



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

November 23, 2010

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings

Mr. Karll called the meeting to order at 7:03pm.

OLD BUSINESS:

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

Present: Kenneth Curran, petitioner;
Glen and Cindy Curran, petitioner's children.

This is a petition filed by Kenneth Curran of 5 Dickerman Lane, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicants seek a permit and/or variance to subdivide 5 Dickerman Lane into two lots, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2027, Plot 57 and containing 30,791 SF +/- 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 and continued by mutual agreement to November 23, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Jay Nuss, with alternate, Michael Calder.

Evidence

The applicant, Kenneth Curran, was represented by his children, Glen and Cindy Curran. Glen Curran explained to the board that the applicant wishes to divide his lot into two lots, one of which would contain 14,449 SF and the other lot containing 16,342 SF, as shown on a plan entitled "Approval Not Required Plan in Braintree, Massachusetts, 5 Dickerman Lane," dated June 1, 2010 and prepared by C.S. Kelley, Land Surveyors of Pembroke, MA. The new lot that would contain 14,449 SF is the site of an existing dwelling currently known as 5 Dickerman Lane. Since the minimum lot size for a Residence B Zoning District is 15,000 SF, a variance is required. In addition, the newly created lot for the existing dwelling would lack the required minimum lot width of 100 feet, and therefore, another variance is required.

Members of the Board expressed reluctance and a long-standing policy against creating undersized lots, particularly in this case where the applicant has sufficient area to create two 15,000 SF lots. The Board questioned why the new lot for 5 Dickerman Lane, identified as Lot LC D3 on the plan, could not be enlarged to contain 15,000 SF. The Board also noted the irregular shape of the newly created lots, commonly referred to as "pork chop" lots, and again expressed reluctance on the part of the Board to endorse such irregularly shaped lots. The applicant's representative explained that the land surveyor had met with the Town's Principal Planner, and due to existing structures on the lot, it was not possible to configure both lots to meet the minimum lot size. The Board again questioned the "pork chop" tail at the back of Lot LC D3 and asked the applicant if more area could be taken from Lot LC D3A to square off both lots and to achieve the 15,000 SF minimum lot size. The Board reiterated their hesitance to create undersized lots, particularly ones with an irregular configuration, and one member requested that the matter be continued to allow a site visit to explore the ability to create two lots containing 15,000 SF each. The applicant's representative agreed to continue the matter to November 23, 2010 to allow a site visit and to explore alternate configuration of the lots.

Sally Ducach, a direct abutter on the westerly side of the lot, questioned the location of a driveway for the newly created lot and whether the driveway would cause water runoff on to her property. The Board advised that water runoff would be addressed through grading and a building permit issued by the Town. No one else spoke in favor of or opposition to this petition at the November 3, 2010 hearing. The Planning Board submitted a favorable recommendation on this petition.

At the continued hearing held on November 23, 2010, the applicant noted that member, Jack Gauthier, visited the site and made some suggestions for a plan that would likely be more acceptable to the Board. The applicant submitted a revised plan entitled "Approval Not Required Plan in Braintree, Massachusetts, 5 Dickerman Lane," dated November 19, 2010, prepared by C. S. Kelley, Land Surveyors of Pembroke, MA. The revised plan shows two lots, conforming as to lot size, with Lot LC D3 containing 15,015 SF and Lot LC D3A containing 15,777 SF. Lot LC D3 has also been reconfigured by removing the "pork chop" tail shown on the prior plan. With the revised plan, the only variance required is from the minimum lot width for Lot LC D3, as the proposed lot contains 88.5 feet of width through the middle of the house, while the Zoning By-law requires a minimum lot width of 100 feet.

As grounds for the variance, the applicant's representative noted the long and narrow shape of this large lot. While the lot is double the minimum lot size required for the zoning district, the rear of this lot is rendered useless because of the narrow width of the lot.

No one else spoke in favor of or opposition to the petition at the continued hearing. The Board commented that the revised plan, with two lots conforming as to lot size, was preferred over the prior plan.

Findings

The Board found that the applicant had presented a hardship based on the shape of the lot, particularly the long and narrow shape of this large lot, noting that two lots conforming to lot size could be created, but a variance

would be needed as to lot width on the front lot; otherwise, the rear of the lot is inaccessible and not usable. The Board also noted that granting an 11.5 foot variance from the minimum lot width was a de minimus departure from the 100 foot lot width requirement. 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. Gauthier and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plan presented.

NEW BUSINESS:

- 2) **Petition Number 10-36**
Joan and Gary Piasecki
RE: 446 Liberty Street

Present: Joan Piasecki, petitioner;
Jean Clegget, sister of petitioner

This is a petition filed by Joan and Gary Piasecki of 446 Liberty Street, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicants seek a permit and/or variance to legalize an existing pool, to legalize an existing back deck, to add an 8 ft. x 30 ft. front porch, and to add a pool deck, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3033, Plot 4 and contains 7,540 SF +/- 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 23, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Michael Calder, with alternate, Jay Nuss.

Evidence

The applicant, Joan Piasecki, explained to the Board that they are seeking permission to construct a front porch to the existing dwelling, and in the course of applying for a building permit for the front porch, the applicant was made aware of existing zoning violations relative to the pool and back deck. The applicant's existing dwelling and lot are both pre-existing nonconforming. The lot is undersized, containing only 7,540 SF of land, while the Zoning By-law requires a minimum lot size of 15,000 SF, and the lot lacks the 100 foot minimum lot width, as it offers only 70 feet of width. The existing structures on the lot are also nonconforming as noted below.

The applicant admitted that they installed a pool and back deck without obtaining building permits. The applicant explained that the pool was installed in the more level area of the back yard, and as currently situated, the pool is located 9 feet from the side yard setback and 3 feet from the rear yard setback, while the Zoning By-law requires a minimum setback of 10 feet for each lot line; therefore, variances are required to legalize the pool setbacks. The applicant explained that the pool was not located in the opposite corner of the yard because of

the sole existing tree in this section of the backyard. The Building Inspector confirmed that his department has inspected the pool, and due to the topography of the yard, he confirmed that the pool was located in the only viable section of the back yard.

With respect to the back deck, the applicant estimated that the deck was built approximately 10 years ago. The deck spans the full width of the house, measuring over 50 feet, and encroaches into the rear yard lot line, as the deck is located 23 feet off the rear yard lot line, while the Zoning By-law requires a minimum rear yard setback of 30 feet, and therefore, a variance is required to legalize the back deck.

The applicant also seeks permission to construct a farmer's porch to the front of the house, which would measure 8 feet by 30.8 feet and span the front of the dwelling. However, the front porch will encroach into the front yard setback, as the porch would be located 16.8 feet from the front yard lot line, while the Zoning By-law requires a setback of 20 feet, and therefore, a variance is required. The Planning Board recommended that the porch be reduced to 6 feet to minimize the zoning relief required. The applicant noted that her neighbor's house, located on a lot of a similar size, has a farmer's porch measuring 8 feet wide, and stated that a similarly sized porch could be added to her house without detriment to the neighborhood.

With respect to the pool deck, the Board noted that the proposed deck would provide no setback from existing lot lines, as the deck would be constructed right up to the lot lines. The Board indicated that they would not approve a variance for the construction of a structure offering no setback.

As grounds for the variances required, the applicant noted the sloping topography of the lot, making it difficult to locate the pool elsewhere on the lot. The applicant also noted the irregular shape of the lot, and indicated the lot is not square but has angled lot lines. The applicant also stated that the pre-existing nonconforming structures on the undersized lot render it impossible to locate these structures elsewhere on the lot in conformance with the Zoning By-laws.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted a recommendation in favor of the existing pool and back deck encroachments, in opposition to the pool decking, and in favor of the farmer's porch with the condition that the porch be reduced to 6 feet in width.

The applicant submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 446 Liberty Street," dated October 19, 2010, prepared by C.S. Kelley, Land Surveyors of Pembroke, MA. The applicant also submitted color photos of the back yard from different views, along with a petition, signed by seven abutters, all of whom support the relief requested.

Findings

While the Board admonished the applicant for installing a pool and back deck without obtaining building permits, the Board found that the applicant had demonstrated a hardship based on the irregular rhomboidal shape of the lot and the sloping topography of the lot, making it difficult to place the pool and back deck elsewhere on the lot in conformance with the zoning by-laws. The Board also found that the relief from the front yard setback could be granted for the farmer's porch without substantial detriment to the existing neighborhood, as the porch would only encroach 3.2 feet into the front yard lot. 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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented, with respect to legalizing the existing pool, legalizing the existing back deck, and approving the construction of a farmer's porch, but denying the request to construct the pool deck.

**3) Petition Number 10-37
John M. Caruso, Jr.
RE: 108 Middle Street**

Present: John M. Caruso, Jr., petitioner

This is a petition filed by John M. Caruso, Jr. of 108 Middle Street, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407 and 701. The applicant seeks a permit and/or variance to construct two decks to the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2003, Plot 9 and contains 12,818 SF +/- 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 23, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, Jack Gauthier and Jay Nuss, with alternate, Michael Calder.

Evidence

The applicant, representing himself, explained to the Board that he is seeking permission to construct two decks. The applicant's lot is pre-existing nonconforming as to size, offering only 12,818 SF, while the Zoning By-law requires a minimum lot size of 15,000 SF. The existing dwelling is also pre-existing nonconforming, as the house is located 14.4 feet off the front yard lot line, while the Zoning By-law requires a setback of 20 feet. The existing structure is also pre-existing nonconforming as to the rear yard setback, offering a setback of 7.8 feet, while the Zoning By-law requires a setback of 30 feet. One deck will be located on the northerly side of the property and measures 10 ft. x 10 ft. At its closest point, this deck is located 28 feet from the rear lot line, while the Zoning By-law requires a setback of 30 feet from the rear lot line; therefore, a variance is required. However, the existing structure encroaches 7.8 feet from the rear lot line. The second deck measures 20 ft. x 18 ft. at its largest point and will be connected to existing decks on the southerly side of the dwelling. This second deck will be located 7.8 feet off the rear lot line, which is consistent with the existing encroachment; therefore, a finding under Chapter 40A, Section 6 is required for the second deck.

The Board questioned whether this house was a legal two-family use. A lengthy discussion ensued as to the history of this house. The applicant represented that he purchased the structure as a two-family use, and an abutter, Steve Pugsley of 8 Wilson Avenue, confirmed that a prior owner converted the house to a two-family use.

As grounds for the variance, the applicant noted the existing location of the structure on the lot, making it difficult to locate the deck elsewhere. The deck requiring the variance, on the northerly side of the house, will fill in an existing notch in the structure, but this proposed deck encroaches far less than the existing structure, which is located 7.8 feet off the rear lot line.

The applicant submitted a plan entitled "Plan Showing Proposed Deck in Braintree, MA," dated October 21, 2010, prepared by Hoyt Land Surveying of Weymouth, MA.

Steve Pugsley of 8 Wilson Avenue and John Alessi of 15 Wilson Avenue, abutters, spoke in favor of the petition. No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0-0 in favor of the requested relief.

Findings

The Board found that while the proposed decks encroach into the rear yard setback, the proposed decks will not encroach any further than the existing structure. The Board also found that the proposed decks would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. The Board also found that the applicant had presented a hardship due to the shape of the lot and the location of the existing structure on the lot. 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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

- 4) Petition Number 10-38
Thichthien Hue
RE: 155 Quincy Avenue**

Present: Diane P. Evers, architect with D.P. Evers Architecture

Based in the recommendation of Chairman Karll, the Board voted on a motion made by Mr. Calder and seconded by Mr. Gauthier, to approve a 30-day extension until the Zoning Board of Appeals meeting on December 28, 2010.

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. Nuss, the Board voted unanimously to accept the meeting minutes of November 3, 2010.

The meeting adjourned at 8:28 pm