road

The petitioner requested the public hearing to be continued to June 25, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the public hearing to June 25, 2018.

- 2) **Petition Number: 17-62**
Petitioner: Foxrock Properties LLC
RE: 350 Granite Street

The petitioner requested the initial public hearing to be continued to June 25, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to June 25, 2018.

- 3) Petition Number: 18-13
Petitioner: Tuan Nguyen
RE: 10 Elm Terrace**

The Board, seeking evidence of community support, requested the public hearing to be continued to June 25, 2018.

The petitioner agreed and on a motion made and seconded, the Board voted 3-0 to continue the public hearing to June 25, 2018.

NEW BUSINESS:

- 1) Petition Number: 18-14
Petitioner: Heather Dudko
RE: 180 Pearl Street**

Heather Dudko, 2 Phoebe Way, Worcester, MA 01605 (Property Owner, Ivory Plaza LTD Partnership) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to install one 8' x 28'8" wall sign. The applicant seeks a permit, variance and/or finding that the proposed sign is not more detrimental to the neighborhood. The property is located 180 Pearl Street, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 18, and contains a land area of +/- 7.28 acres.

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, Section 11, 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 May 21, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Gary Walker; and Stephen Sciascia, Alternate.

Evidence

Heather Dudko, the petitioner on the behalf of the TJX Companies, explained that TJ Maxx/HomeGoods/HomeSense are seeking to provide an additional 8' x 28'8" illuminated wall sign to support the new retail stores located at Ivory Plaza. The retail stores will occupy the space formerly utilized by Cardi's Furniture.

Mr. Ford expressed allowance of the proposed sign could set a precedent. However, Mr. Ford discussed the need to support the anchor retail tenants. He also highlighted that the site is constrained to the high elevation from the roadway and the lack of storefront visibility toward the adjacent roadways. Mr. McDonough inquired if the proposed signage would be visible to the abutting neighborhood. Ms. Dudko replied the MBTA had installed a sound barrier wall which effectively blocks any view to the adjacent abutter of the property. Mr. Walker stated he did not have an issue with the proposed signage and other similar signs would have to be individually judged for merit. Mr. Sciascia asked the petitioner if they would consider reducing the size of the proposed signage. Ms. Dudko replied they would consider reducing the overall height to 6 ft. and scaling the width accordingly. The Board expressed that was an acceptable compromise.

The petitioners seek the following signage variances:

- **Variance from Section 135-904.2 (A)(5)(a):** The Braintree Zoning Bylaw states “No wall sign shall exceed 150 square feet.” The proposed wall sign is +/- 230 sq. ft. (proposed sign contains aggregation of each tenant’s individual logo/sign)
- **Variance from Section 135-904.2 (A)(5)(b):** The Braintree Zoning Bylaw states “No wall sign shall exceed four feet in overall height.” The proposed wall sign is 8 ft. in height.
- **Variance from Section 135-904.2 (A)(5)(g):** The Braintree Zoning Bylaw states “No more than one wall sign for each store or business occupying a building shall be permitted. The aggregate total of all signage allowed shall not exceed 150 square feet in area. Sign permit may be issued only after written permission for said signs is authorized by the Zoning Board of Appeals.” The three subject tenants have previously received ZBA approvals for wall signs that exceeded the signage regulations.

As grounds for the variances, the petitioner noted the TJX companies have made a significant long term commitment to Braintree with the three new stores. TJX would like to provide additional visibility to the riders of the commuter train lines that pass by multiple times daily. The more awareness that is created by the additional signage will create long term stability and growth for these stores which benefits not only TJX Corp, but the overall Braintree community as well. In addition, the petitioner highlights the large “brick & mortar” stores are located up on a hill and difficult to see from the major roadway (Pearl Street). The location is also a large distance from Pearl Street. As such, any increase in visibility for the tenants is necessary due to the unique location. Lastly, the petitioner discusses the new signage will be scaled appropriately and not visible to the adjacent neighborhood.

The petitioner presented signage plans entitled “TJ Maxx/HomeGoods/HomeSense”, dated March 19, 2018 and prepared by American Sign, Inc.

The Planning Board submitted a recommendation to endorse the staff recommendation of denial. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found that the proposed signage, when analyzed in relationship to the building and previous tenant signage, is appropriate in design, size and scale. The Board found the location of the retail store is uniquely situated higher than the primary roadway and setback significantly. In addition, the Board found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed wall sign is necessary to identify the location of the business and for the traveling public on the abutting MBTA commuter rail lines. Furthermore, the Board found that the wall sign will not be visible to the adjacent neighborhood due to the abutting trees and sound barrier. Lastly, the Board found that the wall signs would be well designed, appropriate in terms of size and consistent with the architectural style of the existing building. As a result, the Board found relief can be granted without resulting in a substantial detriment to the public good and will not nullify the intent of the Zoning By-law.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variances from Bylaw Section 135-904.2, pursuant to Bylaw Section 135-407 and 908, in accordance with the plans submitted and the following conditions:

- 1.) Wall sign to be no taller than 6 ft. in height and the width to be scaled proportionately; and
- 2.) No sign illumination from 1am-6am, pursuant to Section 135-905.

**2) Petition Number: 18-15
Petitioner: Charles Thomas Hubbard
RE: 65 Parkside Circle**

Charles Thomas Hubbard, 65 Parkside Circle, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to construct second story above existing two car garage 22' x 22.5'); garage has existing side yard setback deficiency of 7.2 ft. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at 65 Parkside Circle, Braintree, MA 02184 and is within a Residential B District Zone as shown on Assessors Map 2083, Plots 29 and contains a land area of +/- 8,215 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, Section 11, 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 May 21, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Stephen Sciascia; and Gary Walker, Alternate.

Evidence

Charles Hubbard, the petitioner, explained he is seeking to construct a second story above the existing one story, 22 ft. x 22.5 ft. attached two-car garage. The petitioner discussed the existing dwelling provides four bedrooms. The proposed addition would provide a new master bedroom w/bathroom, resulting in a total of five bedrooms. The proposed scope of work would be within the same building footprint as the existing garage.

The petitioner's existing lot is nonconforming, as it contains only 8,215 sq. ft., where 15,000 sq. ft. is required, and provides only 73.6 ft. of lot width, where 100 ft. is required. The petitioner's existing single family dwelling is nonconforming as to the right side yard setback; the dwelling is located 7.2 ft. from the right side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 ft. The proposed addition will be built within the existing footprint and not create any new zoning nonconformity. Accordingly, a finding is required pursuant to M.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 noted the addition will be similar to the existing neighborhood characteristics and not be more detrimental to the neighborhood.

The applicant presented the plan entitled "Plot Plan of Land, 65 Parkside Cir, Braintree, MA", dated March 2, 2018, and prepared by James E. McGrath, PLS of Weymouth, MA. The applicant also presented floor plans and architectural renderings entitled "Additions and Alterations for 65 Parkside Circle", labeled D1-D3, A, A1-A9 and E1, dated December 10, 2017 and prepared by Bourque Design of Waltham, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval. No one else at the Zoning Board of Appeals 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 area and width, as noted above. The Board acknowledged the dwelling, namely the attached two-car garage, was constructed within the right yard setback in 1960. Therefore, the Board found that the existing dwelling is pre-existing nonconforming in terms of the right side yard setback. The Board also found that the proposed second floor addition will not create any new zoning non-conformity. The Board further found that the proposed addition will be designed appropriately and be comparable in size relative to the existing housing stock. As such, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming 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.

**3) Petition Number: 18-16
Petitioner: Chris Walsh
RE: 43 Abbott Street**

Chris Walsh, 9 Timothy Drive, West Bridgewater, MA 02379 (Owner: Margaret Cheung) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to raise existing 1.5 story single family dwelling (+/- 1,105 sq. ft. building footprint) and construct a 2.5 story, single family dwelling (+/- 1,380 sq. ft. building footprint) with attached rear deck; new dwelling would intensify existing nonconforming left side yard setback, building coverage would exceed maximum allowance and rear deck addition would encroach into the rear yard setback. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at 43 Abbott Street, Braintree, MA 02184 and is within a Residential B District Zone as shown on Assessors Map 2032, Plot 44 and contains a land area of +/- 4,950 sq. ft.

Notice

Pursuant to notice duly published in the Braintree Forum, a newspaper in general circulation, and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, 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 May 21, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Stephen Sciascia; and Gary Walker, Alternate.

Evidence

Chris Walsh, the petitioner's design/contractor, explained Ms. Cheung is seeking to raise the existing one story single family dwelling and construct a new 2.5 story, single family dwelling in approximately the same footprint. Mr. Walsh explained the owner originally wanted to utilize the existing foundation, but due to its age and condition, a new foundation is required. In addition, the existing bungalow style dwelling is small and does not meet the needs of the family. Mr. Walsh discussed the proposal would not need a rear yard setback and building coverage variances as a ground level patio is now proposed and the building has been slightly decreased in footprint to meet the building coverage requirement. Mr. Walsh stated the new dwelling will provide a new, quality single family dwelling to the surrounding housing stock.

Mr. Ford stated that while the new home would be larger than the existing small bungalow, the existing neighborhood provides a variety of larger dwellings on small lots. Mr. Ford also added the removal of the need for variances is appreciated. Mr. Sciascia stated the proposed dwelling would be similar to the existing neighborhood characteristics. Mr. McDonough agreed.

The petitioner's existing lot is nonconforming, as it contains only 4,950 sq. ft., where 15,000 sq. ft. is required, provides only 55ft. of lot width, where 100 ft. is required, and provides only 90 ft. of lot depth, where 100 ft. is required. The petitioner's existing single family dwelling is nonconforming as to the front yard setback; the dwelling is located 16 ft. from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 ft. Also, the petitioner's existing single family dwelling is nonconforming as to the left side yard setback; the dwelling is located 6.3 ft. from the side yard lot line, while the Zoning Bylaw requires a side yard setback of 20 ft. Lastly, the petitioner's existing detached garage is nonconforming as to the setbacks; the garage is setback 3 ft. from the rear lot line, while the Zoning Bylaw requires an accessory structure setback of 5 ft. The proposed reconstruction will intensify the existing undersized lot, front yard setback, and side yard setback due to the second story. However, the side yard setback will be decreased from 6.3 ft. to 7.5 ft. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the new dwelling will not generate any new zoning nonconformity. Secondly, the petitioner noted the addition will be similar to the existing neighborhood architectural characteristics and is well designed. Furthermore, the proposed new dwelling only slightly increases the existing building footprint. Therefore, the proposed project will not be more detrimental to the neighborhood.

The petitioner presented a plot plan entitled "Certified Plot Plan, 43 Abbott Street, Braintree, MA", dated April 9, 2018, prepared by Collins Civil Engineering Group Inc. of West Bridgewater, MA. The petitioner also presented floor plans and elevations entitled, "New Construction for Cheung Residence, 43 Abbott Street, Braintree, MA", sheet No.T-1 and A1 thru A4, dated May 11, 2018, prepared by CME Architects, Inc. of Plainville, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of a continuance. Jessica Evans, of 48 Bestick Road, stated her initial concern regarding the proposed rear deck. As the rear deck has been removed, Ms. Evans did not have an issue with the project. No one else at the Zoning Board of Appeals 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 area, width and depth, as noted above. In addition, the Board found that the existing dwelling is pre-existing nonconforming in terms of the left side yard setback. The Board also found that the proposed addition would not create any new zoning nonconformity. The Board further found that the proposed project will be designed appropriately and be comparable in size relative to the existing housing stock. Lastly, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming 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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
 - 2.) Submission of a certified foundation plan to the Planning & Community Development Department prior to vertical construction; and
 - 3.) Submission of an as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.
- 4) Petition Number: 18-17
Petitioner: Brian & Laura McGourty
RE: 460R Pond Street**

The Board & petitioner requested the initial public hearing to be continued to June 25, 2018.

On a motion made and seconded, the Board voted 4-0 to continue the initial public hearing to June 25, 2018.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 4-0 to accept the April 23, 2018 meeting minutes.

The Board adjourned the meeting at 9:00 pm.