



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

November 3, 2010

IN ATTENDANCE: Stephen Karll, Chairman
John Gauthier, Member
Michael Calder, Member
Jay Nuss, Member

ALSO PRESENT: Michael McGourty, Local Building Inspector
Carolyn Murray, Town Solicitor

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

OLD BUSINESS:

- 1) Petition Number 10-29
Reda Veitas, Agent and Trustee for Windjammer Realty Trust
RE: 19-71 Shaw Street**

Present: Attorney Frank Marinelli, representing the petitioner;
Reda and Romualdas Veitas, owners of property and trustees of Windjammer Realty Trust.

This is a petition filed by Reda Veitas as agent and trustee of the Windjammer Realty Trust, 639 Granite Street, Braintree, MA, regarding the property located at 19-71 Shaw Street, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Article 4, Sections 135-402, 135-403, 135-403A 135-407, and Article 7, Section 135-701 as well as M.G.L. Ch, 40A, Section 6. The applicant seeks a permit, variance and/or finding to legitimize the construction of four (4) 4 ft. deep x 8 ft. wide second floor balconies and supporting posts at the rear of three existing buildings in accordance with the plans of record. The property is located 19-71 Shaw Street, Braintree, MA in a General Business District as shown on Assessors Plan No. 3007, Plot 02 and contains +/- 158,123 Sq. Ft. of land.

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 scheduled before the Zoning Board of Appeals for September 28, 2010, but continued to November 3, 2010 at 7 p.m. at the

DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition at the November 3, 2010 hearing were Chairman Steve Karll, and members, Jack Gauthier and Michael Calder with alternate, Jay Nuss.

Evidence

The petitioner, represented by Attorney Frank Marinelli, appeared with Reda and Romualdas Veitas, owners of property and trustees of Windjammer Realty Trust. Attorney Marinelli explained to the Board that the petitioner has already constructed four (4) second floor balconies on the buildings at the apartment complex, identified as buildings 51-49, 61-59 and 71-59. Attorney Marinelli explained that, to the best of his knowledge and research, the buildings conformed to the Braintree Zoning By-Laws at the time they were built in 1973. As evidence of conformity, he presented a letter from the Building Inspector, dated May 21, 1973, which states that the rear yard requirements conform. However, the buildings have since become pre-existing nonconforming structures, as the buildings are now located 13-15 feet from the rear lot line, which is delineated by the Weymouth Fore River.

In 2009, the applicant began construction of the balconies. Attorney Marinelli explained that the petitioner was in the process of applying for a building permit when the building materials for the balconies arrived and the contractor, who was hired to construct the balconies, proceeded to do so even though neither a building permit nor a variance had been issued. The Building Inspector issued a cease and desist order with regard to the construction of the balconies, finding that the balconies encroached into the rear yard setback. Attorney Marinelli explained that the required rear yard setback is 20 feet, but the balconies are set back 13 to 15 feet from the rear lot line. Therefore, the balconies require variances.

As grounds for the variances, Attorney Marinelli stated that the petitioner suffers a hardship due to the topography of the land and shape of the plot, noting that the lot is irregular in shape with the rear lot line defined by a changing river. Attorney Marinelli stated that the balconies are aesthetically pleasing. He also stated that there are vacancies at the apartment complex due to the downturn in the economy and that the balconies serve as an enticement to find new tenants. The applicant also presented 10 color photographs of the building and balconies.

Attorney Marinelli asked the board to legitimize the construction of the balconies by granting a variance for the rear yard setback requirement and by issuing a finding that the balconies are not substantially more detrimental to the neighborhood than the pre-existing buildings.

The Board expressed dissatisfaction that the balconies were constructed without the granting of a building permit or variance. The petitioner apologized for this. The Board inquired as to whether the petitioner had plans to construct balconies on the third floor of the building, to which the petitioner stated that she did not plan to construct more balconies. The Board expressed concern that the footings for the support poles of the balconies may be inadequate and need to be inspected by the Building Inspector. The Building Inspector advised that if the zoning relief is granted, a building permit would issue and the necessary inspections would be conducted.

The petitioner submitted a plan entitled "Building Permit, Plan of Land in Braintree, Massachusetts" dated July 30, 2010, prepared by Jim Troupes, Registered Professional Land Surveyor of Hopkinton, MA.

No one else spoke in favor of or in opposition to the petition. The Planning Board voted 5-0-0 in favor of the petition.

Findings

The Board found that the petitioner had presented a hardship based on the irregular shape of the lot, the location of the existing buildings on the lot, and the shifting lot line due to the fact that the rear lot line is defined by the Weymouth Fore River. The Board also found that the balconies are not substantially more detrimental to the neighborhood than the existing buildings. The Board also found that the requested relief 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 made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

NEW BUSINESS:

- 2) **Petition Number 10-32**
Steven Fishman, as contractor for Eric Tardif, property owner
RE: 34 Boscobel Street

Present: Steven Fishman, petitioner and contractor for the property owner
Eric Tardif, property owner

This is a petition filed by Steven Fishman of 251 Crescent Street, Brockton, MA, as contractor for Eric Tardif, owner of property at 34 Boscobel Street. The applicant is seeking relief from the Town of Braintree Zoning By-laws Article 4, Sections 135-402, 135-403, 135-407, and Article 7, Section 135-701. The applicant seeks a permit, variance and/or finding to in order to construct a 10.5 Ft. deep by 20 Ft. wide, enclosed porch attached to the rear of the home in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1027, Plot 15B and contains +/- 7,484 Sq. Ft. of land.

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 3, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition at the November hearing were Chairman Steve Karll, and members, Jack Gauthier and Jay Nuss with alternate, Michael Calder.

Evidence

Eric Tardif appeared on behalf of himself and his contractor, Steven Fishman. Mr. Tardif explained that he wished to add an enclosed porch to the rear of his property. The rear yard setback requirement in a Residence B Zoning District is 30 feet. The porch would end 29.3 feet from the rear yard lot line, thus necessitating a variance for 9 inches. Mr. Tardif explained that previously his home was extended by 6 feet and at that time a concrete slab was laid in the rear of the property. He wishes to use this concrete slab and extend it by 10 feet in order to create the enclosed porch. Mr. Tardif explained the porch will have an aluminum roof and framing, trex decking and screens. Mr. Tardif explained that the additional 10 feet of porch will make the space more useable and enjoyable. Mr. Tardif requested a variance in order to construct the screen porch. As grounds for

the variance, Mr. Tardif noted the location of the existing dwelling on the lot, making it nearly impossible to locate the porch elsewhere without encroaching into a setback.

Mr. Tardif submitted a plan entitled "Plot Plan Showing a Proposed Porch, 34 Boscobel Street, Braintree, MA" dated September 1, 2010, prepared by Don Rosa, PLS of Randolph.

No one else spoke in favor of or in opposition to the petition. The Planning Board voted 5-0-0 in favor of the petition.

Findings

The Board found that the petitioner had presented a hardship due to the undersized lot and the positioning of the house on the lot making it difficult to construct a porch elsewhere on the lot without encroaching into setbacks. The Board also found that the encroachment of 9 inches was de minimus. Further, the Board found that the requested relief 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 made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

**3) Petition Number 10-33
Michael Maggiore, as contractor for Kathleen Furness, property owner
RE: 143 Pond Street**

Present: Michael Maggiore, petitioner and contractor for the property owner

This is a petition filed by Michael Maggiore of 27 Pleasant Street, Hanson, MA, as contractor for Kathleen Furness, owner of property at 143 Pond Street. The applicant is seeking relief from the Town of Braintree Zoning By-laws Article 4, Sections 135-402, 135-403, 135-407, and Article 7, Section 135-701. The applicant seeks a permit, variance and/or finding in order to construct two full dormers on the existing second floor running in a north/south orientation in accordance with the plans of record. The property is located at 143 Pond Street, Braintree, MA in a Residence B Zoning District as shown on Assessors Plan No. 1041, Plot 21 and contains +/- 12,740 Sq. Ft. of land.

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 3, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition at the November hearing were Chairman Steve Karll, and members, Jack Gauthier and Michael Calder with alternate, Jay Nuss.

Evidence

Michael Maggiore appeared on behalf of himself and property owner, Kathleen Furness. Mr. Maggiore explained that Ms. Furness wishes to add two dormers to the existing second floor running in a north/south orientation in order to add more living space to the house. He explained that these dormers will not increase the footprint of the building. The existing dwelling on the lot is pre-existing nonconforming, as the house

encroaches into the rear and side yard setbacks. The Zoning By-law requires a rear yard setback of 30 feet, but the house is located 20.12 feet from the rear lot line. The Zoning By-law also requires a front yard setback of 20 feet, but the house is located 7.5 feet from the front lot line. The lot is also nonconforming, as it contains only 12,740 SF where the Zoning By-law requires a minimum lot size of 15,000 SF. Since the applicant seeks to alter a pre-existing nonconforming structure, a finding is required under G.L. Chapter 40A, Section 6.

Mr. Maggiore submitted a plan entitled "Proposed Addition Plan in Braintree, Mass. Owned by Margaret M. Furness" dated August 23, 2010, prepared by C.W. Garvey Co., Inc. of Whitman.

No one else spoke in favor of or in opposition to the petition. The Planning Board voted 5-0-0 in favor of the petition.

Findings

The Board found that the proposed alteration of the pre-existing nonconforming structure will not increase the footprint of the existing house and that the proposed addition of dormers to the second story of the dwelling is not substantially more detrimental to the neighborhood than the existing structure. The Board also found that the requested relief 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 made by Mr. Karll and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

- 4) Petition Number 10-34
Kenneth Curran
RE: 5 Dickerman Lane**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting a 30-day deferral regarding this appeal.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day deferral until the Zoning Board of Appeals meeting on November 23, 2010.

- 5) Petition Number 10-35
Joan and Gary Piasecki
RE: 446 Liberty Street**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting to withdraw this petition.

On a motion by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to approve the withdrawal of this petition without prejudice.

APPROVAL OF MINUTES:

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to accept the meeting minutes of September 28, 2010.

The meeting adjourned at 9:00 pm