



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

March 25, 2014

IN ATTENDANCE: Stephen Karll, Chairman
Michael Ford, Member
Richard McDonough, Member
Michael Calder, member

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Peter Morin, Town Solicitor

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

OLD BUSINESS:

- 1) **Petition Number 14-4**
Petitioner: 459 West Street LLC
RE: 459 West Street

Present: Attorney Carl Johnson representing the petitioner

This is a petition filed by 459 West Street, LLC seeking relief pursuant to Article IV Section 135-407 from the provisions of Article VI Sections 135-403, 135-609 and Section 135-701 of the Zoning Bylaws. 459 West Street, LLC, is the owner of 6.28 acres (271,303 square feet) located in Residence A and the Watershed Protection Overlay District. Relief is sought from the one (1) acre minimum lot size for six (6) lots of a proposed eight (8) lot subdivision as shown on the plans of record. The proposed subdivision meets Residence A dimensional and density requirements and will conform to the goals and objectives of Watershed RA and 135-609 except for the minimum lot size for six of eight lots or other appropriate relief.

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 January 28, 2014 and continued by mutual agreement to March 25, 2014 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, with alternate, Richard McDonough.

Evidence

The petition was presented by Attorney Carl Johnson. Mr. Johnson explained that the land, 6.28 acres (271,303 square feet) has been held by the DelPico family continuously since 1954 and operated as a single family dwelling, an egg farm, barns and farm outbuildings. A farm store was operated on the property and an artesian well provided spring water for sale. The property is zoned Residence A and lies within a Watershed Protection Overlay District. Mr. Johnson stated that the goal of the bylaw creating the Watershed Protection District was to protect the recharge areas by limiting the amount of lot coverage on newly constructed properties. Mr. Johnson provided a lengthy analysis of the bylaw, how it is vague and results in unequal treatment of properties. He provided a letter from Robert Daylor, an engineer who noted that the soil on the lot in question was not permeable and therefore the recharge envisioned by the Watershed Protection Overlay District would not occur. Mr. Johnson also noted that subsequently promulgated Department of Environmental Protection storm water management regulations, adopted by the Town in 1998 and further strengthened in 2008 better serve to protect the town's watershed than the lot coverage restrictions. At present, the property has 33,000 square feet of impervious lot coverage.

It was also presented that as a matter of right the petitioners could develop five (5) one acre lots. The shape of the parcel would result in extremely long driveways with houses located behind one another. There would be 24,600 square feet of impervious lot coverage devoted to driveways alone.

The proposed eight lot development would result in 15,200 square feet of roadway, some 9400 square feet less pavement. While only two of the eight lots would meet the bylaw lot size requirement, the remaining six lots meet and exceed all Residence A dimensional and density requirements except for lot size. The proposed eight lot subdivision would also comply with the storm water management requirements. Mr. Johnson stated that the petitioner sought relief from the functional and financial hardship created by the Watershed Protection bylaw. He stated that the impermeability of the soil would result in the Watershed Bylaw lot coverage restriction not serving its purpose. He stated that the eight lot development would provide the resources to fund a \$500,000 to \$600,000 drainage system that would meet the town's storm water requirements. He further noted that due to the lot shape, compliance with the one acre lot requirement would result in undesirable lots.

Members of the DelPico family spoke in favor of the petition, stating they wanted to carry through their father's wish to develop the property in a manner consistent with the present neighborhood. Robert Campbell and Deborah Hayes of Fallon Circle spoke in favor of the eight lot proposal with exceptions regarding drainage onto property downhill from the petitioner's lot. Paul Leonard of Eleanor Drive spoke in favor of the proposal noting his hope that vegetative and tree buffers will be maintained. Town Councilor Charles Kokoros stated he was in support of the project, as long as the buffer and drainage issues were properly addressed. Correspondence in favor of the proposal was received from David Pilling of Burton Road and David and Judith Delaney of Fallon Circle.

James Turley of Burton Road and Dave Cushing of Fallon Circle spoke in opposition to the petition, seeking a less dense development.

The Planning Board made no recommendation on the petition.

The petitioner submitted color aerial photographs depicting the existing lot as well as plans and a memorandum of law in support of the petition.

Findings

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. Specifically, the Board found that the soil conditions and the lot shape presents hardships unique to the petitioner's property. The Board noted that granting the relief would provide a measure of control over the subdivision that would

better address the buffer and drainage issues that had been presented. The Board also concluded 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 motion made by Mr. Calder and seconded by Mr. Ford, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

NEW BUSINESS:

- 2) **Petition Number 14-8**
Petitioner: David Bowering
RE: 119 Shaw, Braintree, MA

Present: Attorney Christopher Harrington representing the petitioner

This is a petition filed by David Bowering of 87 Suomi Road, Quincy, MA 02169 on behalf of The Elizabeth Brown Trust regarding the property located at 119 Shaw Street, Braintree, MA. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 701, particularly lot area and width to subdivide a 24,614 square foot lot with a single family residence into two nonconforming lots, each containing 12,000 square feet and a single family residence. The property is located in a Residence B Zoning District, as shown on Assessors' Map No.3009, Lot 1.

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 25, 2014 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, with alternate, Richard McDonough.

Evidence

The petition was presented by Attorney Christopher Harrington of 1495 Hancock Street Suite 205, Quincy, MA 02169. Mr. Harrington stated that the lot was irregular in shape and contained a residential single family dwelling constructed dating to 1860. The home has substantially deteriorated, with a partially collapsed foundation, substantial mold and antiquated electrical service. He stated the cost of renovating the home was not economically feasible.

Mr. Harrington stated that the proposed 12,000 square foot lots were larger than the average lot size in the Shaw Street area (10,171 square feet) and the new homes would enhance the neighborhood. He represented that the new homes would be slab construction requiring no excavation that may cause neighboring properties drainage issues. He also represented that he would offer landscape easements to abutters thirty (30) feet from the property line to provide vegetative buffers.

No other persons spoke in favor of the petition.

Fourteen residents and Councilor Thomas Bowes spoke in opposition to the petition. They cited the new driveways for the homes would create a traffic hazard, the new construction would create drainage issues

because of the ledge and high water table in the area, and that the financial hardship did not warrant the granting of the petition. The Town also received a petition with 135 signatures verified by the Town Clerk in opposition to the project.

Findings

The Board found that the petitioner had not demonstrated the need for relief from the Zoning By-law. Specifically, the Board found that the purported financial hardship was not sufficiently established to warrant relief. The Board also concluded that the requested relief would be detrimental to the public good and would nullify or substantially depart from and derogate the intent and purpose of the Zoning By-law.

Decision

On motion made by Mr. Ford and seconded by Mr. Calder, it was unanimously voted 3-0 to deny the requested relief.

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 February 25, 2014.

The Board adjourned the meeting at 9:42pm.