



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

October 23, 2012

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

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

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

NEW BUSINESS:

- 1) Petition Number 12-45**
Joseph Correia, Trustee
RE: 136 Trefton Drive

Present: Joseph Correia, petitioner and fellow Trustee, Kenneth Johnson

This is a petition filed by Joseph W. Correia, Trustee, 174 Depot Street, S. Easton, MA 02375, regarding the property located at 136 Trefton Drive in Braintree, MA, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to combine two lots into one 12,000 SF lot, to demolish an existing single-family dwelling on the lot, and to construct a new single-family dwelling on the newly configured lot, all in accordance with the plans of record. The property is located within a Residential B District as shown on Assessors' Map 3041, Plots 177 and 179, which contain a combined land area of +/- 12,000 Sq. Ft.

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 for October 23, 2012 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

Evidence

The petitioner, Joseph Correia, appeared with his partner and fellow Trustee, Kenneth Johnson. The petitioner explained that they own two adjoining lots: one lot contains 4,000 SF and the other contains 8,000 SF. A nonconforming single-family home exists on the 4,000 SF lot. The petitioners explained that the two lots have been owned by family members since 1951; the current owners purchased the two lots from the surviving family member. Since the minimum lot size for a Residence B Zoning District is 15,000 SF, both lots are nonconforming undersized lots, which have merged for purposes of zoning by virtue of their being held in common ownership. As individual lots, the lots lack the 100 ft. required lot width under the Zoning By-laws, as the separate lots offer only 80 ft. and 40 ft. of lot width. The petitioners propose to combine the two lots to create one larger, 12,000 SF lot, which is still undersized in a Residence B Zoning District. However, the small lot size is common in this area of Town. The new lot will provide 120 feet of lot width, which conforms to the Zoning By-laws.

The petitioner plans to demolish the existing nonconforming and dilapidated single-family home and to construct a new single-family home that will comply with all zoning setback requirements and will not require any variances. The existing nonconforming house violates the front yard setback, as it offers only 8.5 feet of front yard setback, while the Zoning By-law requires a 20 ft. front yard setback. The existing house also violates the side yard setback, as the house is situated 7.5 feet from the side lot line, while the Zoning By-law requires a side yard setback of 10 feet. The petitioner presented renderings of a similar house built in Bridgewater that the proposed house will resemble. Therefore, a finding under General Laws Chapter 40A, Section 6 is required.

The petitioner submitted a plan entitled "As Built Plan in Braintree, Massachusetts, 136 Trefton Drive," dated September 17, 2012, 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 to recommend favorable action on the requested relief.

Findings

The Board found that the two separate lots were nonconforming in a Residence B Zoning District and further found that the existing single-family house on the smaller lot violated the front and side yard setbacks established under the Zoning By-laws. The Board found that combining the two smaller lots into one 12,000 SF lot was consistent with the spirit and intent of the Zoning Act. The Board further found that demolishing an existing nonconforming dwelling and replacing it with a new single-family dwelling that conforms to all Zoning By-law requirements would not be substantially more detrimental to the neighborhood. 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.

2) Petition Number 12-46
Joseph and Ann Amendolare
RE: 169 Cedar Street

Mr. Karll advised the Board that the applicant has requested a 30-day extension of the petition.

On a motion made by Mr. Karll and seconded by Mr. Gauthier, the Board voted unanimously to approve a 30-day extension of the petition to be heard at the November 29, 2012 Zoning Board of Appeal meeting.

3) Petition Number 12-47

Kevin Devine

RE: 36 Winthrop Avenue

Present: Kevin Devine, petitioner

This is a petition filed by Kevin Devine of 36 Winthrop Avenue, Braintree, MA regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to construct a 19 ft. x 12 ft. deck on the rear of the dwelling, all in accordance with the plans of record. The property is located within a Residential B Watershed District as shown on Assessors' Map 1080, Plot 29B, which contains a land area of +/- 12,500 Sq. Ft.

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 for October 23, 2012 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

Evidence

The petitioner, Kevin Devine, represented himself and explained that he proposes to build a 19 ft. x 12 ft. deck to the rear of his dwelling, adjacent to an existing addition for which a variance was granted in 1982. The proposed deck will be located 19 feet from the rear lot line, which encroaches into the rear yard setback of 30 feet. However, the proposed deck will be less encroaching than the addition, which is located 18 feet off the rear lot line, and was the subject of the 1982 variance decision. Nonetheless, a variance is required for the deck's encroachment into the rear yard setback.

As grounds for the variance, the petitioner explained the current configuration of the dwelling and explained that the proposed location for the deck is the only viable location that is consistent with the interior living space. The applicant also explained that the 1982 variance permitted the addition which is 18 feet from the rear lot line, and therefore, the deck located 19 feet off the rear lot line would be a de minimus encroachment.

The petitioner submitted a plan entitled "Plan of Land, Winthrop Avenue, Braintree, Norfolk County, Mass.," dated August 8, 1982, prepared by Yunits Engineering Co., Inc., of Holbrook, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the proposed deck, located 19 feet from the rear lot line, would not be more detrimental to the neighborhood than the existing addition, which is located 18 feet from the rear lot line, pursuant to a 1982 variance decision. The Board further found that the petitioner had demonstrated a hardship based on the topography of the site and the location of the existing dwelling on the lot, making it difficult to locate a deck

elsewhere on the lot. 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 September 27, 2012.

The Board adjourned the meeting at 7:28 pm.