



Joseph. C. Sullivan
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, MA
www.braintreema.gov

Zoning Board of Appeals (ZBA) Meeting Notes January 23, 2017

IN ATTENDANCE: Stephen Karll, Chair
Michael Ford, Member
Richard McDonough, Member

ALSO PRESENT: Jeremy Rosenberger, Zoning Administrator

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

OLD BUSINESS:

- 1) Petition Number: 16-58
Petitioner: Joseph Martone
RE: 44 Andersen Road**

Joseph Martone of 131 Green Street, Fairhaven, MA 02719 (Property owner, Phirun Ker), for relief from Bylaw requirements under Chapter 135, Sections 407, 609 and 701 to demolish existing, attached single car garage and construct a first and second floor addition (+/- 2,375 gross sq. ft.) with two-car garage; proposed two-car garage will encroach into the side yard setback. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 44 Andersen Road, Braintree, MA 02184 and is within a Watershed Residential B District Zone, as shown on Assessors Map 1036, Plot 2G, and contains a land area of +/- 15,000 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on December 27 and continued by mutual agreement to January 23, 2017 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough, Members; and no alternate.

Evidence

At the initial public hearing on December 27, 2017, the petitioner, Joseph Martone was unable to attend the hearing to due to personal illness. After discussion, the Board voted to continue the public hearing to January 23, 2017. Mr. Martone mutually agreed to extend the public hearing to January 23, 2017.

At the continued public hearing on January 23, 2016, Mr. Martone, the petitioner, discussed the property/home owners are seeking to construct a second floor addition above an existing one story cape-style single family dwelling, as well as an attached two-car garage. Mr. Martone added the proposed two-car garage addition would be 5.3 ft. from the side yard setback, where 10 ft. is required. Chairman Karll inquired as to what the proposed hardship is regarding the requested relief and if the owners would be open to only having a one car garage. Mr. Martone replied the owners would like the additional garage space and that a smaller sized garage would limit any usability. In addition, Mr. Martone expressed the layout of the existing home, specifically a large fireplace and chimney on the side of the left elevation, precludes constructing a two car garage without encroaching into the side yard setback. Lastly, Mr. Martone discussed a 20 ft. wide garage would slightly encroach into the side yard setback. However, he expressed a 20 ft. wide garage would present challenges with regard to maneuverability and entering/existing the vehicles.

The petitioner's lot is nonconforming, as it contains 15,000 sq. ft., where 43,560 sq. ft. is required. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

A variance is required for relief from the side yard setback requirements. The existing dwelling is 25 ft. from the left side yard lot line. The proposed garage addition will encroach into the left side yard lot line, with a resultant rear yard setback of 5.3 ft. The Zoning Bylaw requires a side yard setback of 10 feet.

As grounds for the variance, Mr. Martone described that the placement of the dwelling on the lot is unique to the neighborhood. He highlighted the front of the dwelling is not situated parallel to the property, but is in fact at an angle. As such, Mr. Martone discussed the dwelling is the only home with this condition in the immediate neighborhood. Furthermore, Mr. Martone stated the existing fireplace with chimney on the left elevation presents a significant financial hardship with regard to removing it for the proposed two car garage. As such, the petitioner stated the proposed two-car garage will provide more curb appeal to the immediate neighborhood and increase the area's home values. Lastly, the proposed project has the support of the immediate neighborhood and abutters, providing evidence the addition will not be more detrimental to the public good.

The petitioner presented the plan entitled "Plan of Land in Braintree, Massachusetts, 44 Andersen Road", dated November 17, 2016 and prepared by C.S. Kelley Land Surveyors of Pembroke, MA. The petitioner also presented floor plans and architectural renderings titled "Ker Residence, 44 Andersen Rd., Braintree, MA", No.'s C-1, EX-1, EX-2, A-1 thru A-9, dated November 15, 2016 and prepared by RL Design of Providence, RI.

The Planning Board submitted an unfavorable recommendation due to lack of unique hardship related to soil, shape or topography. The petitioner submitted a letter of support from ten (10) abutters/surrounding property owners. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot size, as noted above. In addition, the Board found the petitioner had presented a unique hardship with respect to the irregular placement of the dwelling on the property. As a result, the Board found the irregular placement of the dwelling and the shape of the lot has limited the petitioner with regard to the placement of the addition. The Board further found the petitioner had demonstrated the proposed addition would not be more detrimental to the neighborhood due to support of abutters and the immediate neighborhood. Therefore, the Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, and will be appropriately designed.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and variance from side yard setback requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

NEW BUSINESS:

- 1) Petition Number: 16-53
Petitioner: John Minihane (Daddy's Dairy)
RE: 120 Union Street**

John Minihane, the petitioner, after discussion with the ZBA, requested to continue the public hearing to March 27, 2017.

On a motion made and seconded, the Board voted 3-0 to grant the petitioners request to continue the public hearing to March 27, 2017.

- 2) Petition Number: 16-59
Petitioner: Jin Hui Loh
RE: 529-525 Washington Street**

Attorney Jack Milgram, on behalf of the petitioner, after discussion with the ZBA, requested to withdraw the petition without prejudice.

On a motion made and seconded, the Board voted 3-0 to grant the petitioners request to withdraw the petition without prejudice.

- 3) Petition Number: 16-60
Petitioner: Independence Avenue LLC,
RE: 7-11, 7R Independence Avenue**

Independence Avenue LLC, 115 Park Street, Braintree, MA 02184 for variances pursuant to Section 135-407 from the Braintree Zoning Bylaw Sections 135-701 and 135-705 to construct a three to five story, 36 Unit Multi-Family Residential Structure. The Residential Development will provide for 45 interior garage parking spaces and 33 Exterior surface parking spaces for a total of 78 on-site parking spaces. The Development Site is located at 7, 7R and 11 Independence Avenue, Braintree, Massachusetts. The Development Site is within a General

Business Zoning District and a Commercial Zoning District. The Development Site is shown on Assessor' Map 2068 as Plots 1, 18, 21, 22 and also includes the area within the private way located between the described parcels (6,000 Sq. Ft.). The total land area for the Development Site is 45,935 sq.ft. of which 40, 195 sq. ft. is located in Braintree. These plots listed above were combined via an Approval Not Required Subdivision Plan that was endorsed by the Braintree Planning Board on November 9, 2016 and by the Quincy Planning Board on December 14, 2016 and recorded at the Registry of Deeds in Book 655 on Page 92 as Plan No. 1937-300.

Notice

Pursuant to notice duly published in the Braintree Forum, a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to M.G.L. Chapter 40A, Section 11, mailed to all parties of interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on January 23, 2017 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Michael Ford, Members.

Evidence

The Applicant Mr. Thomas Fitzgerald of Independence Avenue Associates LLC was present and was represented by Attorney John E. Garland of Quincy. The Applicant's Attorney Mr. Garland explained to the Board that the relief previously granted by the Zoning Board of Appeals on February 25, 2014 has lapsed because it was not exercised within 1 year of the grant nor was a 6 month extension sought prior to lapse. Mr. Garland went on to explain the project has improved since the last filing with the Zoning Board of Appeals as the Applicant has acquired additional lands at 7R Independence Avenue and has designed an exterior parking area and drainage system in the general area that also includes a portion of the private way. Attorney Garland also informed the Board that portions of the Development parcel were in Quincy and that the land area associated with those parts of the Site cannot be used to satisfy Zoning Requirements in Braintree. Therefore, the land area of 40,195 Sq. Ft. in Braintree will be used to calculate and determine compliance with the Braintree Zoning Bylaw Sections 135-701 and Section 135-705.

The Applicant is proposing to construct a 75,489+/- Sq.Ft. (57,259 +/- Sq. Ft. of Units/18,230 of internal Garage) building having an 18,230 Sq. Ft. Footprint on a parcel that is 45,935 Sq. Ft with land area both in Quincy and Braintree. The building has 5 total stories/levels and the lowest level is an exposed (on certain elevations) garage level that contains interior parking spaces with 3 full stories above that contain residential units and a 4th floor that contains a penthouse level above with a rooftop garden area for residents. The applicant explained that the forms of relief requested from the Zoning Bylaw have been reduced since the previous application.

As noted, the Applicant requested relief from the Maximum Height and Number of Stories pursuant to Braintree Zoning Bylaw Section 135-701. As noted, the height varies significantly given the topography of the site. The Applicant has provided various measurements of height from the grades surrounding the site. The information submitted with this Application states that at the highest point the structure is 52 Ft. above the elevation of the ground and that the average height of the building is 46 Ft. The Site elevation drops 32 Ft. from Independence Avenue to the rear lot line abutting the tracks. The variation in height is due to the change in topography of the site, which is a condition that can be considered a legal hardship. In its

recommendation, the Planning Board by a vote of 3-1-0 recommended favorable action on the relief related to the Maximum Number of Stories and the Maximum Height in 135-701.

As noted, the Applicant requested relief from the Minimum Lot Size, Minimum Open Space Per Unit and Minimum Lot Area per 2-bedroom Unit pursuant to Braintree Zoning Bylaw Section 135-705. The land area of the proposed lot that is located in Braintree to be used in support of this project does not meet the minimum lot size for a multifamily dwelling. While the total lot area exceeds 1 acre, the Braintree land area is deficient. Given the shape of the land area in Braintree due to the location of the Town District dividing boundary this project has demonstrated a valid hardship that supports the granting of a variance from this criteria.

The density proposed far exceeds the allowed density of this site. In that the Applicant cannot provide the 2,000 Square Feet of area required for each 2-Bedroom Unit. A lot of this size would allow 6.7 Units and 36 are proposed. That is about 6 times the permitted density. It is understandable that a project of 6.7 Units would not be financially sensible on this site. Taking into consideration the effect the slope and soils have on this property in creating a hardship, there is a basis for density relief. The number of units proposed is consistent with the previous density relief that was granted and in harmony with other multi-family projects in the Neighborhood. The units per acre for this project is about 39.

The Applicant further requested relief from Braintree Zoning Bylaw Section 135-705 as it relates to the minimum amount of open space per dwelling unit. The applicant restated the topography and soil conditions as hardships as the basis for the relief. The developed areas needed in support of the parking and building leaves remaining open areas on the Site that are not sufficient in size in order to meet the 2,000 Sq. Ft. per unit. Further, it is important to note that there is more open space (as noted above in the table) than the relief is being sought for but it is in Quincy and cannot be used for Zoning Compliance in Braintree. Further, this relief has been granted in the past for projects of a similar size and scope. In its recommendation, the Planning Board by a vote of 4-0-0 recommended favorable action on the relief related to Minimum Lot Area for a Multi-Family Dwelling, the Minimum Amount of Open Space per Unit and the Minimum Amount of Land Area per 2-Bedroom Unit in 135-705, with the inclusion of a roof top terrace.

The members of the Board had minimal discussion in that the matter was deliberated at great length during the previous hearing process and the members were in general consensus that the project had improved given the facts stated and were positive that the project was going to move forward given the delays thus far.

The relief requested is based on the Plans of Record Presented for the Application:

Civil Site Plan: Prepared by: Joyce Consulting Group, Inc.
Erin V. Joyce P.E. No. 47639

Architectural Plans: Prepared by: Choo & Company Quincy, MA

Public Comment

No Comments were submitted in writing nor did any members of the public speak in favor of or in opposition to the Application.

Findings

The Board found that the proposed development requires less relief from the Zoning Bylaw than the previously approved 36 Unit Multi-Family Residential Development and the lot configuration and size of this Development is much improved over the previous circumstances. The Board found that the Applicant had demonstrated valid hardships related to topography and soil conditions in support of the various forms of relief requested. The Board concluded that the relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning Bylaw. In reaching this conclusion, the Board was of the opinion that this property has been in a longstanding condition of blight and that no reasonable person could consider this project a detriment to the neighborhood given the overall aesthetic improvements. The gateway to Braintree will be greatly improved based on the development.

Decision

On a motion duly made by and seconded, the Board by a vote of 3:0:0, voted to approve the five (5) variances sought from the Braintree Zoning Bylaw Sections 135-701 and 135-705 pursuant to Section 135-407, in accordance with the Record Plans noted above including the required Revisions.

- 4) Petition Number: 16-61**
Petitioner: A&M Family Limited Partnership
RE: 555 Pond Street

A&M Family Limited Partnership, 555 Pond Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609, 701 and Article VIII to demolish existing 4,554 sq. ft. Dunkin' Donuts building w/accessory catering/food preparation and construct a 1,000 sq. ft. Dunkin' Donuts fast food establishment with drive-thru and ten (10) off-street parking spaces. The applicant seeks a permit, variance and/or finding that the proposed change will not be more detrimental to the neighborhood. The property is located at 555 Pond Street, Braintree, MA 02184 and is within a Watershed Commercial District Zone, as shown on Assessors Map 1059, Plot 2, and contains a total land area of +/-12,526 sq. ft.

Notice

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on January 23, 2017 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Michael Ford, Members; and No Alternate.

Evidence

Attorney Frank Marinelli, on behalf of the petitioner's, explained that the Andrade family is seeking to improve by redevelopment the family's commercial property located at 555 Pond Street. Mr. Marinelli described the Andrade family is seeking to specifically raze the approximate 4,554 sq. ft. commercial building currently used for catering/food preparation with sale of Dunkin Donuts' product and to construct a substantially smaller building (approximately 1,000 sq. ft.) with drive-through and related features. In addition, Mr. Marinelli articulated various density and dimensional nonconformities associated with the existing 4,554 sq. ft.

building would be reduced and/or eliminated with construction of the new smaller building. Attorney Marinelli mentioned the new building would be approximately 25% the size of the existing building. With the proposed redevelopment, the open space would increase more than five (5) times over the existing percentage of open space. Lastly access to the and from the site will be improved with redevelopment of the site.

The petitioner's existing lot is nonconforming, as it contains only 12,526 sq. ft., where 43,560 sq. ft. is required, provides less than the required 150 ft. of lot width, provides only 97 ft. of frontage, where 150 ft. is required and provides only 124 ft. of lot depth, where 150 ft. is required. The petitioner's existing building is nonconforming as to the front yard setback; the building is located 24 ft. from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 35 ft. Also, the existing structure is nonconforming as to the side yard setback; the building is located 7 ft. from the side yard lot line, while the Zoning bylaw requires a side yard setback of 20 ft. Also, the existing structure is nonconforming as to the rear yard setback; the building is located 20 ft. from the rear yard lot line, while the Zoning bylaw requires a rear yard setback of 35 ft. Furthermore, the existing building/lot is also nonconforming as to the building coverage; the existing building coverage is 35.6% while the Zoning Bylaw requires a maximum building coverage of 25%. Lastly, the existing building/lot is also nonconforming as to the lot coverage; the existing lot coverage is 95% while the Zoning Bylaw requires maximum lot coverage of 60%. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

Variations are required as the new structure will not meet the required rear yard setback and lot coverage/open space requirements pursuant to Section 135-701. The proposed new building will be 29 ft. from the rear yard lot line, while the Zoning bylaw requires a rear yard setback of 35 ft. In addition, the proposed new building/lot will provide lot coverage of +/- 72.1% (27.9% open space) while the Zoning Bylaw requires maximum lot coverage of 60% (40% open space). Furthermore, pursuant to Section 135-814, the Zoning Bylaw requires 1 loading space, but the proposal would provide 0 loading spaces. Lastly, Attorney Marinelli expressed he is seeking relief from the Board, for clarity purposes, variations for lot area, lot width, lot frontage and lot depth.

As grounds for the finding and variations, Mr. Marinelli highlighted the subject property is unique in shape and size, as the property is an irregularly shaped corner lot that is smaller in size than the immediate area commercial properties. In addition, Attorney Marinelli the construction of the new, substantially smaller building, which will be less than 25% the size of the existing building, will eliminate and be significantly less non-conforming than the existing nonconformities. Furthermore, the large curb-cut along Pond Street will be eliminated and improved by a significant increase in landscaping. Mr. Marinelli explained all vehicular traffic will enter and exist a curb-cut about 75 ft. from the intersection of Roc Sam Road and Pond Street. This change will significantly improve the safety of vehicular traffic accessing the site. Lastly, Mr. Marinelli noted the proposal increases the amount of open space by more than five times the current existing percentage of open space.

The applicant presented the plan entitled "Existing Conditions Plan", dated October 11, 2016, stamped on December 5, 2016 by a registered land surveyor and prepared by Kelly Engineering Group, Inc. of Braintree, MA. The applicant also presented the plan entitled "Plan to Accompany ZBA Application", dated November 29, 2016, stamped on December 16, 2016 by a professional engineer and prepared by Kelly Engineering Group, Inc. of Braintree, MA.

The Planning Board submitted a favorable recommendation with the condition the petitioner provide pedestrian access to the new building. Bethany Savella of Braintree, MA

discussed her concern regarding potential traffic safety issues due to the proposed project. No one else spoke in favor of or opposition to the petition.

Findings

The Board found that the existing lot is pre-existing nonconforming in terms of lot area, lot frontage, lot width, and lot depth, as noted above. In addition, The Board found that the existing structure is pre-existing nonconforming in terms of the front, side and rear yard setbacks, building coverage, lot coverage and provided open space. The Board found the petitioner had presented a hardship with respect to the irregularly-shaped corner lot. The Board found that by granting the requested relief and variances, the new, substantially smaller building, will be less detrimental than the existing building. The petitioner has documented the proposed project/site improvements will meet a number of the current setback requirements with the exception of the rear yard setback. The Board found the petitioner could meet the setback, but the overall layout and circulation would be greatly improved by moving the proposed building further back on the site. In addition, the Board found, due to the significantly smaller new building, the building coverage requirement will be met and the lot coverage/open space percentage will be significantly improved. The Board further found a major improvement will be a vast reduction in the amount of curb-cuts on the site. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, and will be appropriately designed.

Decision

On a motion duly made by and seconded, the Board unanimously (3-0) voted to grant requested findings, pursuant to Bylaw Section 135-403 and the requested variances from Bylaw Section 135-701 and 814 requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 5) Petition Number: 16-62
Petitioner: Carmen Vella, Trustee Mauceri-Braintree Realty Trust,
RE: 15-17 Thayer Place**

Attorney Carl Johnson, on behalf of the petitioner, requested to withdraw the petition without prejudice.

On a motion made and seconded, the Board voted 3-0 to grant the petitioners request to withdraw the petition without prejudice.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 3-0 to accept the December 27, 2016 meeting minutes.

On a motion made and seconded, the Board voted for a favorable recommendation to the Town Council regarding support of local adoption of the Mullin Rule.

The Board adjourned the meeting at 9:30 pm.