



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 November 24, 2015

**IN ATTENDANCE:**

Stephen Karll, Chair  
Michael Calder, Member  
Richard McDonough, Member  
Michael Ford, Member

**ALSO PRESENT:**

Carolyn Murray, Interim Town Solicitor  
Jeremy Rosenberger, Zoning Administrator

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

**OLD BUSINESS:**

- 1) Petition Number: 14-33  
Petitioner: Bonnie Tan  
RE: 639 Washington Street**

Bonnie Tan has requested an extension of the petition, case number 14-33.

On a motion made by Mr. Karll and seconded, the Board unanimously voted to continue the petition until the December 22, 2015 Zoning Board of Appeal meeting.

- 2) Petition Number: 15-23  
Petitioner: Annmarie Chase  
RE: 30 Barstow Drive**

Mr. Karll advised the Board that the petitioner has submitted a written request to withdraw the petition without prejudice.

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

- 3) Petition Number: 15-25**  
**Petitioner: Michael Rubino**  
**RE: 42 Howie Road**

Present: Michael Rubino, Property Owner and Petitioner

This is a petition filed by Michael Rubino, 42 Howie Road, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, and 701 to construct a 2<sup>nd</sup> floor addition (1,150 sq. ft.), a front porch addition (6 ft. x 36.3 ft.), a garage addition (5.6 ft. x 24.4 ft.), and a rear addition (8ft. x 16ft.). The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located 42 Howie Road, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 2032, Plot 42, and contains a land area of +/-7,675 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, mailed to all parties in interest, a hearing by the Zoning Board of Appeals was scheduled for September 28, 2015, and continued by mutual agreement to November 24, 2015 at Town Hall, One JFK Memorial Drive, Braintree, MA on September 28, 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**

Michael Rubino, the owner and petitioner, explained that he wishes to provide more living area for his family by adding a 2<sup>nd</sup> floor addition, a front porch and extended garage. The petitioner's lot is nonconforming, as it contains only 7,675 sq. ft. where 15,000 sq. ft. is required and provides only 73.24 feet of lot depth, where 100 feet is required. The petitioner's existing house is also nonconforming as to the rear yard setback; the house is located 11.5 feet from the rear yard line, while the Zoning Bylaw requires a rear yard setback of 30 feet. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

In addition, the petitioner proposes to construct both a front porch and extend the garage footprint into the front yard setbacks, which requires a variance. The Zoning Bylaw requires a front yard setback of 20 feet, but the proposed new porch will be at its maximum, 17.2 feet from the front lot line on Acorn Street and 15.2 feet from the front lot line on Howie Road. The proposed garage extension will be 12 feet from the front yard line on Howie Road.

As grounds for the variance, the petitioner noted the existence of front porches in the immediate neighborhood and submitted letters from abutters in favor of the petition. The petitioner also reiterated the location of the existing non-conforming building on the corner lot, which is set at an angle, as a hardship.

The applicant presented the plan entitled "Plot Plan Showing Proposed Renovations to 42 Howie Road in Braintree, Massachusetts," dated August 7, 2015 and prepared by TMF Associates, Inc. of Weymouth, MA. The applicant also presented plans and architectural renderings entitled "Progress Set" with Sheets Locus Map, A1, A2, A3, A3.1, A4, A5, and S1 dated 7/15/2015.

The Planning Board submitted a favorable recommendation. The petitioner also submitted a listing of signatures supporting the petition.

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, and lot depth, as noted above. In addition, The Board found that the existing structure is pre-existing nonconforming in terms of the rear yard setback. The Board found the petitioner had presented a hardship based on the shape of the property and location of the existing building on the corner lot. 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 without substantial detriment to the neighborhood and public good.

### **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 a variance from the minimum front yard setback, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 4) Petition Number: 15-35**  
**Petitioner: Mass Property Holdings, LLC**  
**RE: 7 Sheraton Avenue & 0 Priscilla Avenue**

Present: Kevin O'Reilly, Petitioner's Attorney  
David Klentaire, Engineer

This is a petition filed by Mass Property Holdings, LLC, 536 North Main Street, Randolph, MA 02368 (owner, Clark Cameron) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609, 701, to subdivide into two lots, one lot that has merged, for zoning purposes, due to adjacent properties under common ownership, 7 Sheraton Avenue into two separate lots and construct a single family dwelling at 0 Priscilla Avenue. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood, the public welfare and convenience will be served, and status of the neighborhood improved. The property is located at 7 Sheraton Avenue, Braintree, MA 02184 and is within a Watershed Residential B District Zone, as shown on Assessors Map 1079, Plot 29 (7 Sheraton Avenue) and Assessors Map 1079, Plot 28 (0 Priscilla Avenue), and contains a land area of +/- 17,865 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, mailed to all parties in interest, a hearing by the Zoning Board of Appeals was scheduled for October 27, 2015, and continued by mutual agreement to November 24, 2015 at Town Hall, One JFK Memorial Drive, Braintree, MA. 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 Kevin O'Reilly, representing the applicant, explained the applicant seeks relief to recognize as two buildable lots, 7 Sheraton Avenue and 0 Priscilla Avenue, which have merged for zoning purposes by virtue of their being held in common ownership. The current properties contain an existing single family dwelling, and a vacant lot. As both properties are undersized and under common ownership of the applicant, the properties are merged for zoning purposes to meet or more closely approximate the minimum lot area and frontage requirements of a local zoning bylaw. Mr. Reilly provided evidence the properties were considered separate lots, based on prior land registration records. Also, Attorney Reilly noted the Assessing department taxes the properties separately.

Attorney Reilly was also joined by Civil Engineer, Dave Klentaire. Mr. Klentaire presented plans on the behalf of the applicant depicting proposed onsite mitigation measures to manage storm-water and methods to ensure water infiltration into the soils.

Variances are required for 7 Sheraton Avenue for relief from lot size, lot coverage and open space requirements. The Zoning Bylaw requires a minimum of 43,560 sq. ft. lot size, but the proposal would provide 9,865 sq. ft. In addition, the Zoning Bylaw allows a maximum of 20% lot coverage, but the proposal would provide 27.7% lot coverage. Furthermore, the Zoning Bylaw requires a minimum open space of 80% of the lot, but the proposal only provides 62.3%.

Variances are required for 0 Priscilla Avenue for relief from lot size, lot width, lot coverage and open space requirements. The Zoning Bylaw requires a minimum of 43,560 sq. ft. lot size, but the proposal would provide 8,000 sq. ft. The Zoning Bylaw also requires a minimum lot width of 100 sq. ft., but the proposal would only provide 80 ft. In addition, the Zoning Bylaw allows a maximum of 20% lot coverage, but the proposal would provide 30.6% lot coverage. Furthermore, the Zoning Bylaw requires a minimum open space of 80% of the lot, but the proposal only provides 69.4%.

As grounds for the variances, the petitioner noted the sloping topography and financial hardship related to the Watershed Protection Overlay requirements. Furthermore, Attorney Reilly noted the proposed new single family would be consistent in scale with the existing neighborhood. Lastly, Mr. Reilly noted the proposed new dwelling would be consistent with the spirit and intent of the zoning bylaws.

The applicant presented the plan entitled "Site Plan, 7 Sheraton Avenue & 0 Priscilla Avenue, Braintree, Massachusetts", dated October 18, 2015 and prepared by Collins Civil Engineering Group, Inc. of West Bridgewater, MA. The applicant also presented plans and architectural renderings entitled "Front Elevation", "Rear Elevation", "Left Elevation", and "Right Elevation", dated September October 16, 2012 and prepared by McClentic Architectural Design of Clayton, NC. The applicant also presented the plan entitled "Site Plan, 7 Sheraton Avenue & 0 Priscilla Avenue, Braintree, Massachusetts", dated November 9, 2015 and prepared by Collins Civil Engineering Group, Inc. of West Bridgewater, MA.

The Planning Board submitted a favorable recommendation with the following conditions: (1.) The proponent seek to decrease the amount of lot coverage and increase the amount of open space provided; and (2.) Provide on-site accommodations for water infiltration.

A letter was submitted by Barry and Janet McGonagle of 3 Sheraton Avenue in support of the petition. Kim Dragoo, an abutter at 125 Brewster Avenue, went on record to note lack of

evidence regarding water or drainage issues on the petitioner's property. Five residents spoke in opposition to the petition, claiming the new single family dwelling would create and increase drainage and water problems in the area. The opponents also claimed the proposed lot sizes would be significantly undersized and did not warrant the granting of zoning relief. Furthermore, the residents note the new construction and proposed driveway would create traffic and safety issues on Priscilla Avenue. The Zoning Board of Appeals also received three letters from property owners stating the evidence of sewer and water issues in the neighborhood. Petitions with a total of 28 signatures in opposition to the petition were also submitted. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the petitioner had not demonstrated the need for relief from the Zoning Bylaws. Specifically, the Board found that the applicant had failed to establish a hardship owing to the shape, soil or topography of the site. Moreover, the Board found that the purported hardship regarding developing a single family dwelling on an undersized lot, was of the applicant's creation, was not unique to the property, and was insufficient to establish or warrant relief. The Board also concluded that the request relief would be detrimental to the public good and would nullify or substantially depart from and derogate the intent and purpose of the Zoning Bylaws.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to deny the requested variances, pursuant to Bylaw Section 135-407.

### **NEW BUSINESS:**

- 1) **Petition No. 15-40**  
**Petitioner: William Wong**  
**RE: 18 Ellsworth Street, Braintree, MA**

Present: William Wong, Petitioner and Property Owner  
Jim Callahan, Contractor

This is a petition filed by William Wong, 18 Ellsworth Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 701 for extension of existing second story to include a playroom and office. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 18 Ellsworth Street, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 2030, Plot 13, and contains a land area of +/- 9,980 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, 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 November 24, 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; Michael Ford, Alternate.

## Evidence

Jim Callahan, the petitioner's contractor, explained that the petitioner and owner, William Wong, wishes to add a home office and playroom to an existing second floor. The existing second floor currently provides two bedrooms and a bathroom. However, the existing second floor has limited use due to the ceiling heights as low as six feet. The proposal would consist of raising the roof to provide a ceiling height of eight feet for the second floor. The addition will be constructed within the existing footprint. The petitioner's lot is nonconforming, as it contains only 9,981 sq. ft., where 15,000 sq. ft. is required, provides only 73 feet of lot depth, where 100 feet is required. The petitioner's existing house is nonconforming as to the rear yard setback; the house is located 20 feet from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 feet. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the rehabilitation and second floor addition to the single family dwelling will be constructed similar to existing neighborhood characteristics.

The applicant presented the plan entitled "Plan of Land in Braintree, Massachusetts, Owned by William & Michelle Wong", dated October 7, 2015 and prepared by John C. Adams, PLS of Brockton, MA. The applicant also presented plans and architectural renderings titled "Wall & Roof Addition, 18 Ellsworth Street", Sheets 1 thru 5, dated November 6, 2015 and prepared by Spink Design, Middleborough, 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 existing lot is pre-existing nonconforming in terms of lot size, and lot depth, as noted above. In addition, The Board found that the existing structure is pre-existing nonconforming in terms of the rear yard setback. The Board also found that the proposed addition will not create any new zoning non-conformity. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

## Decision

On a motion duly made by Mr. Calder and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

- 2) Petition No. 15-41**  
**Petitioner: Dorothy B. McPherson**  
**RE: 24 Hillside Avenue, Braintree, MA**

Present: Dorothy B. McPherson, Petitioner and Owner

This is a petition filed by Dorothy B. McPherson, 24 Hillside Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 701 to construct a 16 ft. x 8 ft. rear deck with stairs and bump-out. The applicant seeks a permit, variance and/or finding

that proposed alteration is not more detrimental to the neighborhood. The property is located 24 Hillside Avenue, Braintree, MA 02184 and is within a Residential C District Zone, as shown on Assessors Map 3050, Plot 71, and contains a land area of +/- 7,200 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, 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 November 24, 2015 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 Michael Calder, Alternate.

### **Evidence**

Dorothy McPherson, the petitioner and owner, explained that she wishes to add a 16 ft. x 8 ft. rear deck. The petitioner's lot is nonconforming, as it contains only 7,200 sq. ft., where 43,560 sq. ft. is required, provides only 60 feet of frontage, where 100 feet is required, offers only 60 feet of lot width, where 100 feet is required, and provides only 120 feet of lot depth, where 200 feet is required. The petitioner's existing house is nonconforming as to the front yard setback; the house is located 3 feet from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 50 feet. Furthermore, the existing house is also nonconforming as to the side yard setback; the house is located 28.3 feet from the left side yard lot line and 2.4 feet from the right side yard lot line, while the Zoning Bylaw requires a side yard setback of 30 feet. Lastly, the existing garage is also nonconforming as to the side yard setback; the garage is located 2 feet from the left side yard lot line, while the Zoning Bylaw requires a garage side yard setback of 5 feet. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the porch will not create any new zoning deficiencies.

The applicant presented the plan entitled "Plan Showing Proposed Addition, 24 Hillside Avenue, Braintree, Massachusetts, Norfolk County", dated October 7, 2015 and prepared by Dennis O'Brien, PLS of Franklin, 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 existing lot is pre-existing nonconforming in terms of lot size, 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 and rear yard setbacks. The Board also found that the existing garage is pre-existing nonconforming in terms of the setback from the rear yard lot line. The Board found that the proposed addition will not create any new zoning non-conformity. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

## 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, in accordance with the plans submitted.

- 3) Petition No. 15-42**  
**Petitioner: Krishnakant Patel**  
**RE: 405 Commercial Street, Braintree, MA**

Present: Krishnakant Patel, Petitioner and Owner

Krishnakant requested an extension of the petition, case number 15-42.

On a motion made by Mr. Karll and seconded, the Board unanimously voted to continue the petition until the December 22, 2015 Zoning Board of Appeal meeting.

- 4) Petition No. 15-43**  
**Petitioner: Matthew J. Foley**  
**RE: 43 Walnut Avenue, Braintree, MA**

Present: Matthew J. Foley, Petitioner and Owner  
Laura Bickel, Petitioner's Representative

This is a petition filed by Matthew J. Foley, 43 Walnut Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 701 to demolish upper floor of existing 1.5 story residence and construct a full size, second story consisting of +/- 722 sq. ft. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 43 Walnut Avenue, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 3020, Plot 05 and 06 and contains a combined land area of +/- 6,528.77 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, 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 November 24, 2015 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 Michael Calder, Alternate.

## Evidence

Laura Bickel, representing the petitioner, explained the owner Mr. Foley seeks to demolish an existing half story on the second floor and construct a full size second floor with attic. The addition will be constructed within the existing footprint. Mr. Foley explained the need for more living space as the reason for the petition. The petitioner's lot is nonconforming, as it contains only 6,528.77 sq. ft., where 15,000 sq. ft. is required, provides only 63 feet of lot width, where 100 feet is required. The petitioner's existing house is nonconforming as to the front yard setback; the house is located 12.9 feet from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 feet. Furthermore, the existing house is also nonconforming as to the side yard setback; the house is located 8.3 feet from the left side yard lot line, while the



Zoning Bylaw requires a side yard setback of 10 feet. Lastly, the existing garage is also nonconforming as to the rear yard setback; the garage is located 4.5 feet from the rear yard lot line, while the Zoning Bylaw requires a garage side yard setback of 5 feet. The proposed alteration will not create any new nonconformity; accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the second floor addition to the single family dwelling will be constructed similar to existing neighborhood characteristics.

The applicant presented the plan entitled "Certified Plot Plan of Land in Braintree, Massachusetts, Located at #43 Walnut Avenue", dated March 25, 2015 and prepared by Rod Carter Associates of Upton, MA. The applicant also presented plans and architectural renderings entitled "Exterior Elevations", "Proposed Second Floor Addition", "Sections; Details", and "Overview Layout", "First, Second, and Roof Frame Plans", and "Existing Conditions; First & Second Floor Plans", dated October 12, 2015 and prepared by Fitzgerald Design of Duxbury, 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 existing lot is pre-existing nonconforming in terms of lot size, and lot width, as noted above. In addition, The Board found that the existing structure is pre-existing nonconforming in terms of the front and side yard setbacks. The Board also found that the existing garage is pre-existing nonconforming in terms of the setback from the rear yard lot line. The Board also found that the proposed addition will be within the existing foot print and not create any new zoning non-conformity. The Board further found that the proposed alterations would not be substantially more detrimental to the neighborhood than the existing nonconforming lot and structure.

### **Decision**

On a motion duly made by Mr. Calder and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

- 5) Petition No. 15-44**  
**Petitioner: 459 West Street LLC**  
**RE: 459 West Street, Braintree, MA**

Present: Carl Johnson, Petitioner's Attorney, Petitioner and Owner  
Richard Whittington, Whitman Homes  
Eric Dias, Engineer

This is a petition filed by 459 West Street LLC, c/o 110 West Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-407, 609, 701 for one (1) acre minimum lot size for eight (8) lots of a proposed eight (8) lot subdivision. The applicant seeks a permit, variance and/or finding that the proposed alteration will not be more detrimental to the neighborhood. The property is located at 459 West Street, Braintree, MA 02184, and is within a

Residential A Watershed District Zone, as shown on Assessors Map 2042, Plot 13, and contains a land area of +/- 6.228 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 November 24, 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**

The petition was presented by Attorney Carl Johnson. Mr. Johnson was joined by Richard Wittington of Whitman Homes, Inc., the proposed developer of the subdivision. Also joining Mr. Johnson was Eric Dias, an engineer representing the firm Tunison Dias, Inc. Mr. Johnson explained the subject subdivision had been approved in March 25, 2014 by the ZBA for a prior petition to construct eight lots, with a six month extension granted which expired September 25, 2015. The petitioner is before the ZBA due to lapse of the variance for failure to exercise same, in addition to ongoing discussions with Braintree Planning Staff and the Braintree Planning Board regarding revisions to the proposed subdivision plan.

Attorney Johnson described that the land, 6.28 acres (271,303 square feet) has been owned 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 documentation from Tunison Dias, Inc. indicating 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 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.

Mr. Johnson explained 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. He further explained the approved 2014 ZBA petition was to construct eight lots; two would meet the 1 acre minimum lot size, while the remaining six lots would require relief. Also, the prior petition assumed water infiltration and recharge on each of the lots, which was incorrectly calculated.

The proposed current eight lot development would meet and/or exceed the Watershed A requirements for building coverage, lot coverage and open space. Mr. Johnson explained the eight lots meet or 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.

Variances are required for relief from the lot size requirements. The Zoning Bylaw requires a minimum lot size of 43,560 sq. ft., but the proposal would provide the following eight lot sizes: 37,083 sq. ft. (Lot 1), 25,017 sq. ft. (Lot 2), 25,037 sq. ft. (Lot 3), 37,235 sq. ft. (Lot 4), 25,037 sq. ft. (Lot 5), 25,304 sq. ft. (Lot 6), 29,184 sq. ft. (Lot 7), and 36,242 sq. ft. (Lot 8).

As grounds for the variance, 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 a drainage system and design 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. Lastly, Mr. Johnson noted the proposed lot sizes are similar in size compared to the immediate neighborhood.

The applicant presented the plan entitled "Sheet 4 of 4, Proposed Lot Layout Plan for the Zoning Board of Appeals, Prepared for: 459 West Street LLC" dated September 21, 2015 and prepared by Field Resources, Inc. of Auburn, MA. The applicant also presented the entitled "Proposed Layout Pland", Sheet C-3, dated August 25, 2015 and prepared by Tunison Dias, Inc. of North Easton, MA. Lastly, the applicant presented documents entitled "Summary of Hydrologic Analysis and Stormwater Management System Design Calculations", dated October 27, 2015 and prepared by Tunison Dias, Inc., of North Easton, MA.

The Planning Board submitted a favorable recommendation. Bob Campbell, representing Fallon Circle and some of the abutters, spoke in favor of the petition. No one else spoke in favor of or opposition to the petition. No one else spoke in favor of or opposition to 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 present a hardship 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-Jaw.

### **Decision**

On a motion duly made by Mr. Karll and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant the requested variances from the minimum lot size requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

**6) Petition No. 15-45**  
**Petitioner: Landing Apartments, LLC**  
**RE: 19, 19A and 37 Commercial Street, Braintree, MA**

Present: Frank Marinelli, Petitioner's Attorney  
Josh Katzen, Developer

This is a petition filed by Landing Apartments, LLC., c/o Heller Property Management, 625 Mt. Auburn Street, Suite 210, Cambridge, MA 02138 for relief from Bylaw requirements under

Chapter 135, Sections 135-407, 615 and such other Bylaw provision as/if necessary to construct 172 residential apartment units, approximately 11,486 sq. ft. of retail and/or restaurant space, a 2-level 198-space parking garage and related public improvements in accordance with approved plans. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at Quincy Avenue and 19, 19A and 37 Commercial Street, Braintree, MA 02184 and is within a Braintree-Weymouth Landing District Zone, as shown on Assessors Map 3006, Plot 9, 10, 12 and 12c and contains a land area of +/- +/- 2.05 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 November 24, 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**

The petition was presented by Attorney Frank Marinelli on the behalf of Josh Katzen and Landing Apartments, LLC. Attorney Marinelli was joined by the Landing developer, Josh Katzen. Mr. Marinelli discussed the site is contains a Chair Fair commercial space/building (Plot 12), commercial space/buildings (Plots 9 & 10) and the municipal lot (Plot 12C). The project was the subject of a multi-year process that led to the Braintree Planning Board, approving on August 18, 2015 special permit(s) and site plan review for the redevelopment project. Attorney Marinelli described the approved project consists of a mixed use transit-oriented redevelopment comprising 172 residential apartment units, approximately 11,486 sq. ft. of retail and/or restaurant space, a 198- space parking garage and a landscaped public pathway. The project was approved by special permit/site plan review authority of the Planning Board under a new zoning district, the Braintree Weymouth Landing District ("BWLD").

The applicant is not seeking any changes of the permits and approvals granted by the Planning Board Decision that allowed construction of the project. However, the applicant is seeking relief from the Zoning Board of Appeals regarding any variance(s) from the provisions, including height and density of Section 615 of the Braintree Zoning Bylaws, and from any other provision of the Zoning Bylaws that may be required. Mr. Marinelli discussed how Section 135-615-08 of the Zoning Bylaws designates the Planning Board as the governing body to allow projects in the BWLD district to exceed density and dimensional requirements specified in Tables 1 and 2 of Section 615-05. However, Attorney Marinelli noted this section does not designate the Planning Board the powers to provide variances pursuant to Section 135-407. Mr. Marinelli expressed financial lenders are accustomed to local Zoning Board of Appeals granting variances and/or relief for dimensional issues. Therefore, due to the new and unique regulations of the BWLD, in addition to the granting by the Planning Board for density and dimensional relief, the applicant would like to confirm zoning relief from the ZBA.

As grounds for the variance, Attorney Marinelli noted the irregular shape of the lots, a high water-table, a descending topography, and difficult soil conditions as a hardship. Furthermore, Mr. Marinelli stated the Landing Apartments was the first project to be approved under the new Braintree Landing Zoning regulations, thus emphasizing the project meets the goals and intent of the zoning bylaws.

The applicant presented the plan entitled "Site Development Plans for Landing Apartments, 19-37 Commercial Street, Braintree, Massachusetts", Sheets 1 thru 7, dated April 17, 2015 and prepared Kelly Engineering Group, Inc. of Braintree, 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 demonstrated the need for relief from the Zoning By-law. Specifically, the Board found that the soil conditions, descending topography, water-table and the irregular lot shape presents hardships unique to the petitioner's property. 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 Bylaw.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variances from the requirements of Bylaw Section 135-615, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 7) Petition No. 15-46**  
**Petitioner: Heather Dudko, representing tenant Bertucci's Restaurant**  
**RE: 392-400 Franklin Street, Braintree, MA**

Present: Heather Dudko, representing Bertucci's Restaurant

This is a petition filed by Heather Dudko, c/o 2 Phoebe Way, Worcester, MA 01605 (owner of property, Wildwood Estates of Braintree) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 904.1 to install a 4 ft. x 8 ft. 10 inch secondary wall sign on the rear elevation of Bertucci's. 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 392-400 Franklin Street, Braintree, MA 02184 and is within a General Business District Zone, as shown on Assessors Map 1022, Plot 14, and contains a land area of +/- 3.25 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 November 24, 2015 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Calder, Chairman; Richard McDonough and Michael Ford, Members; and Stephen Karll, Alternate.

### **Evidence**

Heather Dudko appeared on behalf of Bertucci's Restaurant and sign installer, National Sign Corporation. Ms. Dudko was joined by Kevin Bakas, Vice President of Real Estate Construction and Facilities at Bertucci's. Ms. Dudko explained Bertucci's request for a variance to install an

external wall sign, totaling 35.3 sq. ft. on the restaurant's rear façade, which is not a direct entrance.

The applicant seeks a variance from Section 135-904.1(5)(b) of the Zoning By-law which allows a secondary wall sign if a store or business has a direct entrance into the store or business on a wall other than the store front. The proposed location of the wall sign of the rear façade does not have a direct entrance to the restaurant. The exterior door is utilized for deliveries, not for patrons.

As grounds for the variance, the petitioner noted the proposed signage is necessary for visibility due to the location of the restaurant facing Franklin Street and not the busy thorough fare of Granite Avenue.

The applicant presented the plans entitled "Drawing No. 50299-01" and "Drawing No. 50299-02", dated August 28, 2015 and prepared by National Sign Corporation of Berlin, CT.

The Planning Board provided an unfavorable recommendation.

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 existing signs on the building. The Board also found that the proposed signage was necessary to identify the location of the restaurant and to safely direct the traveling public to the location. 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. McDonough and seconded by Mr. Ford, the Board unanimously (3-0) voted to grant the requested variances from the Bylaw Section 135-904.1 requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

### **APPROVAL OF MINUTES:**

On a motion made by Mr. Ford and seconded by Mr. McDonough, the Board voted 3-0 to accept the meeting minutes of October 14 and October 27, 2015.

The Board adjourned the meeting at 10:00 pm.