



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

1 JFK Memorial Drive – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

June 23, 2015

**IN ATTENDANCE:** Stephen Karll, Chairman  
Richard McDonough, 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: 14-33**  
**Petitioner: Bonnie Tan**  
**RE: 639 Washington Street**

Present: Attorney William Phelan representing petitioner, and Bonnie Tan, Petitioner and Property Owner

After some discussion with the Board members regarding the petition proposal, Attorney Phelan, on behalf of his client requested a 90-day extension of the petition in order to revise the proposal.

Sitting on this case for the Zoning Board of Appeals were: Mr. Karll, Mr. Calder and Mr. McDonough.

On a motion made by Mr. Karll and seconded by Mr. Calder, the Board voted 3-0 to grant the requested extension to the September 15, 2015 Zoning Board of Appeals meeting.

#### NEW BUSINESS:

- 2) **Petition Number: 15-11**  
**Petitioner: David Lin on behalf of Golden Dragon**  
**RE: 250 Granite Street (Space # 1094F-Golden Dragon)**

Present: Li Yong of Statewide Signs, Inc. representing the petitioner.

This is a petition filed by David Lin of 59 Bower Road, Quincy, MA regarding the property located at 250 Granite Street in Braintree, which is the site of the South Shore Plaza. The petitioner seeks relief from the

Town's Zoning Bylaws Sections 135-403, 407, and 904.2A(5)(g) and (f) in order to install a wall sign on the exterior of the South Shore Plaza, in the general location of the proposed restaurant, which is a portion of the location formerly occupied by Legal Sea Foods. The property is located in a Highway Business Zoning District as shown on Assessors' Plan 2089, Plot No. 22 and containing 111.67+/- acres.

### **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, 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 June 23, 2015 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

### **Evidence**

Li Yong of Statewide Signs appeared on behalf of the Golden Dragon, which is a restaurant located in the South Shore Plaza, near the south parking structure, in space previously occupied by Legal Sea Foods. Golden Dragon requests a permit to install one external wall sign, internally lit, measuring 2.5 feet by 10 feet for a total of 25 SF to identify and direct the public to the location of the restaurant.

The applicant seeks relief from Section 135-904.2(A)(5)(g) of the Zoning By-laws which limits one wall sign for each business occupying a building and further limits the aggregate signage to 150 SF. This restaurant is located within the South Shore Plaza, with multiple businesses and signs exceeding this aggregate total, and therefore a special permit is required of the ZBA. The applicant explained that the size of the signage is relatively small in comparison to the size of the overall facade. Attorney Carl Johnson, who represents Simon Properties, the owner of the South Shore Plaza added that the proposed sign is understated and needed for identification purposes.

The Chairman questioned the time of day that the illuminated sign would be shut off, to which the applicant responded that the restaurant complies with the guidelines established by the South Shore Plaza.

The applicant presented a color rendering of the proposed sign superimposed on the facade dated April 29, 2015 and prepared by Stateside Sign, Inc. of Quincy, MA.

The Planning Board submitted a favorable recommendation noting that the proposed signage was appropriate for the location when analyzed in relation to the entire building and other signage.

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

### **Findings**

The Board found that the proposed signage was modest in size in comparison to the overall scale of the South Shore Plaza. The Board also found that the proposed signage was necessary to identify the location of the restaurant and to direct the traveling public to the location, particularly where this restaurant is not visible to a main street but is facing the south parking structure. The Board further found that the proposed signage would be consistent with the purposes and goals of the bylaw.

### **Decision**

On a motion duly made by Mr. Calder and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant

the relief requested, in accordance with the plan submitted and subject to the condition that the illuminated sign be shut off within the guidelines established by the South Shore Plaza, and if there are no such guidelines, that the illuminated sign be shut off one hour after closing.

**3) Petition Number: 15-12**

**Petitioner: Gerald and Caroline Hart/HUB Construction and Maintenance Co., Inc.**

**RE: 291 and 297 Washington Street**

Present: Attorney Carl Johnson representing the petitioner, Gerald Hart, petitioner, and Paul Grada with HUB Construction

This is a petition filed by HUB Construction and Maintenance Co., Inc. of 20 Nantasket Avenue, Hull, MA regarding the property located at 291 and 297 Washington Street in Braintree, owned by Gerald and Caroline Hart. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, and 701 to re-establish a previously granted variance or to grant a new variance for lot width in order to recognize three separate lots. The property is located in a Residence B Zoning District as shown on Assessors' Plan 2027, Plot Nos. 6G and 6F and containing a combined total of approximately 155,526 SF of area.

### **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, 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 June 23, 2015 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

### **Evidence**

Attorney Carl Johnson appeared along with Gerald Hart and Paul Grada of HUB Construction and Maintenance. Attorney Johnson explained that the subject lots were once part of a larger parcel, which also included 285 Washington Street, the current site of a Success Real Estate office building. In 1994, the then-owner of this land, Eugene Mahoney, sought to divide the one large lot into three lots, but at least two of those lots required a lot width variance, as two of the proposed lots offered only 17.5 feet of lot width at their narrowest points. The purpose for creating the two new lots was to construct two single family dwellings. The Zoning Board of Appeals granted the lot width variance in Case No. 1928 of 1994. The variance was recorded at the Registry of Deeds within one year of the grant, as required by G.L. c. 40A, Sec. 10. Mr. Mahoney subsequently filed an Approval Under the Subdivision Control Law Not Required ("ANR") Plan with the Planning Board, which was endorsed and recorded with the Registry of Deeds as Plan No. 96 of 1995 in Plan Book 428.

Subsequent to recording the variance and ANR plan and continuing to this date, no dwellings have been constructed on the two lots. Pursuant to G.L. c. 40A, Sec. 10, a variance must be exercised within one year or it will lapse. The statute does not define what actions constitute an exercise of the variance, but case law interpreting the statute suggests that the property owner must take some action in reliance upon the variance, such as obtaining a building permit or conveying a lot. See Hogan v. Hayes, 19 Mass. App. Ct. 399 (1985) and Cornell v. Board of Appeals of Dracut, 453 Mass. 888 (2009). In a more recent case, Grady v. Zoning Board of Appeals of Peabody, 465 Mass. 725 (2013), the Court found that obtaining mortgages to finance the proposed development of the site was sufficient reliance to exercise the variance. In the present matter, the lots have been conveyed to new owners, Gerald and Caroline Hart, and mortgages have been secured, albeit not

within one year of the grant of the variance. The current owners now wish to construct single family dwellings on the two vacant lots. Since the case law is unclear about the status of the variance, the petitioners seek to have the 1994 variance re-established or to have a new variance granted. Upon further discussion between the Board and Town Solicitor, it was determined that a new variance would be the proper course of action, if the Board is inclined to grant the variance.

Attorney Johnson also advised that the 1994 plan and variance decision erroneously referred to lot width for the two lots as 7.5 feet, which should correctly state 17.5 feet. In addition, in 1994, the Board requested that the plan show the building envelopes for the proposed dwellings; however, when a grading permit was recently granted for this site by the Conservation Commission, the Commission suggested relocating the proposed dwelling on Lot 3 so as to be placed away from the sloping contours and on more level ground. If a new variance is granted, Attorney Johnson requested that the plan reflect the relocation of this dwelling.

As grounds for the variance, Attorney Johnson noted the unusually large size of the parcel with its limited width off Washington Street, describing the lot as having a narrow neck that widens to an expansive rear lot. Attorney Johnson also noted the presence of wetlands towards the rear of the lot, as delineated on the grading plan presented, as well as steep sloping topography from the Washington Street frontage to the rear of the lot, limiting the developable portions of the site.

The applicant presented the plan from the 1994 variance entitled "Subdivision Plan of Land in Braintree, Mass.," dated March 15, 1994 and prepared by Harold Donahoe, Jr., as well as a plan entitled "Grading Plan-Proposed Residences, Lot 2 & 3 Washington Street, Braintree, MA," dated February 24, 2012 and revised through April 26, 2014 and prepared by Hardy Engineering of Weymouth, MA.

The Planning Board submitted a favorable recommendation.

No one else spoke in favor of or opposition to the petition, although an abutter, Mrs. Blunt of Faulkner Place, questioned the location of the foundations with respect to her swimming pool, and Mr. Blunt questioned whether the lots would still have 50 feet of frontage on Washington Street.

### **Findings**

The Board found that the petitioner had presented a hardship in 1994 and confirmed that circumstances pertaining to the hardship remain at the site, namely the unusually large shape of the lot, its limited frontage and narrow width off of Washington Street and its sloping topography towards the rear of the lot. The Board further found that these physical characteristics are unique to the site and not generally shared by the zoning district. Finally, the Board found that the requested relief could be granted without derogating from the purpose and intent of the zoning by-laws.

### **Decision**

On a motion duly made by Mr. Ford and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted and as revised as shown on the accompanying Grading Plan.

- 4) Petition Number: 15-13**  
**Petitioner: Donald Richard Wakeling, Jr.**  
**RE: 42 Newport Avenue**

Present: Donald Richard Wakeling, Jr., petitioner and property owner

This is a petition filed by Donald Wakeling, Jr. of 42 Newport Avenue, Braintree, MA regarding the same property. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, and 701 for a permit, variance or finding to remove the roof off the existing dwelling in order to add a full second floor with walk-up attic. The property is located in a Residence B Watershed Protection Zoning District as shown on Assessors' Plan 1022, Plot No. 37 and contains approximately 9,000 SF of area.

### **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, 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 June 23, 2015 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Richard McDonough, Members; and Michael Ford, Alternate.

### **Evidence**

The petitioner represented himself and explained that he wishes to remove the roof on his Cape-style home in order to convert it to a Colonial-style to accommodate a growing family. The petitioner's lot is nonconforming, as it contains only 9,000 SF where 1 acre is required, and offers only 75 feet of lot width, where 100 feet is required. The petitioner's existing house is also nonconforming as to front yard setback; the house is located 15.2 feet from the front yard line, while the Zoning Bylaw requires a setback of 20 feet.

The proposed alteration will remain within the footprint of the existing dwelling and will not create any new nonconformity; therefore, a finding is required pursuant to G.L. c 40A, Sec. 6.

The applicant presented a plan entitled "Proposed Second Floor, 42 Newport Avenue, Subdivision, Braintree, MA.," dated May 15, 2015 and prepared by Essex Eng. and Survey, Newton Lower Falls, MA.

The Planning Board submitted a favorable recommendation. John Fitzgerald of 49 Newport Avenue and Robert Walsh of 56 Newport Avenue went on record as being in favor of the proposed alteration. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the proposed alteration would remain within the footprint of the existing dwelling and not create any new nonconformity, and therefore, the Board found that the proposed alteration would not be substantially more detrimental to the neighborhood than the existing structure. 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.

### **Decision**

On a motion duly made by Mr. McDonough and seconded by Mr. Calder, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted.

**5) Petition Number: 15-14**  
**Petitioner: Pater J. and Karen L. Carloni**  
**RE: 614-616 Washington Street**

Present: Attorney Carl Johnson representing the petitioner, and Peter Carloni, Petitioner and property owner.

This is a petition filed Peter and Karen Carloni of 103 Weston Avenue, Braintree, MA regarding the property located at 614-616 Washington Street in Braintree. The petitioner seeks relief from the Town's Zoning Bylaws Sections 135-403, 407, 701 and 806 to recognize the third floor studio apartment in an existing multi-family dwelling. The property is located in a Residence C Zoning District as shown on Assessors' Plan 2012, Plot No. 40 and containing approximately 5,945 SF of area.

**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, 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 June 23, 2015 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 Michael Calder, Alternate.

**Evidence**

Attorney Carl Johnson appeared along with Peter Carloni and explained the history of the use of this multi-family dwelling and various building permits issued. Attorney Johnson explained that the owner of the property recently received notice that the Building Inspector considered the apartment on the third floor to be an unrecognized unit, in violation of the Zoning Bylaws, despite the fact that building, electrical and plumbing permits have been issued for this multi-family dwelling as far back as 1986, and in some instances, refer to a third apartment. In addition, in 2004, the then-owner of the property sought zoning relief from the Board in order to encroach into the rear yard setback to provide a second means of egress to the third floor, yet the owner did not seek recognition of the third unit from the Board at that time. The current Building Inspector suggested that these permits for a water closet, lavatory, kitchen sink, shower stall and hot water tank on the third floor could have been associated with an expansion of the second floor unit or a third unit; however, the third unit was never permitted pursuant to Section 135-705 of the Zoning Bylaws. Therefore, the owner now seeks permission from the Board pursuant to Section 135-705 to recognize this third unit. Section 135-705 requires a minimum one acre lot size and 2,000 SF of open space per dwelling unit, and therefore, a variance is required.

The petitioner's lot and existing structure are nonconforming. The lot contains only 5,781 SF, while 1 acre is required. The lot lacks the 200 feet of lot width and depth required, offering only 52 feet of width and 115.3 feet of depth. One hundred feet of frontage is required, but the lot has only 52.4 feet of frontage. The existing structure also encroaches into all setbacks. The Zoning Bylaw requires a front yard setback of 50 feet, but the structure is located 9.5 feet from the front lot line. The Zoning Bylaw requires a side yard setback of 30 feet, but the structure is located 3.9 feet from the northerly lot line. The Zoning Bylaw requires a rear yard setback of 50 feet, but the structure is located 32.4 feet off the rear lot line. The Zoning Bylaw limits maximum building height at 35 feet, and the mean height of the structure is 35.8 feet. Section 135-705 of the Zoning Bylaw requires a minimum of 2,000 SF of open space per unit, but only 804 SF of open space is provided.

The petitioner also seeks a variance from Section 135-806 of the Zoning Bylaws pertaining to parking. Tandem parking is allowed for one and two unit dwellings, but is not allowed for more than two units. Therefore, a variance is required from the parking requirement. As grounds for the parking variance, the

petitioner notes the configuration of the existing structure on the lot, which eliminates any opportunity for parking in the front or side yards. Six tandem parking spaces can be accommodated in the rear yard for the required two parking spaces per unit. In addition, Attorney Johnson noted that this site has been used as a multi-family structure since the late 1890's and has been zoned Residence C for multi-family since 1940. The size of the lot has been over 6,000 SF, but has been reduced to its current size of 5,781 SF due to land takings associated with the widening of Washington Street.

The applicant presented the plan entitled "ZBA Petitioner's Plan Case No. 15-14, 614-616 Washington Street, Braintree, Massachusetts," dated June 19, 2015 and prepared by Branch Survey, Inc. of Pembroke, MA.

The Planning Board submitted a favorable recommendation.

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

### **Findings**

The Board found that the petitioner had presented a hardship based on the shape of the lot and the fact that its size has been reduced due to governmental land takings associated with the widening of Washington Street. The Board also found a hardship based on the narrow shape of the lot, rendering the front and side yards nonconforming and incapable of accommodating any parking needs. The Board also found that the structure has been used for multi-family purposes dating back several decades, before the Residence C zoning district and the requirements of Section 135-705 were adopted. The Board further found that these physical characteristics are unique to the site and not generally shared by the zoning district. Finally, the Board found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws.

### **Decision**

On a motion duly made by Mr. Karll and seconded by Mr. McDonough, the Board unanimously (3-0) voted to grant the relief requested, in accordance with the plan submitted.

### **OTHER BUSINESS:**

This is a matter that the Chairman did not reasonably anticipate at the time of the posting of the meeting.

- 6) Petition Number: 13-54**  
**Petitioner: Gary Gabriel**  
**RE: 100 River Street**

Mr. Karll advised the Board that the petitioner has submitted a letter requesting to extend the relief granted by Zoning Board of Appeal on June 24, 2014 for an additional six months due to weather and technical difficulties with the project.

Sitting on this case for the Zoning Board of Appeals were: Mr. Karll, Mr. Calder, Mr. Ford and Mr. McDonough.

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted 4-0 to grant the requested extension to the January 2016 Zoning Board of Appeals meeting.

This is a matter that the Chairman did not reasonably anticipate at the time of the posting of the meeting.

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

Present: Attorney Carl Johnson representing the petitioner, Joseph Del Pico, Petitioner and property owner.

Attorney Johnson, after a brief narrative, requested that the Board clarify the date of the extension granted from the original relief to reflect an expiration date of September 25, 2015.

Sitting on this case for the Zoning Board of Appeals were: Mr. Karll, Mr. Calder, Mr. Ford and Mr. McDonough.

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted 4-0 to clarify the date on the extension of relief granted to reflect the date of September 25, 2015.

#### **APPROVAL OF MINUTES:**

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted 4-0 to accept the meeting minutes of May 26, 2015.

The Board adjourned the meeting at 9.05 pm.