



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 February 26, 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.

- 3) **Petition Number: 17-57**  
**Petitioner: I.D. Sign Group**  
**RE: 120 Pearl Street**

I.D. Sign Group, Inc., 9 Bristol Drive, South Easton, MA 02375 (Property Owner: Francis X. Messina) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to install three (3) additional tenant panels on existing directory ground sign. 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 120 Pearl Street, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 16, and contains a land area of +/- 3.33 acres.

### Notice

Pursuant to notice duly published in the Braintree Forum 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 February 26, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Michael Ford and Richard McDonough, Members; and Stephen Sciascia, Alternate.

### Evidence

Bob Crissafulli, of I.D. Sign Group, Inc., on the behalf of the property owners, explained they are seeking to install three (3) additional tenant panels on an existing directory ground sign to accommodate three new retail stores. Mr. Crissafulli described the existing ground sign provides 150 sq. ft. of signage area and will increase to 222.5 sq. ft., which exceeds the allowable sign area for a ground sign. The existing ground sign provides signage for four (4) F.X. Messina-owned properties making up what is known as "Ivory Plaza". The plaza is made up of properties identified as 100, 120, 170 and 180 Pearl Street. The plaza encompasses three commercial buildings spread out across the properties. The new retail tenants, TJ Maxx, HomeGoods and HomeSense, will be located on the 180 Pearl Street property. Mr. Crissafulli stated the ground sign will not change in overall height (25' 1.5"). However the tenant panel "block" will be increased by three tenant panels (approximately 66" in total height). The current ground sign provides for five tenant panels. Also, the top of the ground sign which display "Ivory Plaza" would be changed to a more contemporary and smaller font.

The petitioner seeks the following signage variances:

- **Variance from Section 135-904.2 (A)(1)(a):** The Braintree Zoning Bylaw states "No ground sign shall exceed 150 square feet in area." The existing ground sign area is approximately 150 sq. ft. in area (12' x 12.5'). The proposed enlarged ground sign areas would each be 222.5 sq. ft. in area (12' x 18'6.5").

As grounds for the variances, the petitioner noted the large "brick & mortar" stores are located up on a hill and difficult to see from the major access roadways (Pearl Street & Ivory Street). The building 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 discussed the proposed increase to the ground signs will be small and allow the traveling public to easily identify the location of the new retail tenants. Lastly, the petitioner

highlights the overall height/size of the ground sign will not be changing; just three new tenant panels would be added.

The petitioner presented signage plans entitled "Work Order #10-17584", prepared for F.X. Messina Enterprise, dated October 17, 2017, and prepared by I.D. Sign Group, Inc. of Easton, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of continuance. 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 ground sign complies with the signage regulations pursuant to Section 904.2 of the Zoning By-laws. The Board further found, that when analyzed in relationship to the building and surrounding area signage, the proposed increase in signage area is appropriate in design, size and scale. The Board found the location of the retail plaza 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 additional tenant panels are necessary to identify the location of the business and for the traveling public to be safely directed to the businesses. Lastly, the Board found that the improved ground sign would be well designed, appropriate in terms of size and consistent with prior granted relief. 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.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from Bylaw Section 135-904.2, pursuant to Bylaw Section 135-407 and 908, in accordance with the plans submitted and the condition of no sign illumination from 1am-6am, pursuant to Section 135-905.

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

I.D. Sign Group, Inc., 9 Bristol Drive, South Easton, MA 02375 (Property Owner: Ivory Plaza Limited Partnership) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to install three (3) additional tenant panels on existing directory ground sign. 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 180 Pearl Street, Braintree, MA 02184 and is within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 18, and contains a land area of +/- 7.28 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, 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 February 26, 2018 at 7 p.m. Sitting on this case for the

Zoning Board of Appeals were: Stephen Karll, Michael Ford and Richard McDonough, Members; and Stephen Sciascia, Alternate.

### Evidence

Bob Crissafulli, of I.D. Sign Group, Inc., on the behalf of the property owners, explained they are seeking to install three (3) additional tenant panels on an existing directory ground sign to accommodate three new retail stores. Mr. Crissafulli described the existing ground sign provides 150 sq. ft. of signage area and will increase to 222.5 sq. ft., which exceeds the allowable sign area for a ground sign. The existing ground sign provides signage for four (4) F.X. Messina-owned properties making up what is known as “Ivory Plaza”. The plaza is made up of properties identified as 100, 120, 170 and 180 Pearl Street. The plaza encompasses three commercial buildings spread out across the properties. The new retail tenants, TJ Maxx, HomeGoods and HomeSense, will be located on the 180 Pearl Street property. Mr. Crissafulli stated the ground sign will not change in overall height (25’ 1.5”). However the tenant panel “block” will be increased by three tenant panels (approximately 66” in total height). The current ground sign provides for five tenant panels. Also, the top of the ground sign which display “Ivory Plaza” would be changed to a more contemporary and smaller font.

The petitioner seeks the following signage variances:

- **Variance from Section 135-904.2 (A)(1)(a):** The Braintree Zoning Bylaw states “No ground sign shall exceed 150 square feet in area.” The existing ground sign area is approximately 150 sq. ft. in area (12’ x 12.5’). The proposed enlarged ground sign areas would each be 222.5 sq. ft. in area (12’ x 18’6.5”).

As grounds for the variances, the petitioner noted the large “brick & mortar” stores are located up on a hill and difficult to see from the major access roadways (Pearl Street & Ivory Street). The building 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 discussed the proposed increase to the ground signs will be small and allow the traveling public to easily identify the location of the new retail tenants. Lastly, the petitioner highlights the overall height/size of the ground sign will not be changing; just three new tenant panels would be added.

The petitioner presented signage plans entitled “Work Order #10-17584”, prepared for F.X. Messina Enterprise, dated October 17, 2017, and prepared by I.D. Sign Group, Inc. of Easton, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) 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.

### Findings

The Board found that the existing ground sign complies with the signage regulations pursuant to Section 904.2 of the Zoning By-laws. The Board further found that when analyzed in relationship to the building and surrounding area signage, the proposed increase in signage area is appropriate in design, size and scale. The Board found the location of the retail plaza 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 additional tenant panels are necessary to identify the location of the business and for the traveling public to be safely directed to the businesses. Lastly, the Board found that the improved ground sign would be well designed, appropriate in terms of size and consistent with prior granted relief. 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.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from Bylaw Section 135-904.2, pursuant to Bylaw Section 135-407 and 908, in accordance with the plans submitted and the condition of no sign illumination from 1am-6am, pursuant to Section 135-905.

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

Mark Jeske, 935-937 Granite Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to modify approved plans pursuant to Zoning Board of Appeals decision case number 16-52, dated February 27, 2017; petitioner seeks to alter approved addition footprint and garage/rear patio roof designs. 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 935-937 Granite Street, Braintree, MA 02184 and is within a Watershed Residential B District Zone, as shown on Assessors Map 1033, Plot 4B, and contains a land area of +/- 20,000 sq. ft.

### **Notice**

Pursuant to notice duly published in the Braintree Forum 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 and continued by mutual agreement to February 26, 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**

At the initial public hearing on January 26, 2018, the petitioner Mark Jeske, explained he is seeking ZBA approval to modify approved plans pursuant to ZBA Decision 15-62. ZBA Decision 15-62 granted approval to construct additions to his existing two-family dwelling, expanding the building footprint from 1,612 sq. ft. to 3,706 sq. ft. Mr. Jeske explained his engineer advised him the approved garage and rear roof framing would not support the proposed additions. Therefore, the engineer instructed Mr. Jeske to change from a hip roof style to a gable style roof on both the garage and rear porch. Mr. Jeske also noted the building footprint changed slightly to accommodate enclosing a stairwell to the new additions basement. The petitioner was unaware that the changes were not allowed without ZBA approval. As such, he instructed his contractor to make changes to the garage and rear roof designs without updating his building permit or notifying the ZBA. After visiting the site, the Town's Building Inspector instructed Mr. Jeske to file with the ZBA to modify the approved plans of ZBA Decision 15-62.

Mr. Ford stated Mr. Jeske and his contractor should have known that deviating from the approved plans was not allowed without ZBA authorization. Chairman Karll asked Mr. Jeske if the engineer who made the changes to the plans was in attendance. Mr. Jeske replied he was not.

After discussion with the Board, Chairman Karll requested to continue the hearing to allow Board members to visit the site more thoroughly and the petitioner to bring his engineer to the next meeting. Mr. Ford and Mr. McDonough concurred with the Chairman's request. Mr. Jeske and the Board mutually agreed to continue the public hearing to February 26, 2018.

At the continued public hearing on February 26, 2018, after a brief summary of the structural changes by the petitioners contractor, Chairman Karll expressed he had visited the site and had no issues with the proposal. He discussed the property is located next to an industrial park and there has been no opposition from abutters or the neighborhood. Mr. McDonough stated the petitioner had demonstrated that the previously approved roof design was designed incorrectly, and that the proposed changes were necessary for safety. Mr. Ford agreed, but did want to remind the petitioner that any changes to plans require ZBA approval.

As grounds for the modification of the decision, Mr. Jeske noted the changes to the plans were necessary for safety of the approved additions. Mr. Jeske stated the changes will not be more detrimental to the neighborhood as the design changes are minor and oriented toward the adjacent/surrounding industrial park.

The petitioner presented a certified plot plan entitled "As-Built Plan, 935-937 Granite Street, Braintree, MA, Parcel ID: 1033-4B", dated January 20, 2018, and prepared by James McGrath, PLS. The petitioner also presented updated architectural/floor plans entitled "937 Granite Street Residential Addition", No.'s G000, G002, G003, A050, A100, A101, A102, A104, A201, A202, A203, dated January 10, 2018 and prepared by Alex Siekierski, Assoc. AIA of Medway, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of denial. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the petitioner had demonstrated the need for a modification of the approved plans as granted by ZBA Decision 16-52. Specifically, the Board found that the previously approved hip-roof style designs for the garage and rear porch area would not safely carry the weight of the proposed additions. In addition, the Board found the lot is surrounded by an industrial park and the proposed changes would not adversely affect the neighborhood. Furthermore, the Board found no opposition to the proposed changes. As a result, the Board concluded that the requested modification would not be substantially more detrimental to the public good 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 approve the requested modification of the approved plans pursuant to ZBA Decision 16-52, dated February 27, 2017, in accordance with the plans submitted.

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

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

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

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

John E. O'Toole & Katelyn M. O'Toole, 45 Oriole Street, West Roxbury, MA 02132 for relief from Bylaw requirements under Chapter 135, Sections 135-407 and 701 to construct a two-story, single family dwelling (+/- 2,400 sq. ft. building footprint) on a vacant lot that does not meet the minimum lot 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 50 Monatiquot Avenue, Braintree, MA 02184 and is within a Residence B District Zone, as shown on Assessors Map 2034 Plot 16A and contains a total land area of +/- 15,277 sq. ft.

#### **Notice**

Pursuant to notice duly published in the Braintree Forum 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 and continued by mutual agreement to February 26, 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**

Attorney Thomas Cavanagh, on the behalf of the petitioners, discussed the petitioners are seeking to construct a new single family dwelling on an existing vacant lot. The subject property is located at 50 Monatiquot Avenue and is approximately 15,277 sq. ft. in size. The lot is located on the southerly side of Monatiquot Avenue. Attorney Cavanagh discussed the lot does not contain any structures, and is primarily comprised of grass and other landscape improvements. He described an approximate 7 ft. retaining wall resides on the property, leftover from a former barn on the property. The subject property is located in a Residence B Zoning District.

Attorney Cavanagh discussed the subject lot was created in 1987, when the owner of 80 Monatiquot Avenue, subdivided their parcel. The subdivision was approved on September 15, 1987, by the Town of Braintree Planning Board, pursuant to a plan submitted, whereby approval was not required under the subdivision control law, as the lot met all zoning requirements. The petitioners are proposing to improve the lot by building a single-family home for their family to reside. Mr. Cavanagh stated the proposed home captures the overall style and size of other homes in the neighborhood. The proposed improvements on the lot complies with all requirements of the Town of Braintree's Zoning Bylaws for a Residence B Zoning District, except for provisions of Section 135-701(2), relative to maintaining minimum lot width where the principal building is located.

Attorney Cavanagh discussed a variance is sought from Section 135-701(2) of the Zoning By-law which states, "...where no portion of a principal building is allowed to be located on a portion of the lot where the lot width is less than the minimum lot width". Attorney Cavanagh discussed portions of the proposed dwelling would be sited on the lot in an area that is less than the minimum 100 ft. of lot width. Mr. Cavanagh reiterated the lot met all zoning requirements in 1987 when the lot was subdivided. However, because of the zoning changes to Section 135-701(2), and because the lot was held in common ownership, the applicant needs the requested relief.

Chairman Karll asked Attorney Cavanagh if the petitioners had investigated locating a dwelling in the area of the lot where the project would be considered "by right". Mr. Cavanagh discussed the petitioners had discussed a number of potential layouts with their architect. However, the proposed layout was the only iteration that would support the needs of the petitioners and specifically would allow a large amount of useable open space in the rear and side yard areas. Attorney Cavanagh added a by-right siting of the house would produce an even longer driveway, more impervious pavement, and impact the side and rear abutters more so than the proposed configuration. In addition, the remaining retaining wall would further reduce the useable area if the dwelling were to be sited in a by-right manner. Mr. Ford agreed with Attorney Cavanagh's synopsis of the proposed siting of the dwelling. Mr. Ford also discussed the petitioners could construct a dwelling with a detached garage by right. Furthermore, more impervious surface could be proposed. Ultimately, the Board would not have any control or say on a by-right project. The proposal before the Board would allow the Board a say over what is constructed and where. Chairman Karll stated that he did not feel the proposal was substantially more detrimental to the neighborhood and is well designed. Mr. McDonough agreed with Chairman Karll's statement and felt having a say in what is built on the property, as discussed by Mr. Ford, has merit. Mr. Sciascia felt the proposal was more detrimental to the neighborhood as the siting of proposed single family dwelling would be at odds with the neighborhood.

A variance is required for relief from the lot width zoning requirements. The siting of the proposed single family dwelling will be placed where the lot does not provide 100 ft. of lot width, as 100 ft. of lot width is required pursuant to Section 135-701(2).

As grounds for the requested variance, Attorney Cavanagh highlighted the lot met all zoning requirements in 1987 when the lot was subdivided. However, because of the prior mentioned lot width changes to the zoning by-laws, the petitioner needs the requested relief. The lot, as depicted on the plan, is clearly highly irregular in shape; the lot at its greatest point is 105.14 ft. wide and at its narrowest, 55 ft. wide. Therefore, based on the shape of the lot and the setbacks, the area to build on this lot is minimal at best, especially to build a home to conform to the other homes in the neighborhood. Lastly, Mr. Cavanagh highlighted the proposed single family dwelling will be similar in size and design as the surround housing stock and meet the all the required dimensional and density requirements except for lot width.

The petitioners presented a plot plan entitled "Site Plan of Land, 50 Monatiquot Avenue, Braintree, Massachusetts, Norfolk County", dated December 12, 2017 and prepared by Hoyt Land Surveying of Weymouth, MA. The petitioners also presented architectural elevations and floor plans entitled "John E. O'Toole & Katelyn M. O'Toole, 50 Monatiquot Ave, Braintree, MA 02184, New Residence", Sheets A-1, A-2, A-3, dated December 10, 2017 and prepared by LMS Co. of Weymouth, MA. The petitioners also presented a rendering of the proposed single family dwelling.

The Planning Board submitted a recommendation to endorse the staff recommendation of denial. George Clements, of 63 Monatiquot Avenue, voiced his support for the project. Colin McGinn, of 80 Monatiquot Avenue, spoke in support of the project. Suzanne Clements, of 63 Monatiquot, spoke in support of the project. Scott Ford, 100 Monatiquot Avenue, spoke in support of the project as long as the petitioners construct what they have depicted in the submitted plans. Arthur and Jennifer Sullivan, of 73 Monatiquot Avenue, submitted a letter on February 16, 2018, signed by twenty-two (22) residents, requesting the petitioners to have a "street facing house". Bill Crockan, of 87 Monatiquot Avenue, voiced his opposition as he felt the petitioners were creating their own hardship and the siting of dwelling would be out of character with the neighborhood. Attorney Henry Levin, on the behalf of the Settles family, of 56 Monatiquot Avenue, discussed their opposition to the proposed siting of the dwelling as they are concerned about the negative impacts to their adjacent property and rear yard area. Kelly Moore, of 46 Hollis Avenue, spoke in opposition to the proposed project as it would be more detrimental to the neighborhood and set a negative precedent. Louis O'Brien, of 42 Ash Street, voiced her concern with the lack of outreach by the petitioners regarding the proposed project. Linda Kopkind, of Acorn Street, voiced her concern about overall development in the neighborhood. Christine Verbitzki, of 21 Ash Street, voiced concern over the proposed project. 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 hardship unique to the property. Namely, the location of an existing retaining wall, coupled with sloping topography and "pork chop" lot shape, limits the ability to construct a dwelling on the property. While the petitioners could construct a dwelling on the property "by-right", the Board found it was in the best interest of the neighborhood to have a say in what is constructed on the property. The Board found a "by-right" dwelling could potentially be substantially more detrimental by constructing a dwelling that is not architecturally consistent with the neighborhood and actually create more impervious surface. 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. 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 variance for lot width, 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.) Submission of a certified foundation 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.

### **NEW BUSINESS:**

- 1) **Petition Number: 18-01**  
**Petitioner: Frazier Pearl Street Realty Trust and Sunset Realty Trust**  
**RE: 84 Pearl Street & French Avenue**

Frazier Pearl Street Realty Trust and Sunset Realty Trust, P.O. Box 28, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 613, 701, 705 and Article VIII to construct two (2), three-story townhouses and a three story, thirteen (13) unit residential building and twenty-two (22) off-street parking spaces; modify ZBA Decision #13-47 to terminate covenant requiring six (6) reserve off-street parking spaces at 84 Pearl Street. The applicant seeks a permit, variance and/or finding that the proposed change will not be more detrimental to the neighborhood. The property is located at 84 Pearl Street and French Avenue, Braintree, MA 02184 and is within a General Business District Zone and a Village Overlay Zoning District, as shown on Assessors Map 1006, Plots 38 and 39A, and contains a total land area of +/- 18,900 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 February 26, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Gary Walker, Members; and no alternate.

### **Evidence**

Attorney Frank Marinelli, representing the petitioner, appeared with petitioner, William Fazier and traffic engineer, David Kelly of Kelly Engineering Group. Attorney Marinelli provided an overview of the existing conditions. Mr. Marinelli described the subject project encompasses approximately 18,900 sq. ft. of land, comprised of two (2) parcels identified as 84 Pearl Street and French Avenue. 84 Pearl Street, identified as Parcel C in the submitted plans, contains 8,234 sq. ft. and is currently a paved vacant lot. French Avenue, identified as Parcel D in the submitted plans, contains 10,666 sq. ft. and is currently a paved vacant lot. Both existing lots are located within a General Business Zoning District and Village Overlay District. The surrounding area is a mix of lot sizes and uses, most notably a recent mixed use development at 52-60 Pearl Street (approved in 2013), containing (18) eighteen existing residential units. Other immediate area uses include restaurants, an auto-repair garage and residential dwellings.

Attorney Marinelli discussed the petitioner is proposing to construct a three-story, two-unit, residential townhouse-style building on Parcel C. Each townhouse will have two (2) bedrooms and an enclosed garage parking space on the first floor. Mr. Marinelli also discussed the petitioner proposes to construct a three-story, residential building on Parcel D, containing thirteen (13) one-bedroom residential units. Both proposed residential buildings are designed to resemble the mansard design of the Hampton House, which occupied the approximate Parcel D site on French Avenue over one hundred years ago. The residential building will be served by twenty-two (22) off-street parking spaces: ten (10) parking spaces located on Parcel C and twelve (12) parking spaces located on Parcel D as shown on the filed plans. Parcel's C & D will be combined as part of the proposed project.

In order to accomplish the redevelopment of this site, a number of variances and/or findings are required:

1. Section 135-701 of the Zoning By-laws requires structures/buildings in a General Business Zoning District to provide a minimum front yard setback of 10 ft. and a

minimum side yard setback of 10 ft. The proposed townhouse building on Parcel C will provide a front yard setback of 5 ft. on Randall Avenue. The building will also provide a right side yard setback of 5.6 ft. The proposed multi-family building on Parcel D will provide a front yard setback of 5.5 ft. on French Avenue. The multi-family dwelling will also provide a right side yard setback of 6.3 ft. Therefore, setback variances are required.

2. Section 135-705 of the Zoning By-laws permit multifamily dwellings in a General Business Zoning District, provided the minimum lot size is 43,560 sq. ft., minimum frontage is 100 ft. and minimum open space is 2,000 sq. ft. per dwelling unit. As previously discussed, the total combined area for Parcel C and Parcel D is 18,900 sq. ft. The proposed project will meet the required 100 feet of frontage. As fifteen (15) residential units are proposed, the minimum open space required is 30,000 sq. ft. The proposed project offers 3,591 sq. ft. of open space. Therefore, variances are required.
3. Section 135-705 of the Zoning By-laws also permits multi-family dwellings in a General Business Zoning District, provided the site allows 5,000 sq. ft. for each one bedroom unit or studio unit plus 1,000 sq. ft. for each additional bedroom. Applying this ratio to this proposed development, 77,000 sq. ft. of lot area would be required for the 15 residential units. Stated another way, the total area of the site, consisting of Parcels C & D, only offer 18,900 sq. ft. of area, which would allow 3.8 one bedroom or 3.1 two bedroom residential units. Therefore, a variance from this density ratio is required.
4. As this site is located within the Village Overlay Zoning District, the provisions of Section 135-613 of the Zoning By-laws also apply. Under this Zoning By-law, the Planning Board, as the special permit granting authority, may grant waivers from certain dimensional or density requirements, which may overlap with the authority of the Zoning Board of Appeals to grant variances. The prior mentioned relief from Section 135-701 for front and side yard setbacks would fall within the dimensional guidelines of Section 135-613.
5. Since fifteen (15) residential units are proposed, the development site is required to provide 30 off-street parking spaces. The proposed site offers a total of 22 off-street parking spaces. Therefore, a variance is required.
6. The petitioner seeks modification of ZBA Decision No. 13-47 to terminate the covenant referenced in the decision. Specifically, the covenant reserved six (6) parking spaces on Parcel C (84 Pearl Street) as part of the 2013 mixed-use project. The covenant also states that after nine (9) months from issuance of occupancy certificate for the 60 Pearl Street residential building, the petitioner may "apply for termination of this Covenant..." As such, the petitioner is seeking to eliminate any requirement of six (6) reserve parking spaces at 84 Pearl Street, and to find that such reserve space requirement of Decision 13-47 is no longer necessary. The submitted parking assessment by Ron Muller and Associates, concludes the existing apartment building at 60 Pearl Street, which is served by a 23-space parking lot on Randall Avenue, has an existing demand for 17 parking spaces or a ratio of .94 spaces per bedroom. Therefore, the dedicated parking lot adequately accounts for the parking demand of the 60 Pearl Street residences and the 84 Pearl Street reserved parking is not necessary.

As grounds for the variances, Attorney Marinelli explained the development site is unique and irregularly shaped. The juxtaposition of streets (Randall and French) adjacent to the development site creates a unique hardship that pertains to attempted development of the

vacant and/or paved lots comprising the development site. In addition to shape and juxtaposition of the land, there is downward sloping topography of the development site, from Randall to French (at points west to east). The petitioner also highlights that absent relief from the Zoning Bylaws, density of less than four (4) total residential units would be allowed; a density inconsistent with the Village Overlay District. In addition, the petitioner states such a density would not be consistent with Transit Oriented Development (TOD) principles as the proposed project provides a suitable density in order to create a walkable community, with people living proximate to public transportation and establishments providing retail goods and services and restaurants. As such, the convenient TOD location reduces the need to use a motor vehicle. Mr. Marinelli highlighted the submitted parking assessment study by Ron Muller and Associates, which concludes that: 1.) The existing demand observed at the abutting 60 Pearl Street building was .94 spaces per bedroom, 2.) Institute of Transportation Engineers (ITE) national standards acknowledge .9 to 1 space per bedroom; and peak parking demands in the Greater Boston area at similar apartment development are .79 to .89 spaces per bedroom. In addition, Attorney Marinelli stated the proposed residential development is consistent with the Village Overlay District and the overall community benefit of creating a walkable, predominantly residential, redevelopment that enables residents to walk to/from public transportation and other goods and services. Furthermore, the proposed amount of open space/landscaping will provide more than double the requirements of the General Business Zoning District. Lastly, the proposed design of the new residential structures will be a significant improvement over the existing appearance and use of the vacant parking lots.

In support of the variances from the parking requirements, Attorney Marinelli submitted and referenced a Parking Assessment prepared by Ron Muller and Associates dated January 17, 2018 (the "Muller Report"). The Muller Report concluded that a residential development such as the one proposed, in close proximity to public transportation, amenities, and services, parking ratios should be reduced, as these developments are aimed at tenants who commute by non-vehicular methods. Mr. Muller noted the existing apartment building at 60 Pearl Street, which is served by a 23-space parking lot, has an existing demand for parking of 17 spaces, or a ratio of 0.94 spaces per bedroom. Accordingly, the six (6) spaces reserved by the covenant are not required to accommodate the parking demand of 60 Pearl Street. Also, the Muller parking assessment documented that the proposed parking ratio of 1.29 off-street parking offered by the proposed project, far exceeds the recommended parking supply based on: 1.) The existing demand for parking observed at 60 Pearl Street; 2.) Nationally-accepted ITE standards for average parking supply at apartment developments ranging from .9 to 1.0 parking spaces per bedroom; and 3.) Peak parking demands observed at existing apartment developments in the Great Boston providing 0.79 to 0.89 spaces per bedroom. Furthermore, Attorney Marinelli referred to a parking space standard of .8 parking spaces per unit, a ratio contained in Section 135- 615 of the Braintree Zoning Bylaw for the Landing Overlay District, as further reasons of a lower parking space per unit ratio where residential units are proximate to commuter rail or public transportation. Lastly, Attorney Marinelli, summarized that the twenty-two (22) off-street parking spaces serving the fifteen (15) residential units would be sufficient and the supplied off-street parking at the site will exceed the peak demand as set forth in the Muller parking assessment.

The Planning Board voted 5-0 to submit a recommendation to endorse the staff recommendation of approval. Leo Martin, owner of 14-20 Randall Avenue, spoke in favor of the proposed project. Jim Nigrelli, an abutter and owner of Braintree Auto Body, spoke in favor of the petition. Peter Forman, president of the South Shore Chamber of Commerce, spoke in favor of the proposed project. George Jabour, attorney for the owners of Campanale's restaurant, spoke at length against the proposed project. Attorney Jabour referenced a lack of hardship for

the requested relief by the petitioner, the negative effects of the proposed provided off-street parking on his client's restaurant, potential water problems and general density issues. Mr. Jabour acknowledged his clients have been at the location for many decades and are concerned about the ability for the restaurant to be financially sustainable due to the impacts of the proposed project. Joe Campanale, owner of Campanale Restaurant (88 Pearl Street), expressed the proposed project will negatively affect their business by increasing demand for on-street parking in the immediate area. Mr. Campanale stated the proposed project does not provide enough off-street parking. He also expressed concern that the project may exacerbate current ground water issues in the area. Don Harrington, 14 Richard Road, asked the Board to ensure there will be adequate off-street parking supplied. Alice Elstermeyer, 222 Evergreen Avenue, stated the proposed project will increase demand for the public school system, which is already strained. Frank Sullivan, 39 Washington Park Road, stated his concern for the potential loss of business to Campanale's restaurant. Christine Jenny, 605 Middle Street, stated her concern for the potential parking issues. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Chairman Karll asked Attorney Jabour if the proposed development would be beneficial in terms of new customers to his client's restaurant. Attorney Jabour stated it would not, as the restaurant is totally dependent on street parking and the proposed project could negatively affect on-street parking. Chairman Karll asked if the constructed project by the petitioner at 60 Pearl Street had been beneficial to the restaurant. Attorney Jabour stated the owners had expressed it had increased the demand for limited on-street parking accommodations in the immediate area. Attorney Marinelli stated that the proposed impacts stated by Attorney Jabour and other opponents were speculative in nature and the petitioner had provided factual and actual evidence that the proposed project will not negatively affect the existing off/on-street parking in the area. Attorney Marinelli shared with the Board an exhibit prepared by Kelly Engineering Group, depicting on-street parking spaces and other conditions in the area. Chairman Karll acknowledged the opponents had not submitted factual evidence to back-up the stated opinions. Attorney Marinelli stated the restaurant owners did not oppose the adjacent 60 Pearl Street, which provided eighteen (18) residential units and one story of commercial space.

Chairman Karll stated he felt the proposed project would be beneficial towards the revitalization of South Braintree Square area. He felt is what consistent with the goals of the Village Overlay District, and in fact, the Village Overlay District was established to create projects similar to the proposed residential development. Member Walker expressed the South Braintree Square area needs additional housing, especially for younger generations. Mr. Walker also pointed out, that other businesses in the area have not voiced opposition to the proposed project, just an immediate abutter. Also, he discussed that if the 60 Pearl Street project presented problems in the area for businesses and residents, the concerns would have been expressed. Member McDonough stated the parking assessment study presented by the petitioner calmed any of his concerns with regard to potential parking issues.

The petitioner submitted an existing conditions plan entitled "Existing Conditions Plan, Bill Frazier, 60 Pearl Street, Braintree, Massachusetts", dated December 12, 2017, prepared by Kelly Engineering Group, Inc., of Braintree, MA. The petitioner also submitted a proposed site plan entitled "Plan to Accompany ZBA Application, Bill Frazier, 60 Pearl Street, Braintree, Massachusetts", dated December 12, 2017 and revised January 19, 2018, prepared by Kelly Engineering Group, Inc., of Braintree, MA. The petitioner also submitted floor plans and elevations entitled "Proposed 13 Unit New Construction, 84 Pearl Street, Braintree, Massachusetts", Sheets A-1, A-1.1, A-1.2, A-1.3, A-2.1, A-2.2, A-2.3, A-2.4, dated December 4, 2017, prepared by Choo & Company of Quincy, MA. The petitioner also submitted floor plans

and elevations entitled "Proposed 2 Family, 84 Pearl Street, Braintree, Massachusetts", Sheets A-1.0, A-1.1, A-1.2, A-2.1, A-2.2, dated November 28, 2017, prepared by Choo & Company of Quincy, MA. The petitioner also submitted floor plans and elevations entitled "Proposed 2 Family, 84 Pearl Street, Braintree, Massachusetts", Sheets A-1.0, A-1.1, A-1.2, A-2.1, A-2.2, dated November 28, 2017, prepared by Choo & Company of Quincy, MA. The petitioner also submitted proposed renderings of the façade, parking facilities and landscaping, as well as proposed floor plans. Furthermore, petitioner submitted a parking assessment, entitled "Parking Assessment, Apartment & Townhouse Dev. Pearl Street and French Avenue, Braintree, Massachusetts", dated January 17, 2018, and prepared by Ron Muller & Associates of Hopkinton, MA. Lastly, the petitioner submitted an on-street parking study, entitled "Parking Study, Pearl St./French Ave., Braintree, MA" and prepared by Kelly Engineering Group, Inc. of Braintree, MA.

### **Findings**

The Board found that the petitioner had substantiated a hardship owing to the shape and topography of the lot. Specifically, the Board found that the juxtaposition of streets (Pearl, Randall and French) surrounding the development site is a condition unique to the site and beyond the control of the property owner. The Board also found that the proposed redevelopment of the site, its predominant residential nature would provide additional open space/landscaping and establish an aesthetic appearance would not be substantially more detrimental to the neighborhood than the existing vacant lots. In addition, the Board found the proposed project is consistent with the goals of the Village Overlay District, and in fact, the Village Overlay District was established to create projects similar to the proposed residential development. The Board also found the proposed project is consistent with the previously approved 52-60 Pearl Street mixed-use development (eighteen units). Also, the Board found the proposed dimensional relief from Section 135-701 of the Zoning By-laws would meet the dimensional guidelines of Section 135-613, which the Planning Board may grant waivers from. Furthermore, the Board found twenty-two (22) off-street parking spaces serving the fifteen (15) residential units would be sufficient, in fact the submitted data and parking assessment study depict the supplied parking will exceed the peak demand for parking at the proposed development project. Finally, the Board found 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-law. In making these Findings, the Board agrees with the applicant's justifications and evidence set forth above and as contained in the report of the Zoning Administrator, endorsed by the Planning Board.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested modification of ZBA Decision #13-47 to terminate covenant requiring six (6) reserve off-street parking spaces at 84 Pearl Street, and grant the requested variances as depicted on the petitioners referenced submitted plans, namely relief from the front and side yard setback regulations, Section 135-705 multi-family density regulations, and off-street parking regulations, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

- 2) Petition Number: 18-02  
Petitioner: Mento Homes  
RE: 510 Union Street**

The petitioner requested to withdraw the petition without prejudice.

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

**3) Petition Number: 18-03  
Petitioner: Dennis M. Healy and Josh Thompson  
RE: 491 Washington Street**

Dennis M. Healy and Josh Thompson, 491 Washington Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 601 and 701 for additions, two-story rear addition, new dormers and rear deck to existing two-family dwelling; rear deck addition would encroach into the rear yard setback. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 491 Washington Street, Braintree, MA 02184 and is within a Residential C and Residence B District Zone, as shown on Assessors Map 2029, Plot 45 and contains a land area of +/- 6,571 sq. ft.

**Notice**

Pursuant to notice duly published in the Braintree Forum 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 February 26, 2018, 2017 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Michael Ford, Richard McDonough and Stephen Sciascia, Members; and Gary Walker, Alternate.

**Evidence**

Thomas Cavanagh, the petitioner's attorney, explained they are seeking significantly improve a run-down two-family structure at 491 Washington Street. As such, the proposed improvements include razing the existing right side deck, constructing a two-story rear addition, raising an existing dormer, and constructing a second story addition over an existing single story addition. Also, a rear deck with egress stairs would be constructed. The existing building foot print is approximately 1,452 sq. ft. and would increase to approximately 1,563 sq. ft. In addition to the interior improvements, the petitioners plan to complete overhaul of the exterior to improve the tired façade.

The petitioner's existing lot is nonconforming, as it contains only 6,571 sq. ft., where 43,560 sq. ft. is required, provides only 48.86 ft. of lot width, where 200 ft. is required, provides only 42.09 ft. of lot frontage, where 100 ft. is required, and provides only 125.91 ft. of lot depth, where 200 feet is required. The petitioner's existing two family dwelling is nonconforming as to the front yard setback; the building is located 15.5 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 side yard setbacks; the building is located 6.4 ft. from the left side yard lot line and 1 ft. from the right side yard lot line, while the Zoning bylaw requires a side yard setback of 30 ft. The proposed addition will, with the exception of the rear yard lot line, not create any new zoning nonconformity. Furthermore, the proposed right yard setback will be reduced from 1 ft. to 9.8 ft. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

A variance is required for relief from the rear yard setback requirements. The existing dwelling is 61.7 ft. from the rear yard lot line. The proposed addition will encroach into the rear yard setback, with a resultant rear yard setback of 45 ft. The Zoning Bylaw requires a rear yard setback of 50 feet.

As grounds for the variance, Attorney Cavanagh highlighted the shape and location of the structure on the lot creates a hardship. In comparison, the petitioners highlight the abutting dwellings are more centered on their lots, making their lots different from the petitioner's. In addition, the overtly-strict requirements of the Residence C Zoning District hamper the ability to make any improvements to the property without relief. Furthermore, the petitioners state the improvements will significantly benefit the neighborhood and community as a whole, by revitalizing a run-down, two-family dwelling.

The petitioner presented the plot plan entitled "Site Plan Showing Proposed Addition to 491 Washington Street in Braintree, Mass.", dated January 2, 2018, and prepared by Neponset Valley Survey Assoc., Inc. of Quincy, MA. The petitioner also presented architectural and floor plans entitled "Healy & Thompson Residence, 491 Washington Street, Braintree, MA 02184", labeled sheets A1, A2, A2.1, A3, A4, A5, S1, dated December 29, 2017, and prepared by Rockwood Design, Inc. of Marshfield, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval. Charles Donovan, 485 Washington Street, supported the project with the condition the petitioners provide screening on the right side of the new deck to reduce visual impacts to his adjacent property. Kelly Moore, 46 Hollis Avenue, voice his support of the project. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the lot is pre-existing nonconforming in terms of lot area, frontage, width and depth as noted above. In addition, the Board found that the two-family dwelling is pre-existing nonconforming in terms of the front and side yard setbacks. The Board found, with exception of the proposed rear yard setback encroachment, maintains or improves the pre-existing dimensional non-conformities. Also, the Board found the shape and location of the structure on the lot creates a hardship as the abutting dwellings are more centered on their lots, making the subject property unique. The Board further found the overtly-strict requirements of the Residence C Zoning District restricts the ability to make any improvements to the property without relief. Lastly, the Board found that the proposed additions/alterations will significantly improve the run-down structure and will be appropriately designed.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 134-403, and requested variance from the rear 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.) Submission of a certified foundation 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.

**APPROVAL OF MINUTES:**

On a motion made and seconded, the Board voted 5-0 to accept the January 22, 2018 meeting minutes.

The Board adjourned the meeting at 11:30 pm.