



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

April 26, 2011

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings

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

NEW BUSINESS:

- 1) **Petition Number 11-17**
David LaLama of RDD Development, LLC
RE: 268 Quincy Avenue

Present: David LaLama, representative of RDD Development, LLC

This is a petition filed by David LaLama of RDD Development, LLC of 268 Quincy Avenue, 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, 701 and 806 to use an existing office as an apartment on the same lot as an existing single family house. The applicant seeks a permit and/or variance or finding that the proposed alteration is not substantially more detrimental to the neighborhood, all in accordance with the plans of record. The property is located in a General Business Zoning District as shown on Assessors Plan No. 3051, Plot 16 and contains 8,220 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 April 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Jay Nuss, with no alternate.

Evidence

David LaLama, a representative of RDD Development, LLC explained that the petitioner is seeking authorization to use two existing buildings on the same property for residential purposes. Currently, one building on the site is used for residential purposes, and the garage to the rear has been used for office space. The applicant now seeks to convert the garage office space to a two-bedroom residential unit. Because the residential units are not located within one building, this application cannot be considered a two-family dwelling. Rather, the proposal, if allowed, would become a multifamily development, subject to the provisions of Section 135-705 of the Zoning By-laws. According to Section 135-705 of the Zoning By-laws, the minimum lot area for a multifamily is one acre; here, the applicant's lot contains 8,220 SF. Section 135-705 also requires a minimum land area of 6,000 SF per two bedroom unit; here, the applicant proposes 4,110 SF of area for each unit. Section 135-705 requires 100 feet of minimum frontage; here, the lot offers only 85 feet of frontage. Section 135-705 also requires 2,000 SF of open space per unit; the applicant has not delineated the open space per unit. Accordingly, the applicant's proposal requires multiple variances. In addition, the lot and structures on the site are pre-existing nonconforming, and therefore a finding pursuant to G.L. Chapter 40A, Section 6 is also required.

As grounds for the variance, the applicant explained that this is an economic decision, as the owners have been unable to rent the office space. With respect to the Section 6 finding, the applicant noted that converting the office use to residential use will have a less detrimental impact on the neighborhood in terms of traffic and parking on the site.

The petitioner submitted a plan entitled "Plot Plan, 268 Quincy Avenue, Land in Braintree, Mass.," dated February 14, 2011, prepared by Claudio Sala, PLS, of Quincy, MA. The petitioner also submitted eight color photos of the site as it presently exists, along with two sketches depicting the internal layout of the proposed residential unit.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the applicant had failed to present a hardship based on shape, soil or topography to support the requested variances, as required under G.L. Chapter 40A. Further, the Board found that the land area was not adequate to support two residential units. Finally, the Board found that the requested relief could not 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

A motion was made by Mr. Gauthier and seconded by Mr. Karll to deny the requested relief. By a vote of 2 opposed and 1 in favor, the requested relief was denied.

2) Petition Number 11-18 Robert and Michelle Tricarico RE: 56 Cotton Avenue

Present: Robert and Michelle Tricarico, petitioners

This is a petition filed by Robert and Michelle Tricarico of 56 Cotton Avenue, Braintree, MA, regarding the same property, in which the applicants are 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 construct a farmer's porch, mud room, and deck 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. 3053, Plot 82 and contains 6,446 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 April 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Michael Calder, with alternate, Jay Nuss.

Evidence

Robert and Michelle Tricarico, the property owners, presented this petition to the Board, explaining that they propose to construct a 14 ft. x 11 ft. farmer's porch, to demolish an existing mudroom and replace it with a 14 ft. x 11 ft. mud room to the northerly side of the existing dwelling, and to construct a 13.5 ft. x 14 ft. deck to be attached behind the mud room to the rear of the existing dwelling. The three structures are all aligned on the northerly side of the lot and will encroach into the side yard setback. At its closest point, the addition will be 4.2 feet off the side lot line, and at its farthest point, the addition will be located 8.8 feet off the side lot line. The Zoning By-law requires a side yard setback of 10 feet, and therefore, a variance is required.

The applicant's lot is nonconforming. The Residence B Zoning District requires a minimum lot size of 15,000 SF, but this lot contains only 6,446 SF. The lot also lacks the required 100 feet of width, as the lot offers only 68.5 feet of width. Nonetheless, the existing structure on the lot complies with all setback requirements.

The applicant previously applied for a variance in 2004 to construct a farmer's porch on the front of the dwelling, a smaller farmer's porch on the side of the dwelling, and a kitchen addition to the rear of the dwelling. The Board granted the variance allowing the addition to be located 8.8 feet off the side yard lot line, where a side yard setback of 10 feet was required. However, the only structure constructed pursuant to that variance was the front farmer's porch.

As grounds for the variance, the applicant noted the irregular shape of the lot with the angled lot line on the northerly side of the property where the additions are proposed to be located. The applicant also explained that the interior layout of the house does not lend itself to locate the addition elsewhere.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts," dated November 29, 2010, prepared by C.S. Kelley Land Surveyors of Pembroke. The applicant also submitted five color photos depicted the house and yard.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 to recommend unfavorable action on the requested relief and suggested that the applicant revert back to the relief requested in 2004.

Findings

The Board found that the applicant had presented a hardship based on the irregular shape of the lot, and in particular the angled lot line on the same side of the property where the addition is proposed. 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. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

3) Petition Number 11-19

William Forte, on behalf of the property owner, John Kenny

RE: 15 Harrison Avenue

Present: John Kenny, property owner

This is a petition filed by William Forte on behalf of the property owner, John Kenny, of 15 Harrison Avenue, 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 applicant seeks a permit and/or variance to construct a deck to the rear of the property, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2015, Plot 37 and contains 7,500 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 April 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Michael Calder, with alternate, Jay Nuss.

Evidence

John Kenny, the property owner, presented this petition to the Board, explaining that he proposes to construct a 12 ft. x 16 ft. deck to be attached to the rear of the existing dwelling. The deck will encroach into the rear yard setback. The deck is proposed to be located 25.6 feet from the rear lot line, while the Zoning By-law requires a rear yard setback of 30 feet. Therefore, a variance is required.

The applicant's lot is nonconforming. The Residence B Zoning District requires a minimum lot size of 15,000 SF, but this lot contains only 7,500 SF. The lot also lacks the required 100 feet of width, as the lot offers only 75 feet of width. Nonetheless, the existing structure on the lot complies with all setback requirements.

As grounds for the variance, the applicant noting the sloped topography of the land and explained that the slope towards the back of the house would require him to build a retaining wall if the deck were located elsewhere on the lot. The applicant also noted that there is no place on the lot where a deck could be constructed that would conform to the Zoning By-law requirements.

The petitioner submitted a plan entitled "Plot Plan of Land, Kenny Residence, 15 Harrison Avenue, Braintree, Massachusetts," dated March 11, 2011, prepared by Hoyt Land Surveying of Weymouth.

District Councilor Hank Joyce spoke in favor of the petition, stating that the proposed deck would not be too intrusive. Dorothy MacDonald of 19 Harrison Avenue and Paula Caruso of 3 Harrison Avenue submitted letters in support of the petition. No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the applicant had presented a hardship based on the sloping topography of the lot and the positioning of the existing structure on the lot, making it difficult to construct a deck without encroaching into setbacks. Finally, 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 11-20

William Hillman

RE: 47 Dobson Road

Present: William Hillman, petitioner

This is a petition filed by William Hillman of 47 Dobson Road, 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 applicant seeks a permit and/or variance to construct a second story addition over an existing first story, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3058, Plot 21 and contains 5,350 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 April 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Jay Nuss, with alternate, Michael Calder.

Evidence

The property owner, representing himself, presented this petition to the Board, explaining that he proposes to construct a full second story over the existing first story of a bungalow style dwelling. The existing lot and dwelling are pre-existing nonconforming. The lot lacks the 15,000 SF lot size required in a Residence B Zoning District, as the lot contains only 5,368 SF of land. The lot also lacks the required 100 feet of lot width, as the lot is only 50 feet wide. The existing dwelling encroaches into the front yard setback, as the house is located 17.7 feet off the front yard lot line, while the Zoning By-law requires a setback of 20 feet. In addition, the existing dwelling encroaches into the side yard setback, as the dwelling is located 9.4 feet off the westerly side line, while the Zoning By-law requires a side yard setback of 10 feet. The proposed addition will not create any new nonconformities, so therefore a finding is required pursuant to G.L. chapter 40A, Section 6.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts," dated September 20, 2010, prepared by C.S. Kelley Land Surveyors of Pembroke.

Derek Small of 51 Dobson Road spoke in favor of the petition. No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the proposed alteration to the pre-existing nonconforming structure, which would maintain the current footprint and not create any new nonconformities, would not be substantially more detrimental to the neighborhood than the existing dwelling. 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 by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Petition Number 11-21

Nicole Handricken, Sign Design on behalf of Dave & Busters of Massachusetts

RE: 250 Granite Street

Mr. Karll advised the Board that the petitioner is requesting a 90-day deferral regarding this appeal.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to approve a 90-day continuance until the Zoning Board of Appeals meeting on August 23, 2011.

APPROVAL OF MINUTES:

On a motion made by Mr. Calder and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of March 22, 2011.

OTHER BUSINESS:

- Mr. Forsberg submitted to the Board members, a proposed amended appeal application and instructions, including a zoning computation form and letter of rejection that would be prepared by the Building Division for the denial of the building permit application.

The Board reviewed the proposed application and instructions. The Board voted unanimously to approve the amended appeal application and instructions, inclusive of a required zoning computation form and letter of rejection to be prepared by the Building Division.

- Mr. Forsberg advised the Board members that as per Ms. Murray, the Town Solicitor, an appeal has been filed by Roger Aiello to the Board's decision to uphold the actions of the Building Inspector regarding the alleged violations at 531 Pond Street.

The Board acknowledged receipt through the Office of the Town Solicitor of the filing of said appeal.

The meeting adjourned at 8:15 pm