



Joseph C. Sullivan
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, Massachusetts 02184

Zoning Board of Appeals (ZBA) Meeting Minutes July 28, 2015

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

ALSO PRESENT: Erik Erskine, Local Inspector
Carolyn Murray, 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
RE: 60-80 Campanelli Drive

Thayer Academy has requested a 60-day extension of the petition, case number 15-10.

Sitting on this case for the Zoning Board of Appeals were: Mr. Karll, Mr. Calder and Mr. McDonough.

On a motion made by Mr. Karll and seconded by Mr. Calder, the Board voted 3-0 to grant the requested extension to the September 15, 2015 Zoning Board of Appeals meeting.

NEW BUSINESS:

- 2) **Petition No. 15-15**
Petitioner: Patrick Stones
RE: 1431 Washington Street, Braintree, MA

Present: Patrick Stones, Petitioner and Property Owner

This is a petition filed by Patrick Stones of 156 Hayward Street, Braintree, MA regarding the property located at 1431 Washington Street in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, 608, 609 and 701 to renovate the existing house, add a garage and second floor addition over the existing building. The property is located in a Residential B Watershed Zoning District as shown on Assessors' Plan 1049, Plot No. 2D and contains +/-0.282 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, 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 July 28, 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

The petitioner represented himself and explained that he wishes to add a garage and second floor to an existing house located at 1431 Washington Street. The petitioner's lot is nonconforming, as it contains only 12,284 SF where 1 acre is required; however, Town records indicate that the lot and existing dwelling pre-date the adoption of the Watershed Protection overlay district. In addition, the lot is nonconforming as to lot width, as it offers only 74 feet of lot width, where 100 feet is required. The petitioner's existing house is also nonconforming as to front yard setback; the house is located 5.4 feet from the front yard line, while the Zoning Bylaw requires a setback of 20 feet.

The proposed alteration will not create any new nonconformity; therefore, a finding is required pursuant to G.L. c 40A, Sec. 6.

The applicant presented a plan entitled "Plot Plan Showing a Proposed Addition, 1431 Washington Street, Braintree, MA," dated May 21, 2015 and prepared by Don Rosa, PLS, Randolph, MA.

The Planning Board submitted a favorable recommendation. The Planning Board advised the proponent to submit additional information about the existing and proposed grading at the rear of the dwelling in the area of the base flood elevation to demonstrate there will be no effect on flood storage and/or to determine if a special permit will be required under Zoning Bylaws Section 608. Kathleen Bancroft, an abutter who shares a coo on driveway with the subject property, questioned the location of the garage from her lot line. As it was confirmed that a small portion of the existing dwelling would be razed to accommodate the location of the garage and that the garage would be 10.3 feet from her side lot line, which complies with the side yard setback under the Zoning Bylaws, Ms. Bancroft went on record as being in favor of the proposal. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the proposed alteration would not create any new nonconformity, and therefore, the Board found that the proposed alteration would not be substantially more detrimental to 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 by Mr. Ford and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted.

- 3) Petition No. 15-16**
Petitioner: William J. Cook
RE: Portland Road, Braintree, MA

This is a petition filed by William J. Cook of 12 Quashnet Woods Drive, Mashpee, MA regarding the property located at Plymouth Road in Braintree. The petitioner seeks relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 701 to establish lot 1055-0-99 as a buildable lot. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property

is located on Plymouth Road, Braintree, MA 02184 and is within a Residential B Water Shed District Zone, as shown on Assessors Map 1055, Plot 99, and contains a land area of +/-7,114 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 July 28, 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

The petitioner did not attend the hearing. The petitioner was contacted and agreed to withdraw the petition without prejudice.

The Planning Board recommended denial.

Decision

On a motion duly made by Mr. Ford and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the withdrawal without prejudice in accordance with the plan submitted.

- 4) Petition No. 15-17**
Petitioner: J. Edward Bulger
RE: 58 Francine Road, Braintree, MA

Present: J. Edward Bulger, Petitioner and Property Owner

This is a petition filed by J. Edward Bulger of 20 Cain Avenue, Braintree, MA regarding the property located at 58 Francine Road in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, and 701 to construct a 2nd floor addition on an existing dwelling with a 2 ft. overhang in the front and rear. The property is located in a Residence B Zoning District as shown on Assessors' Plan 2087, Plot No. 32 and contains +/-8,314 sq. ft. of area.

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 July 28, 2015 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Michael Ford, Members; and Michael Calder, Alternate.

Evidence

The petitioner represented himself and explained that he wishes to add a second floor on an existing house located at 58 Francine Road. The petitioner noted a number of similar additions have occurred in the immediate neighborhood. The petitioner's lot is nonconforming, as it contains only 8,314 sq. ft. where 15,000 sq. ft. is required and offers only 85 feet of lot width, where 100 feet is required. The petitioner's existing house is also nonconforming as to rear yard setback; the house is located 14 feet from the rear yard line, while the Zoning Bylaw requires a rear yard setback of 30 feet. However, the petitioner proposes to demolish an existing sunroom which encroaches into the rear yard setback, and therefore, the Proposed rear yard setback is 23.67 feet. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6. Lastly, the proposed 2 foot overhang for the second floor addition requires a variance as Section 135-701(7) of the Zoning Bylaw allows a maximum of 18 inches for an overhang.

The applicant presented a plan entitled "Plot Plan, 58 Francine Road, Braintree, MA," dated June 30, 2015 and prepared by James McGrath, PLS.

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 petitioner had presented a hardship based on the odd shape of the lot and the fact that it is a corner lot. Additionally, the Board found that the proposed alteration would remain within the footprint of the existing dwelling and not create any new non-conformity, with the exception of the overhang, which protrudes 6 inches more than allowed under the Zoning Bylaw; however, the Board found the 6 inch of overhang to be a de minimis deviation. The Board found that the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure. 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 by Mr. McDonough and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted.

- 5) Petition No. 15-18**
Petitioner: Robert M. Cusack
RE: 89 Hancock Street, Braintree, MA

Present: Robert M. Cusack, Petitioner and Property Owner

This is a petition filed by Robert M. Cusack of 86 Cochato Road, Braintree, MA regarding the property located at 89 Hancock Street in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, 701, 705 and 806 to convert the use of the 2nd floor office spaces into (4) four one-bedroom residential apartments. The property is located in a General Business Zoning District as shown on Assessors' Plan 1009, Plot No. 11 and contains approximately +/-18,863 sq. ft. of area.

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 July 28, 2015 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 represented himself and explained there was an error regarding notice and advertisement of the property. It was incorrectly listed as 86 Hancock Street, but is actually 89 Hancock Street. Updated notifications and advertisements with the corrected address were sent out and published, and a copy of the corrected advertisement is to be provided for the Zoning Board of Appeals file. Mr. Cusack explained he is seeking to change the use of the 2nd floor office spaces, consisting of approximately 6,000 SF, into 4, one-bedroom residential apartments, which is an allowed use under Section 135-705 of the Zoning Bylaw.

The petitioner's existing structure is nonconforming. The existing structure encroaches into the front and rear setbacks. The Zoning Bylaw requires a front yard setback of 10 feet, but the structure is located 2 feet from the front lot line. The Zoning Bylaw requires a rear yard setback of 20 feet, but the structure is located 16 feet from the rear lot line. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

The petitioner's lot is also nonconforming with respect to Section 135-705 of the Zoning Bylaw, which establishes certain minimum requirements for multi-family units. The density provision of the Zoning Bylaw requires the project to have a land area of 20,000 sq. ft., but the lot 18,863 sq. ft. In addition, Section 135-705 of the Zoning Bylaw requires a minimum of 2,000 sq. ft. of open space per unit, but only 565 sq. ft. of open space per unit is provided. The Bylaw requires that each unit have a land area of 5,000 SF, but only 4,715 SF of land area is offered for each unit. Lastly, the Zoning Bylaw requires lots containing multi-family developments contain a minimum land area of 43,560 sq. ft., but the lot only has 18,863 sq. ft. Therefore, a variance is required from the density regulations of Section 135-705 in order to allow four residential units.

The four residential units require 8 parking spaces, and 8 will be provided. In addition, the office spaces on the first floor require 40 parking spaces, but only 21 are provided, pursuant to a prior Zoning Board of Appeals decision granted in 1977. The site will also offer 2 handicapped accessible parking spaces, one of which will accommodate a van. The total number of parking spaces to be provided on the site is 31.

The applicant presented the plan entitled "Plot Plan Prepared for the 89 Hancock Street Realty Trust, 89 Hancock Street, Braintree, Massachusetts," dated June 26, 2015 and prepared by Don Rosa of Randolph, MA. The applicant also presented floor plans entitled "Bob Cusack, 89 Hancock Street, Braintree, MA 02184, sheets A-1 through A-7 and S-1" dated April 24, 2015 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 and structure were pre-existing nonconforming as noted above. The Board further found that the proposed conversion of office space to four residential units would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure. Rather, the Board found that the proposed re-she of the existing second story would be in keeping with the characteristics of the general business area. With respect to the density variances, the Board found that the existing lot and structure presented existing limitations that would make it difficult to fully comply with the bylaw. In addition, the Board found that the petitioner had presented a hardship based on the irregular "L" shape of the lot and the current configuration of the structure so close to the front lot line, making it difficult for the petitioner to alter the second story of the building in compliance with the bylaw. 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 by Mr. Calder and seconded by Mr. McDonough, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plans submitted.

- 6) Petition No. 15-19**
Petitioner: Thomas Cavanagh on behalf of Riverwalk Development, LLC
RE: 205 Elm Street, Braintree, MA

Present: Attorney Thomas Cavanagh representing petitioner, and George Clemens, Riverwalk Development LLC

This is a petition filed by Thomas Cavanagh of 15 Foster Street, Quincy, MA, as attorney for Riverwalk Development, LLC regarding the property located at 205 Elm Street in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, 701, 705 and 806 to convert an existing lodge building into a (5) five residential unit structure with the construction of porches, decks & dormers, and to construct a free standing (4) four unit town house building and free standing (3) three-unit townhouse style building. The property is located in a Residential C Zoning District as shown on Assessors' Plan 2002, Plot No. 5 and contains approximately +/-78,960 sq. ft. of area.

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 July 28, 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 Tom Cavanagh appeared along with Riverwalk Development, LLC general manager, George Clemens. Riverwalk Development, LLC has purchased the vacant Elks Lodge and is seeking to redevelop the property. The proposed redevelopment includes converting the existing lodge into 5 residential units, and constructing 7 additional townhouse units in two separate buildings. All of the units will contain two bedrooms and two baths.

The petitioner's existing lodge structure is nonconforming. The Zoning Bylaw requires a front yard setback of 50 feet, but the existing structure is located 10.5 feet from the front lot line. The petitioner plans to remove the existing canopy and replace it with a porch structure to be located 23.7 feet from the front lot line. The renovation to the existing building will also include the construction of 2 dormers on the roof. Neither of the dormers will increase the building height, but portions of the dormers will be located within the 50 feet front yard setback. The Zoning Bylaw limits maximum building height at 35 feet, and the existing height of the lodge is 43.6 feet; the proposed height of the renovated structure will remain 43.6 feet. Furthermore, the Zoning Bylaw limits the number of stories to 3, and the existing structure has 4 stories; the renovated structure will retain the 4 stories is 4. Accordingly, the proposed alterations to the non-conforming lodge structure require a finding pursuant to G.L. Chapter 40A, Section 6.

In addition, the proposed townhouse structure to contain four units adjacent to the existing lodge requires a variance. The Zoning Bylaw requires a front yard setback of 50 feet, but the proposed new structure is to be located 26.5 feet from the front lot line, such that its appearance will be in line with the lodge building. The petitioner noted that if this building were to be located 50 feet from the front lot line, it would appear disjointed from the lodge; as proposed, this building will be uniform with the lodge setback. The third building containing three townhouse units does not require any zoning relief.

As grounds for the variance, Attorney Cavanagh noted the existing elevations of the site, sloping down towards the river in the rear, for a 25 foot drop in grade. In addition, the soil towards the rear of the property is not conducive to building and is overrun with invasive plants. Attorney Cavanagh also described the shape of the lot as having a triangular shape toward the rear. The shape, topography and soil conditions towards the rear of the property require any buildings to be situated towards the front of the property. Attorney Cavanagh also stated that his client met with and heard the concerns of several residents who wanted to preserve the lodge structure, claiming some historical significance as the former Cochato Club. To honor the residents' request to preserve the existing lodge structure, the applicant wishes to alter the appearance of the facade to reflect a residential structure. Also, the encroachment of the 4- unit townhouse structure adjacent to the lodge is needed for a uniform, aesthetic appearance.

The applicant presented the plan entitled "Site Plan Showing Proposed Residential Layout at 205 Elm Street, Braintree, Massachusetts," dated June 17, 2015 and prepared by Neponset Valley Survey Assoc., Inc. of

Quincy, MA. The applicant also presented plans and architectural renderings entitled "Proposed Elevations and Plans for The Lodge Units" with Sheets A5 through A8, A12 through A15, dated May 15, 2015 and prepared by Fisher Associates Architects, as well as plans and drawings entitled, "Proposed Elevations and Plans for RiverView Units," Sheets A1 and A2' dated May 15, 2015 and prepared by Fisher Architects. Lastly, the applicant presented plans and Architectural drawings entitled "Proposed Elevations and Plans for RiverFront Units," Sheets A1 through A3, dated May 15, 2015 and prepared by Fisher Associates Architects.

The Planning Board submitted a favorable recommendation.

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

Findings

The Board found the relief requested is supported by the hardships with location of the existing lodge structure and the sloping topography of the land with its 25 foot change in grade. The Board also found that the soil conditions to the rear of the property near the river were not suitable to support a building, making it necessary to locate the buildings closer to the front of the lot and encroach into the front yard setback. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming structure. 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 by Mr. Karll and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plans submitted.

7) Petition No. 15-20

**Petitioner: Thomas Cavanagh on behalf of Riverwalk Development, LLC
RE: 205 Elm Street, Braintree, MA**

Present: Brain McGourty, Petitioner and Property Owner

This is a petition filed by Brian McGourty/McGourty Realty LLC of 2 Garden Park, Braintree, MA regarding the property located at 29-39 Hayward Street in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407 and 701 to improve and alter a pre-existing non-conforming commercial garage into (3) residential garages to service residential units 9, 10 and 11 to be constructed on the property. The property is located in a General Business Zoning District as shown on Assessors' Plan 3057, Plot No. 1 and contains approximately +/-84,796 sq. ft. of area.

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 July 28, 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

The petitioner represented himself and explained that he wishes to demolish and reconstruct a pre-existing, non-conforming parking garage. The garage is located on the property line and is in poor structural condition. The Zoning Bylaw requires an accessory structure minimum rear yard setback of 5 feet, but the proposed structure would provide a setback of zero. Therefore, a variance is required.

The petitioner explained that this site is part of a continued redevelopment of a mixed use site, as the site house a convenience store and residential units. All of the residential units are built except for the remaining units 9, 10, and 11, as shown on the plan submitted. The existing commercial garage will be converted to residential garages to serve these three residential units. As the garage is to be razed, the Board questioned whether the garage could be moved off the lot line to comply with the Zoning Bylaw setback. The petitioner explained that moving the garage forward into the site 5 feet would interfere with existing traffic circulation on the site and could interfere with the ability of fire apparatus to access the rear of the site.

As grounds for the variance, the petitioner noted the presents ever of an existing sewer easement along the rear and side of the property, making it difficult, if not impossible to move the garage. The petitioner also reiterated the location of existing buildings on the site and the need to maintain the internal roadway free of obstructions for site circulation and public safety.

The applicant presented the plan entitled "Site Development Plans at Hayward Street in Braintree, Massachusetts," dated April 20, 2005 and prepared by Daylor Consulting Group, Inc. of Braintree, MA.

The Planning Board did not make any recommendation on the petition, as the petitioner did not appear before the Planning Board.

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

Findings

The Board found the petitioner had presented a hardship based on the shape of the lot and location of the existing parking garage. The Board also found that an existing sewer easement and internal roadway on the site preclude the placement of the renovated garage anywhere but in its current location on the rear lot line. 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 by Mr. Karll and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted.

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted 4-0 to accept the meeting minutes of June 23, 2015.

The Board adjourned the meeting at 8.10 pm.