



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 28, 2019

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

ALSO PRESENT: Jeremy Rosenberger, Zoning Administrator

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 28, 2019 at 7 p.m. Chairman Stephen Karll called the meeting to order at 7:00pm.

OLD BUSINESS:

- 1) **Petition Number: 18-17**
Petitioner: Brian & Laura McGourty
RE: 460R Pond Street

The petitioner requested a continuance to January 28, 2019.

On a motion made and seconded, the Board voted 4-0 to continue the public hearing to February 25, 2019.

- 2) **Petition Number: 18-38**
Petitioner: Offices at 285 Washington Street Braintree LLC
RE: 285-287 Washington Street

The petitioner requested a continuance to January 28, 2019.

On a motion made and seconded, the Board voted 3-0 to continue the public hearing to February 25, 2019.

NEW BUSINESS:

- 1) Petition Number: 18-48
Petitioner: Christopher Kelly
RE: 1 Reservoir Circle**

The Chairman read into record the legal advertisement: Christopher Kelly, 1 Reservoir Circle, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to demolish attached single car garage and construct two-story addition (340 sq. ft. building footprint); proposed addition would maintain, but intensify pre-existing nonconforming side yard setback (5.8 ft.) and is pre-existing nonconforming with regard to lot area, lot width, side/rear yard setbacks and in-ground pool setback. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 1 Reservoir Circle, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2082, Plot 26, and contains a land area of +/- 8,635 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

Attorney Carl Johnson, representing the petitioner Chris Kelly, discussed the petitioner is seeking to raze the existing attached single car garage and construct a two-story addition that would be mostly within the existing building footprint. The building footprint would be expanded slightly to provide a new mudroom and living space above. Mr. Johnson discussed the mudroom would meet the side yard setback requirements. Attorney Johnson also added the reconstruction of the garage would slightly improve the pre-existing nonconforming right side yard setback from 5.8 ft. to 6.35 ft.

As far as the history of the property/dwelling, Attorney Johnson stated the property had previously received building permits for the original one story 36 ft. x 24 ft. dwelling in 1949, a one story 12 ft. x 24 ft. family room in 1964 and a 36 ft. x 26 ft. second story addition above the main dwelling in 2003. He added no building permits are on record for the existing shed and in-ground pool, but have been in existence for many years. As such, Attorney Johnson stated the property and structures are all pre-existing nonconforming and protected by M.G.L. 40A Section 7 and Braintree Bylaw Section 135-402.

Attorney Johnson discussed that the Board had authority with regard to the Buffer Zone regulations of Braintree Zoning Bylaw Section 135-702 as it pertains to Mr. Kelly's proposed additions/alterations. Namely, Attorney Johnson stated that M.G.L Section 6 and Braintree Bylaw Section 134-403 gives the Board authority to grant a Finding to pre-existing nonconforming structures seeking additions, alterations or reconstruction. Section 135-702(B), specifically the regulations regarding Buffer Zones, are dimensional in nature and are therefore subject to the Boards Authority. At issue is the 30 ft. Buffer Zone for properties residing in a Residential A or B Zoning District that abuts an Open Space Conservancy District described in Section 135-702. Attorney Johnson stated the petitioner's property resides in a Residential B Zoning District and the abutting Flaherty School is zoned Open Space Conservancy. Attorney Johnson described the dwelling's nonconformities were in existence prior to the Flaherty School being rezoned from a Resident B Zoning District to an Open Space Conservancy District in 1987. In addition, the provisions of the Buffer Zones have not been enforced upon the surrounding properties that are also subject to the regulations. He added that the 2003 addition to the petitioner's dwelling was not flagged as being subject to Section 135-702.

Chairman Karll asked what if the Planning Board states that a Special Permit is required. Attorney Johnson stated his belief that the Buffer Zone issue was dimensional in nature and therefore under the authority of the Board. Also, he discussed the petitioner's nonconforming dwelling and structures existed prior to any related zoning changes. Mr. Karll was concerned that if the Board approves the project, it could create a hardship for Mr. Kelly. Attorney Johnson replied there would be no hardship to the petitioner as the requested zoning relief is under the jurisdiction of the Board. Chairman Karll agreed. The Zoning Administrator discussed the proposed project is expanding the dwelling (via new mudroom) in the 30 ft. Open Space Buffer Zone, and therefore is more than just a reconstruction or adding within the existing building footprint. As such, past precedent has been that new structures within a Buffer Zone must seek a Special Permit from the Planning Board. Attorney Johnson expressed the petitioner does not have room to install landscaping between the right side of the dwelling and the Flaherty School as described in Section 135-702. Furthermore, Mr. Johnson reiterated that the Buffer Zone issue was dimensional in nature and therefore under the authority of the Board.

Chairman Karll stated he did not have an issue with making a decision on the petition. Mr. Ford expressed if the petitioner's property abutted another residential property he would have concerns with the project. However, the property abuts the Flaherty school's parking lot, which in reality is vacant almost half the year. Mr. Sciascia stated the proposed project is similar to past approved projects by the Board. Mr. Sciascia did express concern regarding any potential open space/conservation issues. Attorney Johnson replied there are no open space or conservation issues with the project.

The petitioner's existing lot is nonconforming, as it contains 8,365 sq. ft., where 15,000 sq. ft. is required and provides 90 ft. of lot width, where 100 ft. is required. The petitioner's existing single family dwelling is nonconforming as to the side yard setbacks; the dwelling is located 4.5 ft. from the left side yard lot line and 5.8 ft. from the right side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 ft. The petitioner's existing single family dwelling is nonconforming as to the rear yard setback; the dwelling is located 25.84 ft. from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 ft. The petitioner's existing in-ground pool is nonconforming as to the pool setback requirement; the pool is located 5 ft. from the rear yard lot line, while the Zoning Bylaw requires a pool setback of 10 ft. from a side or rear yard lot line. The proposed additions/alterations will intensify the pre-existing side yard nonconformity by the way of a second story addition. The additions/alterations will slightly decrease the right side yard setback from 5.8 ft. to 6.35 ft. As such, the proposed project will not create any new zoning nonconformity. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the additions/alterations will not generate any new zoning nonconformity. Secondly, the petitioner noted the addition will be similar to the existing neighborhood characteristics and not be more detrimental to the neighborhood. Furthermore, the petitioner stated the additions are necessary to provide for additional living space and a growing family. The petitioner noted the existing dwelling does not provide a basement and therefore space is at a premium. Lastly the petitioners stated they have support of the immediate neighborhood and do not want to move from their home/location.

The applicant presented the plan entitled "Proposed Addition, 1 Reservoir Circle, Braintree, MA 02184", dated December 29, 2018, and prepared by James E. McGrath of Weymouth, MA. The applicant also presented floor plans and architectural renderings entitled "Kelly Family Addition, 1 Reservoir Circle, Braintree, MA 02184", drawing numbers 1 thru 9, dated September 20, 2018 and prepared by HOMESTYLE designs of Weymouth, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of continuance. David Milch-Hoka and Christopher Milch-Hoka of 26 Blake Street spoke in support of the proposed project. Michael Calderara of 11 Reservoir Circle spoke in support of the proposed project. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found the lot is pre-existing nonconforming in terms of lot area and width, as noted above. The Board also found the existing dwelling is pre-existing nonconforming in terms of the side and rear yard setbacks. In addition, the Board found that the existing in-ground pool is pre-existing nonconforming in terms of the pool setback requirement. The Board found, based on testimony of the petitioner's attorney, that the requirements of Braintree Bylaw Section 135-702, which governs Buffer Zones, were dimensional in nature. The Board further found that, where the dwelling was in existence when Section 135-702 was enacted, the structure is pre-existing nonconforming as to the dimensional requirements of Section 135-702. The Board found that the proposed increase in height, within the side setback nonconformity, would be an intensification of an existing nonconformity. The Board also found that the proposed additions will not create any new zoning nonconformity. The Board further found that the proposed addition will be designed appropriately and be comparable in size relative to the existing housing stock. Furthermore, the Board found the proposed project would slightly improve the pre-existing nonconforming right yard setback. Lastly, the Board found there was no opposition to the proposed project and in fact had support of the immediate abutters/neighbors. As such, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and
- 3.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

2) Petition Number: 18-53
Petitioner: Anna Haluch c/o Pro Signs
RE: 120 and 180 Pearl Street

The Chairman read into record the legal advertisement: Anna Haluch, 65 Belmont Street, South Easton, MA 02375 (Property Owners: Francis X. Messina and Ivory Plaza LTD Partnership) for relief from Bylaw requirements under Chapter 135, Sections 135-407 and 904.2 to install one (1) 229.42 sq. ft. illuminated wall sign, one (1) 141.80 sq. ft. illuminated wall sign and two (2) ground sign panels for tenant Total Wine; proposed signage exceeds the total allowable height, square footage and number of signs. The applicant seeks variances and/or findings that the proposed project will not be more detrimental to the neighborhood. The properties are located 120 & 180 Pearl Street, Braintree, MA 02184 and are within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 16 & 18, and contains a combined land area of +/- 10.61 acres.

Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Stephen Sciascia; no alternate

The petitioner, Anna Haluch of Pro Signs discussed the proposal is to provide signage for a new retail store Total Wine, which along with TJ Maxx, HomeGoods and HomeStyle, occupy the space formerly utilized by Cardi's Furniture at Ivory Plaza. Total Wine is seeking to install one (1) 229.42 sq. ft. illuminated wall sign on the front elevation, one (1) 141.8 sq. ft. illuminated wall sign on the easterly side elevation and two (2) tenant panels on existing directory pylons. Lastly, Ms. Haluch stated the proposed signage exceeds the height allowed, total signage sq. ft. and number of signs.

Mr. Ford asked the Zoning Administrator how the proposed signage compared to the other tenants at Ivory Plaza. In general, the Zoning Administrator discussed most signage is around 6 ft. in height. The Board did approve a 6 ft. wall sign for the side of the building adjacent to the MBTA tracks. However, a sign permit has not been sought for the sign. The Zoning Administrator added the Board approved a 7' 10" wall sign for TJ Maxx. The letters were mostly 6 ft. in height, but a couple of the character were larger based on the brand identity. Mr. Ford expressed he did not see the need for the additional wall sign as the tenant will still have adequate visibility on the variety of ground signs associated with Ivory Plaza. Mr. Sciascia stated a second wall sign would make sense on the side. However, a comprehensive review of all the signs would need to be considered as part of the allowance for the additional sign. Mr. Ford did not think the existing tenants would consider reducing their respective signs. Mr. Sciascia added he agreed with reducing the main wall sign to 6 ft. in total height to be consistent with the other tenants of Ivory Plaza. Mr. Ford agreed. Mr. McDonough agreed to the conditions as approved by the Planning Board.

The petitioners sought the following signage variances:

- **Variance from Section 135-904.2 (A)(5)(a):** The Braintree Zoning Bylaw states "No wall sign shall exceed 150 square feet." The proposed front wall sign is 229.42 sq. ft. (6' 11.75" x 28' 8")
- **Variance from Section 135-904.2 (A)(5)(b):** The Braintree Zoning Bylaw states "No wall sign shall exceed four feet in overall height." The proposed front wall sign is 6' 11.75" in height. The proposed side wall sign is 5' 9.75" in height. Both signs provided two (2) rows of channel letters.
- **Variance from Section 135-904.2 (A)(5)(c):** The Braintree Zoning Bylaw states "No wall sign shall be visible to the major highway, if a ground sign has been permitted." The Petitioner is seeking to add signage to the existing directory ground signs at 120 & 180 Pearl Street. In this case, both the ground sign facing Pearl Street and the proposed wall sign would be visible to Pearl Street (the "major highway").
- **Variance from Section 135-904.2 (A)(5)(e):** The Braintree Zoning Bylaw states "Sign area is further limited to one square foot of signage per linear foot of frontage. Said frontage shall be the linear feet of the building which faces the access roadway." The linear frontage of Total Wine is 128 ft. The aggregate of all proposed wall signs is 371.2 sq. ft.
- **Variance from Section 135-904.2 (A)(5)(g):** The Braintree Zoning Bylaw states "No more than one wall sign for each store or business occupying a building shall be permitted. The aggregate total of all signage allowed shall not exceed 150 square feet in area. Sign permit may be issued only after written permission for said signs is

authorized by the Zoning Board of Appeals.” The proposal includes two (2) wall signs. The aggregate of all proposed wall signs is 371.2 sq. ft.

As grounds for the variances, the petitioner noted the large retail store is located up on a hill and difficult to see from the major roadways (Pearl Street & Ivory Street). The location is also a large distance from Pearl Street. In addition, the proposed signage will not be oriented or be visible to any immediate residential areas. The petitioner discusses the proposed signage would be scaled appropriately. Also, while the total proposed signage square footage is larger than the linear frontage, the actual font size of all signage is slim in nature, and will be appropriately designed. The petitioner noted past ZBA signage cases for the location have included wall signs taller than 6’ in height.

The petitioner presented signage plans entitled “Drawing No. 026876 REV 3”, titled “SUM/SITE”, “FRONT ELEV”, “SIDE ELEV”, “SIGN NO. 1.0”, “SIGN NO. 2.0”, “SIGN NO. 3.0”, “SIGN NO. 4.0”, dated July 26, 2018, and prepared by American Sign, Inc.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) No side wall sign; 2.) Front wall sign to not exceed 6 ft. in height; and 3.) No sign illumination from 1am-6am, pursuant to Section 135-905. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the proposed front wall sign, when analyzed in relationship to the building, previous tenant signage and existing area signage, was appropriate in design, size and scale. However, the Board found the height of the front wall sign should be a maximum of 6 ft. in height, consistent with the majority of other business signage at Ivory Plaza. In addition, the Board found the additional side wall sign facing John Mahar Highway was unnecessary as the tenant would be provided proper identification and visibility on the existing ground signs on Pearl and Ivory Street. With regard to reasons to grant the requested sign relief, the Board found the location of the retail store is uniquely situated higher than the primary roadway and setback significantly. In addition, the Board found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed larger wall sign is necessary to identify the location of the business and for the traveling public to be safely directed to the businesses. As a result, the Board found relief can be granted without resulting in a substantial detriment to the public good and will not nullify the intent of the Zoning By-law.

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variances from Bylaw Section 135-904.2, pursuant to Bylaw Section 135-407, in accordance with the plans submitted and the following conditions:

- 1.) No side wall sign;
- 2.) Front wall sign to not exceed 6 ft. in height; and
- 3.) No sign illumination from 1am-6am, pursuant to Section 135-905;

**3) Petition Number: 18-54
Petitioner: John & Kathleen Joyce
RE: 137 Walnut Street**

The Chairman read into record the legal advertisement: John and Katherine Joyce, 137 Walnut Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to construct two-story side addition (315 sq. ft. building footprint) and extend rear deck (18 ft. x 8 ft.); proposed additions would intensify pre-existing nonconforming

rear yard setback (13.32 ft.) and is pre-existing nonconforming with regard to lot area, width, depth and front/rear yard setbacks. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 137 Walnut Street, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2038, Plot 45 and contains a total land area of +/- 5,620 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Stephen Sciascia; no alternate.

The petitioners John and Katherine Joyce explained they are seeking to construct a two-story left side addition. The proposed addition to the first floor would remove an existing sunroom and add a den/office and family room. The second floor addition would maintain three bedrooms, but altered/expanded to provide a new master suite. No walk-up attic will be provided as part of the addition. A full unfinished basement will be part of the new addition. The existing basement level garage would be removed.

Mr. Ford asked the petitioner about the need for three exterior doors on the basement level. Mr. Joyce responded the three doors depicted on the plans is an error. Two exterior doors are to be provided at the basement level.

The petitioner's existing lot is nonconforming, as it contains only 5,605 sq. ft., where 15,000 sq. ft. is required, provides 80 ft. of lot width, where 100 ft. is required, and provides 69.83 ft. of lot depth, where 100 ft. is required. The petitioner's existing single family dwelling is nonconforming as to the front yard setback; the dwelling is located 17.12 ft. from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 ft. The petitioner's existing single family dwelling is nonconforming as to the rear yard setback; the dwelling (deck) is located 13.32 ft. from the rear yard lot line, while the Zoning Bylaw requires a rear yard setback of 30 ft. The proposed addition will intensify the pre-existing rear yard nonconformity by the way of a slight increase the rear yard setback (12.89 ft.). However, the proposed project will not create any new zoning nonconformity. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner noted the addition will not generate any new zoning nonconformity. Secondly, the petitioners noted the addition will be similar to the existing neighborhood characteristics and not be more detrimental to the neighborhood. Furthermore, the petitioners stated they have support of the immediate rear abutter

The applicant presented the plan entitled "Proposed Plot Plan, 137 Walnut Street, Braintree, MA 02184", dated December 9, 2018, and prepared by the Joyce Consulting Group of Braintree, MA. The applicant also presented floor plans and architectural renderings entitled "Joyce Residence, 74 Walnut Street, Braintree, MA 02184", labeled A1, A2, A3, A3.1, A4, A4.1, A5, A5.1, A6, S1, S1.1, dated September 13, 2018 and prepared by Baker Architectural Design of Braintree, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Provide evidence of rear abutter support; 2.) Reduce the number of basement level exterior doors to two (2); 3.) No provisions to create a second, separate unit within the single family residence to be allowed; 4.) Any changes to the approved plans will require ZBA approval; 5.) Certified foundation plan 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. A letter of support was submitted by the rear abutters, Mary and Shaun Buckley. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the existing lot is pre-existing nonconforming in terms of lot area, width and depth, as noted above. The Board found that the existing dwelling is pre-existing nonconforming in terms of the front and rear yard setbacks. The Board also found that the proposed additions will not create any new zoning non-conformity. The Board further found that the proposed addition will be designed appropriately and be comparable in size relative to the existing housing stock. Lastly, the Board found there was no opposition to the proposed project. As such, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Reduce the number of basement level exterior doors from three (3) to two (2);
- 3.) Certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and
- 4.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

**4) Petition Number: 18-55
Petitioner: Patrick Palzkill c/o Beacon Rock Realty,
RE: 2 Elm Street**

The Chairman read into record the legal advertisement: Peter Palzkill c/o Beacon Rock Realty, 2 Elm Street, Braintree, MA 02184 (Property Owner, PL Properties II LLC, c/o Peter Le) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.1 and 904.6 to install a 3' x 10' illuminated wall sign that would exceed the total allowable height and square footage. The applicant seeks variances and/or findings that the proposed project will not be more detrimental to the neighborhood. The property is located at 2 Elm Street, Braintree, MA 02184 and is within a General Business District Zone/Village Overlay District, as shown on Assessors Map 2026, Plot 2, and contains a land area of +/- 3,615 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

The petitioner Peter Palzkill, owner of Beacon Rock Realty, discussed the proposed petition is to provide a new wall sign as part of his new business at 2 Elm Street. Mr. Palzkill stated the proposed sign is 3 ft. x 10 ft. The sign would be internally illuminated and be high quality, namely push through acrylic letters with aluminum face and construction. The petitioner noted the sign exceeds the allowable 2 ft. height maximum for the Village Overlay District, in addition to allowable sign area. Lastly, Mr. Palzkill discussed he has removed a formerly existing black awning on Washington Street and that the proposed sign would be an improvement for North Braintree Square.

Mr. Karll did not have an issue with the sign. Mr. Ford stated it was replacing a sign of similar size and would in fact be a higher quality. Mr. Sciascia stated, while the proposed sign

was not larger than the sign it is replacing, new signage should be consistent with the Village Overlay District's signage height requirement of 2 ft. Mr. Ford agreed with Mr. Sciascia comments, but did not feel it was reasonable to ask the petitioner to reduce the scale of the sign from what was already there. On the positive, Mr. Ford stated the proposed sign will be an improvement as far as design for North Braintree Square.

The petitioner is seeking the following variances/relief:

- Variance from Section 135-904.1 (A)(5)(a) of the Braintree Zoning Bylaw which states, "No wall sign shall be more than four feet overall in height and a wall sign shall not exceed the lesser of 150 square feet or one square foot in area for each linear foot of frontage for each business." The linear frontage of the business is approximately 20 ft. and the proposed wall sign is 30 sq. ft. in area (3 ft. x 10 ft.).
- Variance from Section 135-904.6(c) of the Braintree Zoning Bylaw which states "Signs defined as wall signs shall not exceed two feet in height." The proposed The proposed wall sign is 3 ft. in height (two rows of lettering).
- Variance from Section 135-904.6 (d) of the Braintree Zoning Bylaw which states "Sign material should be consistent with the original construction materials and architectural style of the existing or proposed building on which each sign is to be displayed." The proposed signage materials consist of push through acrylic letters with aluminum face and construction. The existing building is primarily of masonry construction. The architectural style is unknown and a basic one story commercial building. As this provision in the bylaw is undefined and interpretive, the applicability/determination is subject to the ZBA's discretion.

As grounds for the variances, the petitioner states a 2 ft. in height sign would not fit the logo/brand identity of the business. As such, the proposed sign is necessary to let customers and the general public about their services. Furthermore, the proposed signage will be high quality, namely push through acrylic letters with aluminum face and construction.

The petitioner presented signage plan dated December 13, 2018, labeled "Sketch #3299" and prepared by MassSign of Rockland, MA.

The Planning Board voted to endorse the Staff Recommendation of 1.) Building/property to comply with regard to allowable window signage (no more than 20%) prior to issuance of a sign permit; and 2.) No sign illumination from 1am-6am, pursuant to Section 135-905. No one else spoke in favor of or opposition to the petition.

The Board found that the proposed wall sign, when analyzed in relationship to the building and signage in South Braintree Square, is appropriate in design, size and scale. In addition, the Board found that the petitioner had demonstrated the need for relief from the Zoning By-law as the proposed wall sign is necessary to identify the location of the business and for the traveling public to be safely directed to the business. By reducing the sign to meet the signage regulations, the brand/messaging of the tenant would be hard to discern. Furthermore, the Board found the proposed wall sign would be of a better design than the existing building signage and consistent with the architectural style of the existing building. As a result, the Board found relief can be granted without resulting in a substantial detriment to the public good and will not nullify the intent of the Zoning By-law.

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variances from the Bylaw Section 135-904.1 and 135-904.6 requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted, and subject to the following conditions:

- 1.) Building/property to comply with regard to allowable window signage (no more than 20%) prior to issuance of a sign permit; and
- 2.) No sign illumination from 1am-6am, pursuant to Section 135-905;

**5) Petition Number: 18-57
Petitioner: Craig and Kerry Starks
RE: 9-11 Marietta Avenue**

The Chairman read into record the legal advertisement: Craig & Kerry Stark, 11 Marietta Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 701 and 806 to construct 7' x 8' dormer; addition would intensify existing front yard setback deficiency (1.4 ft.); property/building is pre-existing nonconforming with regard to lot area, width, depth, front/rear setbacks, detached garage setback and off-street parking. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 9-11 Marietta Avenue, Braintree, MA 02184 and is within a Residence C Zoning District, as shown on Assessors Map 3050, Plot 42, and contains a land area of +/- 15,000 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

The petitioners, Carl and Kerry Stark discussed they are seeking to construct an additional bedroom for the one of the building's four one-bedroom units, namely Unit 11B. The current structure is a four-family dwelling. Mr. Stark added own the property and live in Unit 11B. The petitioners would like to utilize the attic area of the unit. By adding a dormer, appropriate ceiling height would be established to meet the building code and allow for an additional bedroom. Lastly, the petitioners stated they are currently renovating the units as part of a larger project to improve the entire property.

Mr. Ford asked the petitioner about the existing detached garage and their ability to improve/rehabilitate it. Mr. Stark responded the existing two-car garage is in need of significant improvement. It is currently boarded up. Once the units in dwelling are improved, rehabilitation of the garage is the next project. However, Mr. Stark stated it would probably not begin for at least two years due to the financial cost. Mr. Ford felt the petitioners are doing the "right thing" and have shown a track record of recent permits to show they are seeking to improve the property. Mr. Karll concurred and felt a condition regarding improvements to the garage were overbearing and perhaps beyond the Board's authority. Mr. McDonough agreed. Mr. Sciascia felt the building was very large for the neighborhood and concerned about the intensification.

The petitioner's existing lot is nonconforming, as it contains 15,000 sq. ft., where 43,560 sq. ft. is required, provides 150 ft. of lot width, where 200 ft. is required, and provides 100 ft. of lot depth, where 200 feet is required. The petitioner's existing four family dwelling is nonconforming as to the front yard setback; the building is located 1.4 ft. from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 50 ft. In addition, the existing building is nonconforming as to the rear yard setback; the building is located 48.8 ft. from the rear yard lot line, while the Zoning bylaw requires a rear yard setback of 50 ft. Lastly, the

petitioner's existing building/property is non-conforming as to the required off-street parking; four (4) off-street parking spaces are provided, while the Zoning bylaw requires eight (8) off-street parking spaces for the four (4) dwelling units. The proposed addition will, with the exception of the front yard lot line, not intensify any of the pre-existing zoning nonconformity. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

A variance is required for relief from the front yard setback requirement. The existing dwelling is 1.4 ft. from the front yard lot line. The proposed addition will intensify the front yard setback. As the dwelling/property does not meet the grandfathering protections of G.L. Chapter 40A, Section 6 for one and two-family dwellings, a variance is required.

As grounds for the variance, the petitioners add the new dormer is small and will not negatively affect the surrounding neighborhood. As far as the garage, the petitioners state they inherited the property and the building/units are in need of improvement. They are seeking to improve the units to generate an increased revenue stream that would allow for rehabilitating the garage and improve the parking areas. The petitioners stated they do not currently have the financial means to redo/expand the parking areas with asphalt. Furthermore, the petitioners discussed, the amount of parking currently on site meets the demands of the one bedroom units and they have never had parking issues.

The petitioner presented the plot plan entitled "Plan of Land in Braintree, Massachusetts, 9-11 Marietta Avenue", dated November 7, 2018, and prepared by C S Kelley Land Surveyors of Pembroke, MA. The petitioner also presented architectural and floor plans entitled "Attic Renovation", labeled sheets 3D #1 thru 3, Floor #1 of First Floor, Floor #1 of 2nd Floor, Floor #2 of 2nd Floor, dated September 28, 2018, and prepared by PDR Construction of Braintree, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Any changes to the approved plans will require ZBA approval; 2.) New dormer siding materials/color to match existing dormer/building; 3.) Prior to issuance of a building permit, submission of a plot plan depicting additional/expanded parking areas to the Planning and Community Development Department; and 4.) Submission for a building permit to replace/rehabilitate the existing detached garage within two years of the ZBA approval. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the lot is pre-existing nonconforming in terms of lot area, frontage, and depth as noted above. In addition, the Board found that the four-family dwelling is pre-existing nonconforming in terms of the front and rear yard setbacks. Also, the Board found that the four-family dwelling is pre-existing nonconforming in terms of the off-street parking requirements. The Board found the proposed dormer will be located within the front yard and therefore a variance is required. The Board found the petitioner has met the threshold for a variance due to the hardships demonstrated by the sloping topography from the street to the rear of the property by over ten (10) feet and presence of ledge/rock out-crops. The Board further found the overly-strict requirements of the Residence C Zoning District restricts the ability to make any improvements to the property without relief. Furthermore, the Board found that the proposed dormer addition would be within the existing building footprint and be appropriately designed. Lastly, the Board found the proposed addition will not be substantially more detrimental to the neighborhood than the existing structure.

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 requested variance from the front

yard setback requirement, pursuant to Bylaw Section 135-407, in accordance with the plans submitted and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) New dormer siding materials/color to match existing dormer/building; and
- 3.) Prior to issuance of a building permit, submission of a plot plan depicting additional/expanded parking areas to the Planning and Community Development Department.

**6) Petition Number: 18-58
Petitioner: Larry Colson
RE: 1784 Washington Street**

The Chairman read into record the legal advertisement: Larry Colson, 94 Gold Street, Randolph, MA 02368 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 609 and 701 to demolish existing 1.5 story, single family dwelling (+/- 1,020 sq. ft. building footprint) and construct new two (2) story single family dwelling (+/- 2,000 sq. ft. building footprint); property is pre-existing nonconforming with regard to lot area and width. 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 1784 Washington Street, Braintree, MA 02184 and is within a Watershed Residence B Zoning District, as shown on Assessors Map 1080, Plot 1, and contains a land area of +/- 10,928 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

The petitioner Larry Colson discussed he is seeking to raze an existing single family dwelling, built around 1948, and construct a new, two-story dwelling. The new dwelling will front Plymouth Avenue as opposed to the existing dwelling, which faces Washington Street. The petitioner reasoned Plymouth Avenue is a much safer means of accessing the property than Washington Street. The new dwelling would also provide an attached two-car garage and a +/- 380 sq. ft. rear deck. No walk-up attic is proposed.

Mr. Ford stated the proposed new dwelling was rather large for the lot. However, Mr. Ford added the new dwelling would be a significant improvement over the existing run-down and vacant dwelling. He also liked the idea of reorienting the dwelling toward Plymouth Avenue. Mr. Ford asked if Mr. Colson would live in the new dwelling. Mr. Colson responded he and his wife would like to live there, but have not decided yet. Chairman Karll agreed that the proposed new dwelling would be a significant improvement compared to the existing dwelling.

The petitioner's existing lot is nonconforming, as it provides 10,928 sq. ft., where 43,560 sq. ft. is required and provides 60 ft. of lot width where 100 ft. is required. The reconstruction will comply with the setback, height and coverage requirements, but intensify the nonconforming lot area and width, due to the larger dwelling. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

The petitioner presented an existing plot plan entitled "Site Development Layout Plan, 1784 Washington Street, Braintree, MA, Norfolk County", dated December 19, 2018 and prepared by Engineering Design Consultants, Inc. of Southborough, MA. The petitioner also presented floor plans and elevations entitled, "1784 Washington Street, Braintree, MA", sheets 1 thru 7, dated October 16, 2018 and no preparer listed.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Any changes to the approved plans will require ZBA approval; 2.) Submission of a certified foundation to the Planning & Community Development Department prior to vertical construction; and 3.) Submission of as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the existing lot is pre-existing nonconforming in terms of lot area and width. The Board found that the proposed new dwelling would not create any new zoning nonconformity, but in fact conform to the setbacks, height and coverages. In addition, the Board found that the proposed new dwelling will be designed appropriately and be an improvement compared to the existing vacant dwelling. Furthermore, the Board found there was no opposition to the proposed project. Lastly, the Board found the proposed project will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Submission of a certified foundation plan to the Planning & Community Development Department prior to vertical construction; and
- 3.) Submission of an as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

APPROVAL OF MINUTES:

On a motion made and seconded, the Board voted 4-0 to accept the December 17, 2019 meeting minutes.

The Board adjourned the meeting at 9:00 pm.