



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

May 21, 2013

IN ATTENDANCE: Stephen Karll, Chairman
Jack Gauthier, Member
Michael Calder, Member
Michael Ford, 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 13-8**
Paula Orinofsky
RE: 79 Town Street

Present: Paula Orinofsky, petitioner

This is a petition filed by Paula Orinofsky of 65 Town Street, Braintree, MA on behalf of the owner of record, her uncle, David Melrose, regarding the property at 79 Town Street in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135- 403, 407, and 701 to alter the property line between 79 and 65 Town Street, thereby reducing the size of the lot at 79 Town Street, all in accordance with the plans of record. The property is located in a Residential B Watershed Protection Overlay Zoning District as shown on Assessors Plan No. 1043, Plot 2 and contains 40,861 +/- SF.

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 March 19, 2013 but was continued to 7 p.m. on April 23, 2013 and May 21, 2013 before the Zoning Board of Appeals at Braintree Town Hall at 1 JFK Memorial Drive, Braintree, MA. Sitting on this petition were Chairman, Steve Karll, and members Jack Gauthier and Michael Ford.

Evidence

Paula Orinofsky, the applicant, appeared on behalf of the property owner, her uncle, who recently passed away. The applicant explained to the Board that the property at what is now 65 and 79 Town Street has been in her family for decades. Ms. Orinofsky and her sister currently own 65 Town Street, which is improved with a single family home where the applicant resides. The abutting property is 79 Town Street, which is improved with a two-family dwelling. The applicant's uncle recently passed away, and when the probate estate is settled, the property will transfer to the applicant; at the time of this appeal, however, title was still in the name of David Melrose. The applicant proposes adjusting the adjoining property line between 65 and 79 Town Street such that the lot size of 79 Town Street would be reduced by 16,071 SF, for a new lot size of 24,790 SF; the applicant proposes adding this 16,071 SF to the lot at 65 Town Street.

The lot is pre-existing, nonconforming, as it contains only 40,861 SF of land, where the Zoning By-law currently requires one acre, due to its location in the Watershed Protection District; therefore, a variance is required to further reduce the lot size. This lot also contains a pre-existing nonconforming use, a two-family house. The reduction in the lot size would also require a finding under General Laws Chapter 40 A, Section 6 that the alteration of the lot, as it impacts the pre-existing nonconforming use, is not substantially more detrimental to the neighborhood than the existing use on the currently configured lot.

As grounds for a variance, the applicant noted the irregular, angled lot line that currently divides the two lots. The adjustment of the lot line would make the lots more square and regular.

The applicant submitted a plan entitled "Plan of Land in Braintree, Mass., prepared for Paula Orinofsky," dated January 18, 2013 and revised March 13, 2013, prepared by The Russell A. Wheatley Co., Inc. of Abington, Mass.

No one else appeared in favor of or in opposition to the petition. The Inspector of Buildings noted that these two lots, while undersized for the Watershed Protection District, are among the largest parcels in the area.

The Planning Board voted 4-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the applicant had demonstrated that the lot was an undersized, pre-existing, nonconforming lot within the Watershed Protection District but also found that this lot, both before and after the proposed reduction in lot size, is still considerably larger than other lots in the neighborhood. . The Board found that the reduced lot size of 24,790 SF, while less than that required under the Zoning By-law, was consistent with or larger than other lots in this area of Town on which houses are built. The Board also found that the applicant had proven a hardship based on the irregular shape of the lots due to the angled lot line. The Board also found that the granting of the requested relief would not be substantially more detrimental to the neighborhood than the existing lot with its nonconforming two-family use. 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. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

2) Petition Number 13-9

David Lehmkuhl

RE: 35 Roc Sam Park Road

Present: Attorney Thomas Moriarty, representing the petitioner
David Lehmkuhl, petitioner
Paul Mirabito, P.E., from Ross Engineering Company, Inc.
Greg Tansey, Civil Engineer

This is a petition filed by David Lehmkuhl of 111 Paterson Avenue, Jersey City, NJ, 07097, on behalf of the owner of record, Frannmar Property of New England, regarding the property at 35 Rocsam Park Road in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135- 403, 407, and 701 to expand an existing structure by constructing three additions, all in accordance with the plans of record. The property is located in a Commercial Watershed Protection Zoning District as shown on Assessors Plan No. 1059, Plot 0-10 and contains 84,463 +/-SF.

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 on March 19, 2013 and continued to 7 p.m. on May 21, 2013 before the Zoning Board of Appeals at Braintree Town Hall at 1 JFK Memorial Drive, Braintree, MA. Sitting on this petition were Chairman, Steve Karll, and members Jack Gauthier and Michael Ford.

Evidence

Attorney Thomas Moriarty, and Paul Mirabito, P.E., from Ross Engineering Company, Inc. appeared on behalf of the applicant. Mr. Mirabito explained that the property is used by Academy Bus Lines to maintain their fleet of buses which are used to service local colleges. Mr. Mirabito explained that the buses used are longer than a typical bus and that the additions proposed are intended to accommodate the extended length of the buses. Two additions are proposed to the rear of the property, straddling either side of the existing building. One addition on the westerly side of the building measures 25 feet by 48 feet and will be used as a service and wash bay for the buses. The addition on the easterly side of the building measures 10 feet by 25 feet. The third addition is proposed for the front of the building, on the easterly side, and measures 16 feet by 47.6 feet; this addition squares off a bump-out in the existing building and will be used for office space.

The additions to the rear of the property encroach into the rear yard setback, as the proposed additions are located between 0.5 feet and 1.9 feet from the rear lot line. The Zoning By-law requires a rear yard setback of 35 feet for this Zoning District, and therefore, a variance is required for the two rear additions. The existing building also encroaches into the rear yard setback, as it is located .1 feet from the rear lot line at its closest point. No proof of a prior variance was presented for the existing structure.

The site is also nonconforming as to maximum lot coverage and minimum open space. The Zoning By-law limits lot coverage to 60% but 70.75% is proposed with these additions. The Zoning By-law also requires 40% open space, whereas this site presents virtually no open space, except for some gravel areas. The applicant complies with the 20 parking spaces needed to accommodate the total office space.

As grounds for a variance, Mr. Mirabito explained that the current configuration of the building on the site does not accommodate the extended length of the buses. Noting that the proposed rear additions encroach into the rear yard setback, Mr. Mirabito asserted that the proposed additions will not encroach further than the existing

structures. No explanation was provided as to any prior zoning relief for this setback. Mr. Mirabito also explained the internal configuration of the building with respect to the location of current service and wash bays making it difficult or impractical to locate the additions elsewhere.

In response to questions from the Board, Mr. Mirabito stated that an oil and grease separator would be installed and that there would be no water discharge impact on abutters. The Planning Board report noted drainage and pervious pavement improvements that will further the goals of the Watershed Protection Overlay District, which will be addressed through a Special Permit Site Plan review application before the Planning Board.

The applicant submitted plans entitled "Site Plan Franmar Properties of New England at 35 Rocsam Park Drive, in Braintree, Massachusetts," prepared by Ross Engineering Company, Inc. of Norwell dated February 1, 2013, with sheets entitled "Plot Plan," revised March 12, 2013, "Site Plan" revised March 12, 2013, and "Construction Details" revised March 12, 2013.

Todd Hamilton, owner of 66 and 77 Rocsam Park Road spoke in opposition to the petition. Mr. Hamilton stated that drainage is a problem in this area; his property flood now and new construction will, in his opinion, exacerbate the problem. Mr. Hamilton is opposed to any variances being granted in this Watershed Protection District.

The Board requested an extension in order to allow Board members to view the site and encouraged the applicant to reach out to the neighbors. Mr. Hamilton was not present at the continued hearing on May 21, 2013.

At the continued hearing on May 21, 2013, Board members indicated that had viewed the site and were satisfied. It was also stated that the Planning Board had approved an addition to this building in 2000.

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

The Planning Board voted 4-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the applicant had demonstrated a hardship unique to the site, specifically the current configuration of the structure on the site, as it currently encroaches into the rear yard setback. The Board found that the proposed additions to the rear of the building, which would also encroach into the rear yard setback were de minimus. The Board also noted the internal configuration of the building with existing wash and service bays, rendering it difficult, if not impractical, to locate the two rear additions elsewhere. 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. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

3) Petition Number 13-13

Paula Orinofsky

RE: 65 Town Street

Present: Paula Orinofsky, petitioner

This is a petition filed by Paula Orinofsky and Gail Burns of 65 Town 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 alter the property line between 79 and 65 Town Street, thereby increasing the size of the lot at 65 Town Street, all in accordance with the plans of record. The property is located in a Residential B Watershed Protection Overlay Zoning District as shown on Assessors Plan No. 1043, Plot 2 and contains 20,198 +/- SF.

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 on April 23, 2013 and May 21, 2013 at 7 p.m. before the Zoning Board of Appeals at Braintree Town Hall at 1 JFK Memorial Drive, Braintree, MA. Sitting on this petition were Chairman, Steve Karll, and members Jack Gauthier and Michael Ford.

Evidence

Paula Orinofsky, the applicant, appeared on behalf of herself and her sister, Gail Burns, as the owners of 65 Town Street. The applicant explained to the Board that the property at what is now 65 and 79 Town Street has been in her family for decades. Ms. Orinofsky and her sister currently own 65 Town Street, which is improved with a single family home where the applicant resides. The abutting property is 79 Town Street, which is improved with a two-family dwelling, and is owned by the applicant's uncle, David Melrose. Mr. Melrose recently passed away, and the applicant advised that when the probate estate is settled, the property will transfer to the applicant; at the time of this appeal, however, title was still in the name of David Melrose. The applicant proposes adjusting the adjoining property line between 65 and 79 Town Street such that the lot size of 79 Town Street would be reduced by 16,071 SF, for a new lot size of 24,790 SF; the applicant proposes adding this 16,071 SF to the lot at 65 Town Street, for a new lot size of 36,269 SF.

The lot is pre-existing, nonconforming, as it contains only 20,198 SF of land, where the Zoning By-law currently requires one acre, due to its location in the Watershed Protection District. If this petition and the petition related to 79 Town Street are approved, this lot will increase in size to 36,269 SF, but will still be an undersized lot for the Zoning District. Since the applicant is proposing to alter a pre-existing nonconforming lot by making it less nonconforming, a finding is required under General Laws Chapter 40 A, Section 6.

In support of the finding, the applicant noted that the two house lots are currently undersized and will remain undersized, although the lot at 65 Town Street will be significantly improved. The applicant also noted the irregular, angled lot line that currently divides the two lots. The adjustment of the lot line would make the lots more square and regular. The Inspector of Buildings noted that these two lots, while undersized for the Watershed Protection District, are currently and will remain among the largest parcels in the area.

The applicant submitted a plan entitled "Plan of Land in Braintree, Mass., prepared for Paula Orinofsky," dated January 18, 2013 and revised March 13, 2013, prepared by The Russell A. Wheatley Co., Inc. of Abington, Mass.

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

The Planning Board voted 4-0-0 to recommend favorable action on the requested relief.

Findings

The Board found that the applicant had demonstrated that the lot was an undersized, pre-existing, nonconforming lot within the Watershed Protection District, but also found that this lot, both before and after the proposed reduction in lot size, is still considerably larger than other lots in the neighborhood. The Board found that the petition sought to make the lot less nonconforming by adding 16,071 SF in area. The Board also found that the granting of the requested relief would not be substantially more detrimental to the neighborhood than the existing undersized 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. Gauthier and seconded by Mr. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

**4) Petition Number 13-15
Joseph Mento
RE: 53 Joseph Road**

Present: Joseph Mento, Builder and petitioner for the property owner
Jeff Leung, property owner

Following a presentation by the petitioner and discussion between the applicant and Appeals Board Members, it was recommended by Mr. Gauthier that the petition be continued until the June 25, 2013 Zoning Board of Appeal meeting, so that Appeals Board members could visit the property.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board unanimously voted to continue the petition until the June 25, 2013 Zoning Board of Appeal meeting.

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 April 23, 2013.

The Board adjourned the meeting at 7:55 pm.