



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

October 22, 2013

IN ATTENDANCE: Stephen Karll, Chairman
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.

NEW BUSINESS:

- 1) Petition Number 13-36**
David M. Litif
RE: 85 Cotton Avenue

Present: David M. Litif, petitioner/property owner

This is a petition filed by David M. Litif, owner of the property located at 85 Cotton 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 build a 12 foot by 14 foot deck on the rear of the existing dwelling, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 3052, Plot 29, which contains a land area of +/- 4,684 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 held on October 22, 2013, 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 Michael Calder and Michael Ford.

Evidence

The petitioner, representing himself, explained that he was before the Board earlier this year for relief from the side yard setback when three modest additions were constructed. (See Board decision on petition number 13-22.) Prior to that decision, zoning relief was also granted in 2001 for the construction of a second story over the existing dwelling. The petitioner explained that when he filed with the Zoning Board for the relief sought pursuant to petition number 13-22, the proposed deck was erroneously omitted from the plan. The petitioner proposes to construct a 12 foot by 14 foot deck off the rear of the existing dwelling. The deck will be located 5.9 feet from the westerly lot line, which encroaches into the minimum side yard setback of 10 feet. However, the deck will be aligned with the existing dwelling, also located 5.9 feet from the side lot line; a variance for this encroachment was granted pursuant to petition number 13-22. In addition, the proposed deck will be located 21.8 feet from the rear lot line, while the Zoning By-law requires a minimum rear yard setback of 30 feet. Therefore, a variance is required.

As grounds for the variance, the petitioner noted that the same conditions upon which the Board granted relief under petition number 13-22 apply. Specifically, the petitioner noted that the existing lot is extremely undersized, as it contains only 4,684 SF of land where the Zoning By-law requires a minimum lot size of 15,000 SF. The lot is also deficient in width, offering only 50.6 feet of width where 100 feet of width is required by the Zoning By-law. Finally, the lot is deficient as to lot depth, as the lot is only 93 feet deep, whereas the Zoning Bylaw requires 100 feet of lot depth. The existing dwelling is currently located 33.8 feet from the rear lot line, and the proposed deck will further encroach into this rear yard setback.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 85 Cotton Ave.," dated August 8, 2013, prepared by C.S. Kelley, Land Surveyors of Pembroke, MA.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the lot was extremely undersized and lacked the required depth and width, making it difficult to construct a deck that would comply with all dimensional setbacks. The Board also found that the placement of the existing dwelling on the lot restricted the location for a deck. Further, the Board found that the proposed alteration of the existing structure by the addition of a deck, although it would encroach into the side yard setback, would be in line with the existing structure for which a variance was previously granted, and therefore, the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford and seconded by Mr. Karll, it was unanimously voted to grant the requested relief, subject to the plan presented.

2) Petition Number 13-37

David Oliver, on behalf of Joseph Zanca and Tom Grace

RE: 11 Alfred Road

Present: David Oliver, representing the property owners

This is a petition filed by David Oliver of 77 Rodman Street, Quincy, MA on behalf of Joseph Zanca and Tom Grace of 33 Regis Road, Braintree, MA regarding the property located at 11 Alfred Road, 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 construct a second story addition over an existing single family dwelling, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 2088, Plot 42, which contains a land area of +/- 7,627 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 held on October 22, 2013, 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 Michael Calder and Michael Ford.

Evidence

The property owners, represented by David Oliver, explained that the existing dwelling is a ranch-style house, and the owners wish to construct a full second story addition within the existing footprint of the dwelling, including the existing one-car garage. The lot and the existing dwelling on the lot are nonconforming. The minimum lot size for a lot within the Residence B Zoning District is 15,000 SF, but this lot contains only 7,627 SF of area. The lot also lacks the 100 feet of lot depth required by the Town's Zoning By-laws, as the lot is only 80 feet deep. The house, as it presently sits on the lot, encroaches into the rear yard setback; the Zoning By-law requires a minimum rear yard setback of 30 feet while the existing house is located 23.73 from the rear lot line. Since no new encroachments will be created by the proposed addition, a finding under G.L. Chapter 40A, Section 6 is required.

As grounds for the finding, the petitioner explained that the existing dwelling is a so-called Campanelli ranch, many of which have been converted to two-story homes. The Planning Board report also referenced a number of second story additions to houses in this neighborhood. No elevation plans were submitted with this petition, although the Zoning Computation Form submitted with the application indicates that the height of the house will comply with the Zoning By-law.

The petitioner submitted a plan entitled "Plot Plan, 11 Alfred Road, Braintree, MA," dated June 27, 2103, prepared by James McGrath, Professional Land Surveyor.

By a vote of 5-0-0, the Planning Board voted to recommend favorable action on the requested relief.

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

Findings

The Board found that the proposed alteration of the existing structure by the addition of a second story, all within the existing footprint of the house, would not create any new nonconformities, and therefore, the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

3) Petition Number 13-38
Richard T. Gallagher, Jr. and Cathy Sloan-Gallagher
RE: 50 Hickory Road

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

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to approve a 30-day extension of the petition to be heard at the November 26, 2013 Zoning Board of Appeal meeting.

4) Petition Number 13-39
F.X. Messina Enterprises/Granite Plaza LLC
RE: 727 Granite Street

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

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to approve a 30-day extension of the petition to be heard at the November 26, 2013 Zoning Board of Appeal meeting.

5) Petition Number 13-40
Meridith and Keith Duffy
RE: 1486 Liberty Street

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

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to approve a 30-day extension of the petition to be heard at the November 26, 2013 Zoning Board of Appeal meeting.

6) Petition Number 13-41
Donna Brickley
RE: 17 Olofson Street

Present: Donna Brickley, petitioner/property owner

This is a petition filed by Donna Brickley, owner of the property located at 17 Olofson Street, 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 build a 14 foot by 24 foot one-car garage to be attached to the existing dwelling, all in accordance with the plans of record. The property is located within a Residential B Watershed protection Zoning District as shown on Assessors' Map 1093, Plot 14, which contains a land area of +/- 10,133 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 held on October 22, 2013, 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 Michael Calder and Michael Ford.

Evidence

The petitioner, representing herself, explained that she would like to add a one-car attached garage to the southerly side of her existing house, measuring 14 feet wide by 24 feet deep. Her lot is currently non-conforming. The Zoning By-law requires a one acre minimum lot size for this zoning district, yet this lot contains only 10,133 SF of area. The lot also lacks the required 100 feet of lot width, as the lot offers only 72.4 feet of width. The existing house sits square on the lot and currently conforms to the side yard setbacks on both sides; however, given the insufficient width of the lot, neither side provides adequate width for a garage. The proposed garage will encroach into the southerly side setback, as it will be located 8.5 feet from the side yard lot line. The Zoning By-law requires a side yard setback of 10 feet; therefore, a variance is required.

As grounds for the variance, the petitioner noted the insufficient width of the lot and the placement of the existing dwelling on the lot, such that no garage could be added to either side of the house without encroaching into a side yard setback. The Board also noted that under the Zoning By-laws a detached garage could be located 5 feet from a lot line, but an attached garage requires a 10 foot setback.

The Planning Board report suggested that the garage width be reduced to 12.5 feet, which would negate the need for a variance. In response, the petitioner explained that, according to her architect, a 12 foot wide garage is typically constructed when the garage is detached or a breezeway separates the house and the garage. In this instance, there will be no separation between the house and garage, and the extra width is needed to accommodate the change in grade between the house and garage. The petitioner also anticipates that her elderly mother will be living with her, and the extra width of the garage will facilitate access and movement from the house and garage.

Based on a suggestion that the width of the garage could be reduced so as to comply with the Zoning By-laws, the Planning Board voted 4-0-0 to recommend denial of the relief as requested.

The petitioner submitted a plan entitled "Certified Plot Showing Proposed Conditions at 17 Olofson Street, Braintree, MA," dated September 18, 2013, prepared by Boston Survey, Inc. of Charlestown, MA. The petitioner also submitted a set of permit plans depicting the garage at various elevations. Further, a petition in favor of the requested relief and signed by several abutters and neighbors was submitted.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the lot was undersized and lacked the required width, making it difficult

to construct an attached garage that would comply with all dimensional setbacks. The Board also found that the placement of the existing dwelling on the lot restricted the location for a garage. Further, the Board found that the proposed alteration of the existing structure by the addition of an attached one-car garage would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

7) Petition Number 13-42

John Barrett

RE: 196 Allen Sreet

Present: John Barrett, petitioner/property owner

This is a petition filed by John Barrett, owner of the property located at 196 Allen Street, 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 a basement addition with retaining wall and a deck with egress accommodations, all in accordance with the plans of record. The property is located within a Residential C Zoning District as shown on Assessors' Map 3008, Plot 14F, which contains a land area of +/- 7,600 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 held on October 22, 2013, 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 Michael Calder and Michael Ford.

Evidence

The petitioner, representing himself, explained that he is seeking permission to construct a 10 foot by 25 foot deck with egress on the northeasterly side of the existing dwelling and a 5.75 foot by 22.9 foot basement addition with a retaining wall on the northwesterly side of the dwelling. The purpose of the basement addition is to provide walk-in closets on two levels of the house.

The lot and the existing house on the lot are pre-existing nonconforming. The residence C Zoning District requires a minimum lot size of one acre, while this lot offers only 7,600 SF of area. The lot lack the required 200 feet of width and depth, as it offers only 76 feet of width and 100 feet of depth. The existing house on the lot also fails to conform to current setback requirements. The Residence C Zoning District requires a 50 foot front yard setback, yet the existing structure is located 25 feet from the front lot line. The Residence C Zoning District also requires a 30 foot side yard setback; the existing house encroaches into the side yard setback, as the house is located 12 feet from the northwesterly side lot line. Further, the Residence C Zoning District requires a 50 foot rear yard setback, and the existing structure is located 39.5 feet from the rear lot line. The proposed alterations will encroach upon the side yard setbacks. The basement addition on the northwesterly side of the property will be located 12 feet from the side lot line, which is in line with the existing nonconforming

structure; therefore, a finding under G.L. Chapter 40A, §6 is required for this proposed alteration. The proposed deck on the northeasterly side will be located 29 feet from the side lot line, and therefore, a variance is required.

As grounds for the variance, the petitioner noted that the existing lot is extremely undersized and deficient in lot width and depth. The petitioner also submitted photographs reflecting that the house has been built into ledge with significant elevation changes. The side of the house where the deck is proposed to be built drops off by 8 to 10 feet. The deck will provide a natural extension of the kitchen and another means of egress that accommodates the topography. The petitioner also submitted photographs depicting the northwesterly side of the house, where the main floor of living area overhangs the basement foundation. The proposed basement addition will square off this overhang to provide more useful storage area, aligned with the remainder of the house. In addition, the lot is subject to a 12 foot wide right of way on the northeasterly side and a 20 foot wide sewer easement along the rear lot line.

The petitioner submitted a plan entitled "Plot Plan, #196 Allen Street, Braintree, MA, Parcel: 3008 0 14F," dated September 19, 2013, prepared by James McGrath, PLS.

By a vote of 5-0-0, the Planning Board voted in favor of the requested relief.

Emily Hoard expressed her support for the requested relief. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board noted the sloping topography of the lot and found that the lot was extremely undersized and lacked the required depth and width, making it difficult to construct a deck that would comply with all dimensional setbacks. The Board also found that the one foot encroachment into the northeasterly side lot line was de minimis. The Board also found that the placement of the existing dwelling on the lot restricted the location for a deck. Further, the Board found that the proposed alteration of the existing structure by the basement addition, which would be aligned with the side of the house and would encroach no further than the existing structure, would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford, 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. Ford, the Board voted unanimously to accept the meeting minutes of September 24, 2013.

The Board adjourned the meeting at 8:05 pm.