



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 Minutes January 22, 2018

**IN ATTENDANCE:**

Stephen Karll, Chair  
Michael Ford, Member  
Richard McDonough, Member  
Stephen Sciascia, Associate  
Gary Walker, Associate

**ALSO PRESENT:**

Jeremy Rosenberger, Zoning Administrator

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

**OLD BUSINESS:**

- 1) Petition Number: 17-43**  
**Petitioner: K. Ingber, Tr. Wood Road Nominee Trust and Wood Road Realty LLD**  
**RE: 290 Wood Road**

The petitioner requested the initial public hearing to be continued to February 26, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

- 2) Petition Number: 17-46**  
**Petitioner: William Wong**  
**RE: 18 Ellsworth Street**

The petitioner discussed with the Board that he had been unable to have a meeting with the rear abutter. The Board asked the petitioner to continue the public hearing to February 26, 2018 to allow time to discuss the issue with the rear abutter and to develop a landscape plan for screening purposes. The petitioner agreed to the public hearing extension.

On a motion made and seconded, the Board voted 3-0 to continue the public hearing to February 26, 2018.

**NEW BUSINESS:**

- 1) **Petition Number: 17-58**  
**Petitioner: I.D. Sign Group**  
**RE: 120 Pearl Street**

The petitioner requested the initial public hearing to be continued to February 26, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

- 2) **Petition Number: 17-59**  
**Petitioner: I.D. Sign Group**  
**RE: 170-180 Pearl Street**

The petitioner requested the initial public hearing to be continued to February 26, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

- 3) **Petition Number: 17-59**  
**Petitioner: Christin & James Morrissey**  
**RE: Marshall Street**

Christin Harriman & James Morrissey, 26 Watson Street, Braintree, MA 02184 (Property Owner: Thomas Beck c/o Attorney David Lane) for relief from Bylaw requirements under Chapter 135, Sections 135-407 and 701 to construct a 2.5 story, single family dwelling (+/- 988 sq. ft. building footprint) with an 18' x 10' rear deck on a vacant lot that does not meet the minimum lot area. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at Marshall Street, Braintree, MA 02184 and is within a Residence B District Zone, as shown on Assessors Map 2011 Plot 08 and contains a total land area of +/- 4,991 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 Braintree Town Hall, One JFK Memorial Drive, Braintree, MA on January 22, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

**Evidence**

Christin Harriman and James Morrissey, the petitioners, discussed they are seeking to, construct a 2.5 story, 34' x 26' single family dwelling with a 6' x 26' front farmer's porch and 18' x 10' rear deck. The dwelling's footprint would be +/- 988 sq. ft. The gross living space would be approximately 2,268 sq. ft. The new dwelling will provide a dining room, kitchen/living room

and a bathroom on the first floor. The second floor would provide a master bedroom/bath, a bathroom, bedroom and den. The attic level would provide two additional bedrooms and a sitting area. The basement would be accessed by a rear bulkhead. The proposed building height would be 31.5'.

As far as the Marshall Street property (Lot 91), the petitioners discussed it was created as part of a subdivision in 1922. Per the subdivision, the lot created was unique as the majority of lots created were 5,000 sq. ft. and 50 ft. wide by 100 ft. deep. However, Lot 91 was created as a 4,991 sq. ft. lot and was not symmetrical dimensionally. Per the Registry of Deeds, the property was sold to William Becks in 1948. The listed owner of the property per the Braintree Assessing Department is Thomas Becks, the trustee of William Becks estate (his father). Of note, William Becks also had ownership interest (50%) of the adjacent Lot 90, known as 40 Marshall Street from 1975 to 2003. 40 Marshall Street was sold to Russell Sharp in 2003. Lastly, it should be noted, the 1948 deed for Lot 91 listed the following deed restrictions:

- 1.) No building shall be erected or placed on said premises within twenty (20) feet of Marshall Street;
- 2.) No building shall be erected or placed upon said premises having a flat roof;
- 3.) No garage for more than two cars shall be erected or placed upon said premise;
- 4.) No manufacturing shall be conducted upon said premises; and
- 5.) No dwelling house to cost less than \$5,000.00 shall be erected or placed upon said premise.

Member Ford discussed his concern with building on an undersized lot. However, Mr. Ford recognized that the property has existed as a vacant lot for a number of years within the Beck family and that the property was comparable to other lots in terms of size in the immediate area. Mr. Ford did highlight he felt the bedrooms and living space in the attic area would be too much living space for such a small property. Member McDonough expressed he was fine with the proposed single family dwelling. Chairman Karll recognized that the subject lot was similar in terms of size compared to surrounding lots and due to the fact the area was subdivided in 1923 into mostly 5,000 sq. ft. lots. Furthermore, he added the proposed single family dwelling was well designed and appropriate for the lot. Lastly, Mr. Karll asked the petitioner's if they would be open to removing the living space from the attic area, namely no stairs going to the attic. The petitioners replied they would agree for the attic to be storage accessed by pull-down stairs.

Variances are required for relief from the lot area and lot width zoning requirements. The petitioner's subject lot area is 4,991 sq. ft., where 15,000 sq. ft. is required. The lot width is 43 ft., where 100 ft. is required.

As grounds for the requested variance, the petitioner highlights the lot shape is unique; the rear lot line is much narrower (43 ft.) than the front yard lot line (56.25 ft.). As a result, there is a pinching off of the rear lot line in comparison to the lots on either side of it. The petitioners note the uniquely shaped subject lot is one of only six lots in the original subdivision having less than 5,000 square feet. Five of the other six lots are each developed with single family homes. The subject lot is the only undeveloped parcel within the original subdivision (excluding a 5,000 square foot parcel on Marshall Street which is owned by the Town of Braintree). As such, the petitioners state the property is taxed as "developable land" and is consistent within the subdivision; to deny its development arguably denies the original intended purpose as a single family house lot. Furthermore, the proposed single family dwelling will be scaled appropriately for the lot, meet all the setbacks, height and coverages. Lastly, the petitioners highlight the design will enhance surrounding property values and improve the Town's housing stock.

The petitioners presented a plot plan entitled "Site Plan of Land in Braintree, Norfolk Co., MA", dated December 6, 2017 and prepared by Land Surveys Incorporated of Brockton, MA. The petitioners also presented architectural elevations and floor plans entitled "Proposed Dwelling for Morrissey, Lot #8, Marshall St., Braintree, Mass.", sheets untitled, dated November 19, 2017 and prepared by J. Rogers.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Dwelling to conform to the front yard setback of 20 ft.; 2.) Dwelling to only have bedrooms on the second floor; 3.) Any changes to the approved plans will require ZBA approval; 4.) Submission of a certified foundation submitted to the Planning & Community Development Department prior to vertical construction; and 5.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy. Louise and Kevin McCue expressed support for the project and that it would improve an undesirable vacant lot. John Newcomb, of 29 Watson Street, stated his support for the proposed project and that it would add value to the neighborhood. Kerry Murphy, of 12 Watson Street, stated his support for the proposed project. Tom Melanson, of 274 Middle Street, stated his support for the proposed project. Chris Joyce, stated his support for the proposed project. Shawn Christmas, of 38 Watson Street, stated his support for the proposed project. Mark Jeske, of 935-937 Granite Street, stated his support for the proposed project. Israel Alicea, of 30 Marshall Street, voiced his concern with any removal of the existing fence. The petitioner stated they will ensure the fence is maintained and on the subject lot. Peter Smith, of 49 Marshall Street, asked if the large tree on the property would be removed and if a secondary egress from the attic was necessary. The petitioner's stated the tree would be removed No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

### **Findings**

The Board found the petitioner had presented a unique hardship with respect to the shape of the lot. The Board found the asymmetrical shape is unique as compared to the rest of the properties laid out in the 1922 subdivision plan. In addition, the Board found the Beck family, which purchased the property in the 1940's, had always intended the lot to be developed. The Board also found that the proposed new single family dwelling will meet the current zoning requirements for lot frontage, lot depth, setbacks, building height and building/lot coverages. Furthermore, the Board found the petitioners had demonstrated an abundance of neighborhood support for the proposed single family dwelling and requested zoning relief. Lastly, the Board further found that the proposed new single family dwelling will be designed appropriately, be comparable in size relative to the existing housing stock and would not be more detrimental to the neighborhood.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variances for lot size and lot width, pursuant to Bylaw Section 135-407, in accordance with the plans submitted and the following conditions:

- 1.) Dwelling to conform to the front yard setback of 20 ft.;
- 2.) Dwelling to only have bedrooms on the second floor and no living space in the attic;
- 3.) Dwelling to not provide a walk-up attic;
- 4.) Any changes to the approved plans will require ZBA approval;

- 5.) Submission of a certified foundation submitted to the Planning & Community Development Department prior to vertical construction; and
- 6.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

**4) Petition Number: 17-60  
Petitioner: Mark Jeske  
RE: 935-937 Granite Street**

The Board asked the petitioner to continue the public hearing to February 26, 2018 to ask his engineer to attend the next hearing. The petitioner agreed to the public hearing extension.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

**5) Petition Number: 17-61  
Petitioner: Jennifer & Michael Foley  
RE: 128-132 Hancock Street**

Jennifer & Michael Foley, 61 Hawthorn Road, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 601 and 806 for relief from the off-street parking requirements for a proposed ice-cream/fast-food establishment. The applicant seeks a permit, variance and/or finding that proposed alteration is not more detrimental to the neighborhood. The property is located at 128-132 Hancock Street, Braintree, MA 02184 and is within a Commercial Zoning District, as shown on Assessors Map 1007, Plot 08, and contains a land area of +/- 8,521 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 22, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Stephen Sciascia; and Richard McDonough, Alternate.

### **Evidence**

The petitioners and property owners, Jennifer and Michael Foley explained to the Board they are seeking to change the use of the nail salon on the property to an ice cream parlor/establishment. Ms. Foley expressed she would own/run the business, to be called "Foley's Ice Cream Parlor". The petitioners discussed the 8,521 sq. ft. lot is improved by two buildings and a detached, two-car garage. Building #1 (128 Hancock Street), constructed circa 1900, contains three (3), one bedroom units. Building #2 (132 Hancock Street), constructed circa 1920, contains a 400 sq. ft. commercial unit, currently used as a nail salon, and two (2), one bedroom units. The majority of the property is paved. The petitioners highlight the property provides off-street parking for up to twelve vehicles. However, the petitioners noted the parking is currently unstriped.

As far as the need for the parking variance, petitioners discussed the existing site provides twelve off-street parking spaces based on their submitted site plan. Per zoning, they would need to provide two off-street parking spaces per dwelling unit and two off-street parking spaces for the nail salon (1 space per 200 sq. ft. for personal services establishment), for a total of twelve off-street parking spaces. The petitioners stated that the submitted plan would deem them compliant with the off-street parking requirements based on the current uses. The petitioners noted the proposed ice cream establishment use requires four off-street parking spaces per the Braintree Zoning Bylaws (1 space per 100 sq. ft. for a fast food establishment), which results in a total of fourteen required off-street parking spaces. The proposed change of use would result in a deficiency of two off-street parking spaces. The Zoning Administrator discussed two of the off-street parking spaces, based on the submitted site-plan, overlap onto the abutting property to the rear owned by the MBTA (the Middleboro Commuter Rail Line). To correct the overlap, the Zoning Administrator discussed the parking space labeled #9 would likely need to be removed. Furthermore, it is questionable as to whether it is an accessible off-street parking space anyways. As such, staff had the opinion that the actual off-street parking is 11 spaces due to the shape of the lot and configuration of buildings on the property. Lastly, the petitioners discussed they have reached out to some of the surrounding properties to inquire about the possibility of a shared parking arrangement to provide a few more off-street parking space. They have not yet secured any agreements.

Chairman Karll asked the petitioners if the off-street parking spaces labeled #11 & #12 are actually used. The petitioners highlighted four of the five residential tenants have only one car. As a result, the petitioners stated there are often a number of unused off-street parking spaces on site. They expressed there has never been a parking issue. Mr. Ford asked the petitioners if it would be better to remove the off-street parking spaces labeled #11 & #12 to provide a means of vehicular circulation thru the site. The petitioners stated they would not have an issue with that. Mr. Ford also stated he did not have an issue with the proposed parking deficiency as the proposed use was only 400 sq. ft. and there is ample on-street parking. Furthermore, Mr. Ford felt the proposed ice cream parlor is a more desirable use than the existing nail salon. Mr. Sciascia noted the surrounding area is not pedestrian friendly and advised the petitioners seek off-street parking for employees.

Variances are required for relief from the minimum off-street parking requirements pursuant to Zoning Bylaw Section 135-806; the Bylaw requires a minimum of one (1) space per 100 sq. ft. for fast food use and two (2) spaces per dwelling unit for the residential uses. As such, the property would require a total of 14 off-street parking spaces, namely four (4) spaces for the ice cream use and ten (10) off-street parking spaces for the residential units. The submitted site plan portrayed twelve (12) off-street parking spaces. However, the Zoning Administrator concluded the actual off-street parking would be only eleven (11) off-street parking spaces as the off-street parking space labeled #9 on the site plan was highly inaccessible and slightly overlaps onto the abutting MBTA property. Therefore, the petitioners are deficient with regard to the off-street parking requirements by three (3) spaces.

As grounds for the variances, the petitioners stated a hardship exists due to the asymmetrical lot shape and the juxtaposition of the buildings upon the land that create the need for the requested relief. The petitioners highlight the lot was created in the 19<sup>th</sup> century, much before the advent of automobiles. Since the majority of the lot is paved, there isn't sufficient open space to create additional off-street parking spaces. The unique size and shape of the property, in addition to the location of the MBTA tracks immediately adjacent to the property, significantly reduces the ability for the ice cream parlor to meet the on-site parking requirements. The

petitioner further discussed the change of use would not affect adjoining properties or the community in general as the on-street parking in this area is under-utilized by surrounding commercial properties. Furthermore, the petitioner highlights there is approximately six on-street parking spaces in front of the property. Lastly, the petitioner notes they will work with surrounding property owners to provide parking for employee parking.

The applicant presented the site/plot plan entitled "#128-#132 Hancock Street, Braintree Massachusetts, Site Plan of Land", dated October 8, 2017, and prepared by Hoyt Land Surveying of Weymouth, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Petitioner shall provide, by the way of a covenant, agreement or easement, off-site parking for a minimum of two employees; and 2.) Petitioner shall submit a revised site/parking plan that depicts all off-street parking within the property bounds and all off-street parking spaces to be 8.5 ft. x 18 ft. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the existing lot, multiple structures and off-street parking are pre-existing nonconforming. The Board found that the proposed change of use would only affect the interior of the commercial/residential building numbered 132 Hancock Street and is a desirable use. As a result, the Board found the change of use to an ice cream parlor/establishment would not be more detrimental to the community than the existing nail salon. In addition, the Board found the petitioner had presented a hardship with respect to the unique shape of the lot, which is highly asymmetrical. As a result of the unique lot shape and development prior to automobiles, the site is constrained with regard to providing additional off-street parking. The Board also found the lot meets the off-street zoning requirements for the five (5) residential units, but could not meet the off-street parking requirements for the proposed ice-cream parlor. The Board found the categorization of the proposed 400 sq. ft. ice cream parlor as a fast-food use pursuant to Zoning Bylaw Section 135-601, was excessive and limits the petitioner's ability to reuse the commercial space. The Board further found reducing the amount of off-street parking, by namely removing off-street parking spaces #9, #11 and #12 to improve the site circulation would be acceptable if the petitioner chooses to do so. 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 of benefit to the community.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 134-403, and variance from the off-street parking requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted and with the condition the petitioner, at their discretion, remove the off-street parking spaces #9, #11 and #12, resulting in a total of nine (9) off-street parking spaces.

**6) Petition Number: 17-62  
Petitioner: Foxrock Properties LLC  
RE: 350 Granite Street**

The petitioner requested the initial public hearing to be continued to February 26, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

- 6) Petition Number: 17-63**  
**Petitioner: John E. O'Toole & Katelyn M. O'Toole**  
**RE: 50 Monatiquot Avenue**

The petitioner requested the initial public hearing to be continued to February 26, 2018.

On a motion made and seconded, the Board voted 3-0 to continue the initial public hearing to February 26, 2018.

**APPROVAL OF MINUTES:**

On a motion made and seconded, the Board voted 5-0 to accept the December 18, 2017 meeting minutes.

The Board adjourned the meeting at 8:45 pm.