



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

February 3, 2011

IN ATTENDANCE: Stephen Karll, Chairman
Jack Gauthier, Member
Jay Nuss, Member

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Marybeth McGrath, Director-Department of Municipal Licenses & Inspections
Melissa Santucci, Principal Planner
Carolyn Murray, Town Solicitor

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

OLD BUSINESS:

- 1) Petition Number 10-41**
Eugene Caruso
RE: 282 Middle Street

Present: Eugene Caruso, petitioner

This is a petition filed by Eugene Caruso of 282 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, and 701. The applicant seeks a permit and/or variance to construct a full third story on an 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. 2011, Plot 2 and contains 5,710 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 scheduled before the Zoning Board of Appeals on January 25, 2011, but due to a lack of a quorum, the hearing was rescheduled to February 3, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jack Gauthier and Jay Nuss.

Evidence

The applicant, representing himself, explained to the Board that he is seeking permission to construct a full third story within the existing dwelling's footprint to provide two additional bedrooms and a bathroom. The applicant's existing dwelling and lot are both pre-existing nonconforming. The lot is undersized, containing only 5,710 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 50+/- feet of width. The existing dwelling on the lot is also nonconforming. The existing house encroaches into the front yard setback, offering a setback of only 11.3 feet while the Zoning By-law requires a minimum setback of 20 feet. In addition, the existing house encroaches into the side yard setback, as the house is located 1.7 feet from the side lot line, while the Zoning By-law requires a side yard setback of 10 feet. The current house is a two-story structure. The third floor addition will be located within the existing footprint of the dwelling and will not exceed the 35 ft. height limit. The proposed addition will not create any new nonconformities, and therefore a finding under G.L. Chapter 40A, Section 6 is required.

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

The applicant submitted a plan entitled "Plan of Land, Braintree, MA," dated October 26, 2010, prepared by C.S. Kelley, PLS of Pembroke, MA, along with revised drawings depicting the interior and exterior features of the addition.

Findings

The Board found that proposed alteration of the pre-existing nonconforming dwelling within the existing setbacks would not create any new nonconformities under the Zoning By-law. The Board also found that granting the relief requested would not be substantially more detrimental to the neighborhood than the existing structure. 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 11-01

Tony D. Tran

RE: 51 Somerville Avenue

Present: Tony D. Tran, petitioner

Mr. Karll advised the Board that the petitioner is 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 continuance until the Zoning Board of Appeals meeting on March 22, 2011.

3) Petition Number 11-02

Roger Aiello, Trustee of Roger E. Aiello Revocable Trust

RE: 531-533 Pond Street

Present: Roger Aiello, petitioner
Darlene Aiello, wife of petitioner
David A. Kellem, Kellem & Kellem, LLP, attorney representing petitioner
Jeffrey Tocchio, attorney representing RMT Braintree, LLC, McCourt Construction

Mr. Kellem presented the Board with a summary of his client's position relative to the requested zoning enforcement action.

Mr. Tocchio presented the Board with a brief rebuttal of the summary provided by Mr. Kellem.

Mr. Forsberg, the Inspector of Buildings advised the Board that the department's response letter to Mr. Kellem dated November 16, 2010 clearly outlines the department's position regarding this matter.

Mr. Karll advised that the Board has not had the opportunity to review all of the materials regarding this petition, and felt that was necessary before any decision was rendered.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to continue this case until the Zoning Board of Appeals meeting on March 22, 2011.

4) Petition Number 11-03
Kathleen Carroll
RE: 21 Judson Street

Present: Kathleen Carroll, petitioner
John Frazier, resident of 21 Judson Street accompanying petitioner

This is a petition filed by Kathleen Carroll of 21 Judson 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, and 701. The applicant seeks a permit and/or variance to remove an existing garage and to construct a new garage with a larger footprint, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2036, Plot 45 and contains 5,250 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 scheduled before the Zoning Board of Appeals on January 25, 2011, but due to a lack of a quorum, the hearing was rescheduled to February 3, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, Jack Gauthier and Jay Nuss.

Evidence

The applicant, Kathleen Carroll, appeared with John Frazier, who also lives at the address. They explained to the Board that they are seeking permission to demolish an existing 18 ft. x 10 ft. garage, which is currently a pre-existing nonconforming structure, as it is located 2.3 feet off the rear yard lot line and 3.7 feet off the side yard lot line. The Zoning By-law, Section 135-701 Note (4) requires a setback of 5 feet off each lot line for a detached garage. The applicant proposes to build a new garage measuring 22 ft. x 14 ft. in the same location with the same setbacks as the existing garage. The applicants' existing dwelling and lot are both pre-existing nonconforming. The lot is undersized, containing only 5,250 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 lot is also nonconforming as to lot depth, offering only 75 feet of depth, whereas the Zoning By-law requires a minimum lot depth of 100 feet.

The existing structures on the lot are also nonconforming. As noted above, the existing garage encroaches into the side and rear yard setbacks. The existing house encroaches into the front yard setback, offering a setback of only 18.9 feet while the Zoning By-law requires a minimum setback of 20 feet. In addition, the existing house encroaches into the rear yard setback, as the house is located 18 feet from the rear lot line, while the Zoning By-law requires a rear yard setback of 30 feet.

When the applicants presented their petition to the Planning Board, they indicated that they would be willing to move the proposed garage 5 feet off the rear and side yard setbacks, and based on this representation, the Planning Board concluded that no relief was required under the Zoning By-laws because the detached garage would conform to setback requirements. However, at the Zoning Board of Appeals hearing, the applicants expressed their desire to locate the new garage in the same location as the existing garage, as stated in their petition. The proposed garage will not conform to the Zoning By-laws but will not create any new nonconformities, and therefore a finding under G.L. Chapter 40A, Section 6 is required. The applicants explained that the existing garage is too small to house a single car, so they would like to enlarge the garage to store a car and other items. The Zoning Board noted that if the applicants were demolishing the existing garage, including the footings and foundation, they should be able to locate the new garage 5 feet off the rear and side yard lot lines, in conformance with the Zoning By-law. The applicants stated they would prefer to keep the garage in its present location, as the lot is small and moving the garage 5 feet off each lot line would bring the garage within approximately 5 feet of the house. The applicants represented that their neighbors to the side and rear of their property have no objection to the location of the garage.

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

The applicant submitted a plan entitled "Plan of Land, 21 Judson Road, Braintree, MA," dated October 27, 2010, prepared by Hoyt Land Surveying of Weymouth, MA.

Findings

The Board found that proposed alteration of the pre-existing nonconforming garage within the existing setbacks would not create any new nonconformities under the Zoning By-law; however, the Board also found that, since the applicant was removing the existing foundation and footings, the applicants could make the new garage more conforming. The Board also found that granting the relief requested would not be substantially more detrimental to the neighborhood than the existing structure. 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 relative to the location of the garage from the rear lot line, but subject to the condition that the new garage be located 5 feet off the left side lot line, in accordance with the plan presented.

- 5) Petition Number 11-04**
Dennis Malloy
RE: 20 Judson Street

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 continuance until the Zoning Board of Appeals meeting on March 22, 2011.

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 December 28, 2010.

The meeting adjourned at 9:22 pm