



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

August 23, 2011

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

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Carolyn Murray, Town Solicitor

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

OLD BUSINESS:

- 1) Petition Number 11-21**
Dave & Busters of Massachusetts
RE: 250 Granite Street

Mr. Karll advised the Board that the petitioner is requesting to withdraw the appeal without prejudice.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to allow the petitioner to withdraw the appeal without prejudice.

- 2) Petition Number 11-24**
Arlene M. Powers
RE: 153 Middle Street

Present: Jack Green, Attorney representing applicant; Paul Marabito, surveyor.

Mr. Karll advised the Board that the petitioner is requesting to withdraw the appeal without prejudice.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to allow the petitioner to withdraw the appeal without prejudice.

3) Petition Number 11-28

Kathleen O'Connell

RE: 118 Park Street

Present: Kathleen and John O'Connor, petitioner and property owners

This is a petition filed by Kathleen O'Connell of 118 Park Street, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to remove a portion of the existing structure and to construct a two-story addition, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2025, Plot 14 and contains 16,060 +/- 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 July 26, 2011 at 7 p.m. but was continued to August 23, 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 Michael Calder.

Evidence

The petitioner, representing herself, appeared before the Board and explained that she is seeking permission to remove an existing portion of the rear of her dwelling and to replace that structure with a two-story addition consisting of a family room and a bedroom on the second floor. The addition measures 15 ft. x 19 ft. and will be located 21.5 feet from the rear lot line; the Zoning By-law requires a rear yard setback of 30 feet

The applicant's existing dwelling is pre-existing nonconforming. As noted above, the Zoning By-law requires a 30 foot setback from the rear lot line, and, at its closest point, the existing dwelling is located 8.5 feet from the rear lot line. Therefore, the applicant seeks a finding under G.L. Chapter 40A, Section 6 to alter the pre-existing nonconforming structure.

The petitioner submitted a plan entitled "Plan of Land in Braintree, MA," dated May 13, 2011, prepared by C.S. Kelley, Land Surveyors of Pembroke, MA.

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 the applicant's current dwelling provides a rear yard setback of 8.5 feet, and therefore, the dwelling is pre-existing nonconforming as to the rear yard setback. The Board further found that the proposed addition to the dwelling would be located 21.5 feet from the rear yard lot line, and therefore, the Board concluded that the proposed alteration to the existing would not be substantially more detrimental to the neighborhood than the existing dwelling. 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

NEW BUSINESS:

**4) Petition Number 11-38
Lien Quach and Hank Duong
RE: 381 Granite Street**

Present: Hank Duong, petitioner

This is a petition filed by Lien Quach and Hank Duong of 381 Granite Street, Braintree, MA regarding the same property. The applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to build a sunroom on the rear of an existing dwelling, all in accordance with the plans of record. The property is located in a Residence A and B Zoning District as shown on Assessors Plan No. 2042, Plot 6F and contains 30,245 +/- 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 August 23, 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, with alternate, Michael Calder.

Evidence

Hank Duong, representing himself, appeared before the Board and explained that he is seeking permission to construct a 13-14 feet x 16.3 feet sunroom on the rear of his existing dwelling. The sunroom will encroach into the rear yard setback, as it is proposed to be located 20 – 20.5 feet off the rear lot line. The Zoning By-law requires a 30 foot rear yard setback for both a Residence A and B Zoning Districts, and therefore, a variance is required.

As grounds for a hardship, the applicant noted the irregular, “pork chop” shape of his lot, making it difficult to construct a compliant sunroom.

The petitioner submitted a plan entitled “As Built Plan, No. 381 Granite Street, Braintree, MA,” dated June 28, 2011, prepared by Don Rosa, PLS of Randolph, MA. The petitioner also submitted two color photos of the rear of his house, where the sunroom is proposed to be located.

The petitioner submitted letters in support of his request from Gary Clifford of 375 Granite Street and from Renato Notaro of 385 Granite Street. Sue Verney of Granite Park claims that she is a direct abutter to this property, but was not notified. Ms. Verney lives next door to Carole Skellett of 78 Blossom Road, whose property is directly behind the petitioner’s. Ms. Verney is concerned about maintaining her property value, the view of the petitioner’s house from her lot, and setting a precedent for other non-complying structures in the Granite Park neighborhood. The Chairman confirmed that she is not listed on the abutter’s list, but noted that she had constructive notice of this petition by virtue of her appearance at and participation in the hearing.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 in favor of the requested relief.

Findings

The Board found that the applicant had demonstrated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the applicant's lot was irregularly shaped like a "pork chop", making it difficult to construct compliant structures on the lot, and therefore, a variance was warranted. 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 and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

5) Petition Number 11-39
Tony DePalma
RE: 451 Quincy Avenue

Present: Tony DePalma, petitioner

After a presentation of the petition and listening to the concerns of abutting property owners, Mr. Karll recommended that the petitioner defer his case until September 27, 2011, in order for him to confer with his neighbors about landscape and screenings to limit the additions affects on their property.

Mr. DePalma agreed to the recommended deferral of the petition.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to continue the hearing until the Zoning Board of Appeals meeting on September 27, 2011.

6) Petition Number 11-40
Messina Commercial Properties, LLC
RE: 326 West Street

Present: Attorney Carl Johnson and Attorney Ron Marshall representing the petitioner

This is a petition filed by Messina Commercial Properties, LLC of 400 Franklin Street, Braintree, MA regarding the property located at 326 West Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to allow a lot, recently reconfigured via an Approval Under the Subdivision Control Law Not Required Plan, to maintain insufficient lot width, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2047, Plot 11C and contains 21,381 +/- 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 August 23, 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 Michael Calder.

Evidence

The petitioner was represented by Attorney Carl Johnson and Ronald Marshall, General Counsel for Messina Enterprises. Attorney Johnson advised the Board that the site of the former Jimbo’s Restaurant, located at Five Corners at the easterly intersection of Franklin and West Streets, is undergoing redevelopment. Much of the former restaurant site will become the location for a new TD Bank branch office, which recently obtained a Special Permit from the Planning Board. In conjunction with the TD Bank application, the property owner, Messina Commercial Properties, LLC, filed an Approval Under the Subdivision Control Law Not Required Plan (“ANR Plan”) with the Planning Board, which was also approved in the Fall of 2010. This ANR Plan reconfigured the proposed site for TD Bank along with an adjoining residential property, also owned by Messina Commercial Properties, LLC, known as 326 West Street (the “Lot”), which is the subject of this petition.

Attorney Johnson explained that 326 West Street is residentially zoned property which abutted the former restaurant site in the rear, and a portion of this residentially zoned lot had been used to support the restaurant use. In fact, prior to the filing of the ANR Plan, a portion of the Lot had frontage and access off of Franklin Street. As a result of the ANR Plan, the newly configured Lot no longer has frontage or access off of Franklin Street, as that portion of the Lot has now been joined with the lot on which the new TD Bank facility will be built. The ANR Plan also altered the Lot’s frontage on West Street, expanding it from 20 feet to the required 50 feet of frontage. Because of its reconfiguration under the ANR Plan, the lot lacks the required minimum width of 40 feet between the West Street line and the structure, and therefore, a finding and/or a variance under G.L. Chapter 40A, Section 6 is required.

Attorney Johnson provided background on the history and use of this lot. In 1986, a building permit was issued to construct a residential dwelling on the lot. Thereafter, in 1994, the Zoning By-law was amended by adding Note 2 to Section 135-701 as follows:

At no point shall lot width between the street line and the principal building be less than 40% of the minimum required lot width. No portion of a principal building shall be located on a portion of a lot where the lot width is less than the minimum lot width, and said minimum lot width shall be maintained to a point 20 feet beyond the rear portion of the principal building.

At the time the house was constructed in 1986, there was no by-law requirement relative to the width of the lot between the street line and the principal building; therefore, when the above-referenced by-law was adopted in 1994, the lot became nonconforming. The minimum lot width for a lot in a Residence B Zoning District is 100 feet; accordingly 40 feet of lot width is required between the street line and the dwelling. When the house was constructed on this lot in 1986, the Lot had over 80 feet of lot width between the Franklin Street line and the dwelling and 20 feet of width between the West Street line and the dwelling. Following the approval of the ANR Plan, this Lot no longer has frontage on the Franklin Street side, but the lot still has 20 feet of lot width between the West Street line and the principal building. To the extent that the reconfigured lot maintains the 20 feet of lot width between the West Street line and the principal building but the alteration of the lot possibly intensifies the nonconformity of the Lot, the applicant seeks a finding pursuant to G.L. Chapter 40A, Section 6.

In support of this finding, Attorney Johnson reiterated that the 20 feet of lot width from the West Street side of the property to the principal building has existed since 1986, and the ANR Plan maintains this 20 feet of width. The newly configured Lot is compliant in all other respects.

In addition, the Inspector of Buildings, Russell Forsberg, suggested to the Board that a variance from the lot width requirement of Section 135-701 Note 2 was required due to the loss of frontage, and therefore lot width, off the Franklin Street line. To the extent that a variance is required, Attorney Johnson noted the basis for a hardship is the shape of the lot, noting its irregular “pork chop” shape.

The petitioner submitted a plan entitled “Plan of Land, 326 & 330 West Streets, Braintree, Massachusetts,” dated July 20, 2011, prepared by James E. Patterson, RLS for Alpha Surveying and Engineering, Inc. of Middleborough, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 in favor of the requested relief.

Findings

The Board found that the applicant had demonstrated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the applicant’s lot was irregularly shaped like a “pork chop”, and therefore, a variance was warranted. The Board also found that in 1986, when a residential dwelling was constructed on the lot, there was no lot width requirement as found in Note 2 of Section 135-701; therefore, the lot became pre-existing nonconforming with the adoption of this Zoning By-law in 1994. Prior to the Planning Board’s endorsement of the ANR Plan, the lot had 20 feet of lot width between the West Street line and the principal building and over 40 feet of lot width from the Franklin Street line. With the endorsement of the ANR Plan, the Board found that the lot maintained its 20 feet of lot width from the West Street line, while losing the lot width from the Franklin Street line. The Board also found that the ANR Plan demonstrated that the lot had sufficient frontage from the West Street line. Accordingly, the Board found that the alteration of the lot pursuant to the 2010 ANR Plan was not substantially more detrimental to the neighborhood than the lot as it existed prior to the ANR Plan. 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

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 July 26, 2011.

The meeting adjourned at 8:45 pm