



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 October 14, 2015

IN ATTENDANCE:

Stephen Karll, Chair
Michael Calder, Member
Richard McDonough, Member
Michael Ford, Member

ALSO PRESENT:

Carolyn Murray, Interim Town Solicitor
Jeremy Rosenberger, Zoning Administrator
Christine Stickney, Planning & Community Development Director

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

NEW BUSINESS:

- 1) Petition No. 15-33
Petitioner: Mento Homes, LLC.
RE: 44 Plymouth Avenue, Braintree, MA**

Present: Joe Ryan, Petitioner and Property Owner
Jim Cotter, Attorney General's Office

This is a petition filed by Mento Homes, Inc., 1157 Washington Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609, 701 to demolish an existing two-family dwelling and construct a +/- 2,350 sq. ft. single family dwelling on a lesser footprint. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood than the existing structure. The property is located at 44 Plymouth Avenue, Braintree, MA 02184 and is within a Residential B Watershed District Zone, as shown on Assessors Map 1078, Plot 35, and contains a land area of +/- 5,000 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 October 14, 2015 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

Attorney Kevin O'Reilly, representing the proposed developer/owner, John Mento, of Mento Homes, Inc., explained the applicant seeks relief to raze an existing abandoned dwelling and construct a new single-family dwelling. Also in attendance was attorney Jim Cotter, the appointed receiver for the applicant's subject property. Relative to the abandonment of 44 Plymouth Avenue, the Town of Braintree, working in conjunction with the Commonwealth's Attorney General's Abandoned Housing Initiative, petitioned to have a receiver appointed under the provisions of Commonwealth's sanitary code for the subject property. Subsequent to the appointment of a receiver, the receiver entered into an agreement with the applicant to purchase the property contingent upon the applicant acquiring the necessary permits and approvals required to construct the new single-family dwelling. Attorney Cotter offered that a Purchase and Sales agreement, contingent upon the applicant receiving the proper approvals and permits, had been executed that day.

The petitioner's lot is nonconforming, as it contains only 5,000 sq. ft. where 43, 560 sq. ft. is required in the Watershed Protection Overlay District. Furthermore, the property offers only 50 feet of lot width, where 100 feet is required. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

In addition, variances are required for relief from lot coverage and open space requirements. The Zoning Bylaw allows a maximum of 20% lot coverage, but the proposal would provide 38% lot coverage. Furthermore, the Zoning Bylaw requires a minimum open space of 80% of the lot, but the proposal only provides 62%.

As grounds for the variance, the petitioner noted repair or reuse of the existing dwelling would be a significant financial hardship as the structure is condemned by neglect. The petitioner also reiterated the Board of Health has determined the dwelling to be hazardous, thus presenting a detriment to the immediate neighborhood. The size and width of the lot are also problematic in that the lot is undersized for the Watershed Protection District, and the lot's width of 50 feet makes it difficult for a structure to be placed on the lot that would satisfy all dimensional setbacks. Furthermore, the proposed new single family would be smaller in scale than the existing structure. Lastly, the proposed new dwelling would be consistent with the spirit and intent of the zoning bylaws as the proposal would be similar to the existing footprint of the structure.

The applicant presented the plan entitled "ZBA Plot Plan in Braintree, Massachusetts, 44 Plymouth Avenue", dated September 18, 2015 and prepared by Borderland Engineering, Inc. of Randolph, MA. The applicant also presented plans and architectural renderings entitled "Proposed Elevations, New House Construction" Sheet 2, dated September 23, 2015 and prepared by Walter A. McKinnon Associates, as well as plans and architectural renderings entitled and, "Proposed Floor Plans, New House Constructions", Sheet 1, dated September 23, 2015 and prepared by Walter A. McKinnon Associates.

The Planning Board submitted a favorable recommendation with the following conditions: (1.) The proponent seek to decrease the amount of lot coverage and increase the amount of open space provided; and (2.) Provide on-site accommodations for water infiltration.

Laurie Eleuteri, an abutter, had a question regarding demolition of the property. Chairman Karl responded the board does not have authority regarding the demolition of the property, but that any demolition will need to be approved by the Town of Braintree Building Department, be properly insured, and to discuss any questions with applicant after the hearing. Michael Crane, of Plymouth Avenue, asked where any proposed parking would be located. Attorney Reilly responded the proposed parking would be sited in essentially the same location as the existing driveway. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot and structure both predated the establishment of the Watershed Overlay Protections District and that altering the condemned structure by replacing it with a new structure would not be substantially more detrimental to the neighborhood. In addition, the Board found the petitioner had presented a hardship with respect to reuse of the abandoned structure and the inability to construct a new single family dwelling without zoning relief. 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, and will dramatically improve the health and safety of the community.

Decision

On a motion duly made by Mr. Calder and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant the requested findings, pursuant to Bylaw Section 135-403, and variances from the maximum lot coverage and minimum open space requirements, pursuant to Bylaw Section 135-407.

OTHER BUSINESS:

1) RE: Braintree Rezoning Process

Present: Judy Barrett, RKG Associates
Robert Mitchell, Consultant

Christine Stickney, Director of the Planning and Community Development, explained to the ZBA the Town of Braintree is beginning a rezoning process. She further discussed the Town had hired RKG Associates as the lead consultants for the process. The consultant team, represented that evening by Judy Barrett and Robert Mitchell, would like to have an informal discussion regarding the current zoning code. Furthermore, the consultants would like to hear what is working regarding the zoning code, and what is not.

As such, the ZBA provided a number of examples, such as garages, building height and in-law apartments. In addition, the ZBA and Town Counsel discussed past and current litigation related to the ZBA and zoning.

The Board adjourned the meeting at 8:00 pm.