



Joseph. C. Sullivan
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, MA
www.braintree.ma.gov

APPROVED

Zoning Board of Appeals (ZBA) Meeting Minutes May 20, 2019

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

ALSO PRESENT: Melissa SantucciRozzi,
Assistant Director-Planning & Community Development

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 May 20, 2019 at 7 p.m.

NEW BUSINESS:

- 1) Petition Number: 19-13
Petitioner: Mark Bogan c/o Brian Palmucci
RE: 144 Allen Street**

The Chairman reads into record the legal advertisement: Mark Bogan c/o Brian Palmucci, Palmucci Law, 23 Mechanic Street, Quincy, MA 02169 (Owner, Robert K. Kelly Tr. and 144 MPB Nominee Trust) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 701 and Article VIII to construct a 82' x 48' two-story, commercial building, consisting of six (6) contractor bays/units. The Applicant seeks a variance and/or findings that the proposed project will not be more detrimental to the neighborhood. The property is located at 144 Allen Street, Braintree, MA 02184 and is within a Residential B Zoning District and Commercial Zoning District, as shown on Assessors Map 3008, Plot 3 and contains a total land area of +/- 22,364 sq. ft.

Sitting on this petition for the Zoning Board of Appeals were: Stephen Karll, Michael Ford, Richard McDonough and Stephen Sciascia, alternate.

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified.

There is a letter from Councilor Thomas Bowes, District 3 Councilor, who rises in support of this application; there are no recommendations of the Planning Board due to timing and staffing issue.

The petitioner, Brian Palmucci, who represents Mark Bogan on behalf of 144 MPB Nominee Trust, begins the presentation. Also here is Shawn Hardy, Engineer for the project. Attorney Palmucci corrects a typographical error on the dimensional table. The square footage of the lot was entered as 21,390 SF, but the square footage of the lot is 22,364 SF. The application and legal notices and public notices were correct; the plan was corrected. Nothing about the relief sought is changed by the correction. Mr. Bogan seeks to construct a six-unit commercial building at this location. It is listed in the application as a two-story building; one story is at grade the second story is under grade. The building appears as one-story tall and will be used as contractor style bays, with some area inside, for a use consistent with the general nature of the commercial area. The Applicant is here seeking variance of the dimensional requirements under zoning code 135-701 for a commercial lot. Specifically, this proposed project requires relief from the minimum lot area, the minimum lot width, the minimum frontage and the minimum lot depth, as required under 701 in a commercial zone. The parcel itself is a split zone parcel, a portion of which is zoned Commercial and a portion of which is zoned Residential. By applying the regulations and Zoning Code 135-306, the lot qualifies as a commercial lot because it meets the 150 foot requirement between the two districts. There is a Letter of Determination from the Town that supports this. As such the commercial use is permissible, but the lot is undersize. Because the lot would otherwise be unbuildable due to the dimensional deficiencies, the Applicant seeks relief from this Board. This would otherwise be a lawfully permissible commercial use. They are seeking a finding that the relief sought would not create an alteration that would be any more detrimental to the neighborhood.

Chairman Karll asks if any other variances or findings are needed. Attorney Palmucci states not from this Board.

Member Ford confirms that the applicant owns two properties on the left of this property. The Applicant owns the larger lot.

Member Mcdonough confirms that a single-family dwelling there was demolished. Assistant Director SantucciRozzi confirms that there are single-family residential structures on either side of this property. There is a residential property commercially zoned.

Alternate Member Sciascia confirms that the Applicant owns both a commercial and residential (3-family house).

Chairman Karll asks the audience if there is anyone opposed or with a question.

Nicki Shaban, 53 Newton Avenue, travels into this area every day. Her question is about the six contracted bay units. She asks if we are talking about large trucks coming and out of the Allen Street/Shaw Street intersection.

Attorney Palmucci states there isn't anything specified. They bays would not accommodate heavy units; it would be more than likely a contractor, like a painter.

Nicki Shaban confirms that we are not talking about the tree service. Attorney Palmucci confirms that the tree service is located at the Applicant's other property. Mrs. Shaban states this area is notorious for accidents (Allen/Shaw/Thayer). There are no lights, and it is a major school bus stop (both middle school and high school). There are no proper sidewalks, and no one does the speed limit. In addition, the Town has not plowed sidewalks in this area. Her main concern is for school children. Her other concern has to do with the back of the property – the Monatiquot River and anything that might drain into this. Chairman Karll states the Monatiquot River has to do with the Conservation Commission, and he asks if traffic concerns have been brought to the attention of the Police Department. He also suggests contacting DPW regarding the plowing issue or Town Councilor Tom Bowes.

Assistant Director SantucciRozzi states Conservation Commission reviewed this proposal in the Fall of 2018, and they issued an Order of Conditions. The Applicant is here before the Zoning Board to determine if this lot is actually buildable. If the Applicant is successful before the Zoning Board, there is also an Application before the Planning Board for this location. Attorney Palmucci states their meeting before the Planning Board is on June 11.

Alternate Member Sciascia asks where the bus stops are; Nicki Shaban states on Allen and Shaw Streets, less than a block from where we are discussing.

Hearing is closed to the public and opened for discussion by members; Chairman Karll understands that this will help to clean up a blighted area.

Member Ford observes that the property slopes drastically from the street, into the lot. Assistant Director SantucciRozzi confirms it is a Variance. Member Ford states there is a similar building on the other side of the Monatiquot River. There is not traffic in and out all day long. Member Ford agrees that a flashing light would be good in that intersection. Member Ford states that Zoning is a hot topic in Braintree. Member Ford feels that this is a good project for this property, and it would not have the impact of a housing development.

Member McDonough concurs with the previous two statements. He looked at the property; he understands resident's concerns. However, he thinks this will be a decent project.

The revised plans updated the dimensional table to correct the square footage error. The parking is not on the plans.

Member Ford **MOTION** to approve the petition for variance because of shape, soil and topography of the lot, subject to revised plans, with a finding that this will not be more detrimental to the neighborhood; seconded by Member McDonough; voted 3:0:0.

2) Petition Number: 19-14
Petitioner: Yiu Hung Chan
RE: 126 Jefferson Street

The Chairman reads into record the legal advertisement: Yiu Hung Chan, 7 Mosesso Drive, Holbrook, MA 02343 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to modify ZBA Decision No. 17-13 to reduce the size of proposed new two-story, single family dwelling from +/- 2,120 sq. ft. to +/- 1,268 sq. ft. building footprint; proposed project would intensify pre-existing nonconforming lot area and width. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood.

APPROVED

The property is located at 126 Jefferson Street, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 1045, Plot 21 and contains a land area of +/- 9,027 sq. ft.

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

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified; there are no recommendations of the Planning Board due to timing and staffing issue.

Angela McCarthy, contractor on record for the project explains that the project was permitted for a larger house, and they realized they wanted to re-design a smaller house. That is what is being presented tonight. It is about 1500 square feet smaller. Member Ford asks if they are removing the existing foundation; she confirms that it will not fit with the new design of the house and will be removed as soon as possible. Chairman Karll confirms that they are not going to blast. She will use bobcats.

Chairman Karll asks what precipitated the change in plans; Ms. McCarthy states the owner wanted something a little smaller. It would have stood out a lot more compared to the other houses on the street. It will be about 2100 square feet, with a two car garage; the previously approved house was 3600 square feet. The style will be a colonial with three bedrooms, 2 ½ bathrooms. Chairman Karll confirms the setbacks on all sides. Assistant Director SantucciRozzi confirms that the former Zoning Administrator was looking for some additional architectural features, like shutters. Also, the driveway calculations need to be corrected, as the driveway is more likely 28 feet rather than 25 feet.

Member Ford confirms the first house was approved. The previous house was taken down by the Applicant to build the 3600 square foot house prior to coming to the Zoning Board. Assistant Director SantucciRozzi reads from the Staff Recommendations done by the former Zoning Administrator.

Alternate Member Walker's only concern was that going from a larger house to a smaller house is usually a cost issue. He does not want what is being built to be low quality. Chairman Karll confirms with the Applicant that his mother and sister will live in house.

Russ Forsberg, Building Inspector, is not rising in opposition, but he wants to make it clear how much has gone on in this neighborhood during the failed initial attempt; there are items that need to be done immediately to this site relative to the remediation of the site; Mr. Forsberg asks for this to be conditioned. He states that the existing foundation and existing excavation needs to be removed and backfilled within four days, or any approval granted by the Zoning Board of Appeal at this time will be null and void. He states that this neighborhood has suffered a long time due to inadequacies of the owner and their contractors. The Building Department has had nothing but problems and nothing but disinterest to do the right thing by the Applicant since the variance was approved and the permit was authorized. Mr. Forsberg confirms on record with the Applicant and contractor that we have an agreement. Mr. Forsberg expresses that there was a total disregard to the neighborhood. There are residents calling about mosquito breeding in this location. If the ZBA grants relief, there needs to be something conditioned about getting this done in four days.

The contractor is asking for one week to get this done. She states that the Building Department only sent letters and not emails to her. There is some discussion by the contractor about issues with communication from the Building Department.

Member Ford feels it is not the Building Department's job to track down the contractor. Member Ford is referring to Mr. Forsberg comment that the contractor is ill-prepared. Member Ford feels it is not a week's worth of work. The wall is a health hazard because of the way it is holding water. Member Ford feels that the contractor has exhausted every ounce of patience the Building Department has. Assistant Director SantucciRozzi states they can work on Saturday, but not Sunday or Holiday.

Assistant Director SantucciRozzi asks if the applicant hit ground water; they say no. It is all rain, and the soil is ledge and just holds the water. Assistant Director SantucciRozzi states it is holding a lot of silt and needs to be pumped before going into town's drainage system.

Chairman Karll would like to see applicant succeed. Chairman Karll suggests that this get done by Wednesday, May 29. Staff states it is up to the Building Inspector. Contractor would like to get this done by Friday. Mr. Forsberg does not think a bobcat will do this job. Mr. Forsberg states an excavator would get this done in one day. The problem of this project is that they are trying to pinch pennies. Mr. Forsberg has sent out four letters; most recently, one was served to the property owner by Constable. The address used for the letters was the address provided with the application and to the state. Mr. Forsberg states, to the Board's point, this can be taken out and filled in one day, by an adequately sized excavator. Member Ford states an excavator is needed. Mr. Forsberg states if the foundation is out and filled by Friday, May 24, he is satisfied. Chairman Karll wants to give the contractor until Wednesday, May 29, until 4:30 PM. Chairman Karll thinks that downsizing is probably in the Applicant's favor.

Chairman Karll opens discussion to the neighbors.

Robert Kane, new owner at 114 Jefferson, has been in the neighborhood since February; he is the direct abutter. He is okay with anything that gets this built; he appreciates the willingness to find peace by both parties. He appreciates a Building Inspector that is actively involved and cares. Mr. Kane is a structural engineer. He wants to make sure that the property line and the offset are defended. Assistant Director SantucciRozzi confirms that the Applicant's proposed dwelling is 12 feet off the property line.

Ciaran Rynne, 32 Shepard Road, has been living with property the way it is since last November, when a stop-work order was put in place. The original property and foundation was a single-story house. They have a problem with the noise ordinance. It was clarified by staff that the start time is 7:00 AM and the end time is 8:00 PM. He doesn't have a lot of confidence that this will get done. Mr. Rynne asks how long they will have to put up with construction. Mr. Rynne confirms that there will be living quarters in the basement. Assistant Director SantucciRozzi states the drawings don't show the basement as finished. Mr. Rynne asks if there is a timeframe to finish the property. Mr. Forsberg explains the process. The first permit is a foundation permit; the second permit will be the balance of the building. It needs to be started within six months of the issuance of the permit. Mr. Forsberg assures everyone that it is his plan to ensure the completion of this project in a timely fashion.

Assistant Director SantucciRozzi states the plans have discrepancies and are not consistent related to the windows in the basement. Staff will work with the Applicant on correcting plans.

APPROVED

Member Ford refers to statement made by Russ Forsberg, and confirms that all fill needs to come out, and therefore, neighbor will no longer need to look at this pile of dirt.

Chairman Karll closes the hearing and opens discussion by board members.

Chairman Karll thinks a smaller house would be better for the neighborhood; however, the neighbors are due some respect to get rid of eye-sore and health condition that exists.

Member Karll would like to add conditions, as follows, if this Petition is allowed: (1) the present foundation structure and footings be removed no later than Wednesday, May 29, at 4:30 PM; (2) the water and silt plan be presented to staff so that silt will not drain into water supply or sewer system; (3) mounds of dirt in the rear of the property be either used for backfill or reduced to ground level; (4) whatever conditions the Building Inspector includes in his permit be adhered to. This residence is a single-family dwelling and cannot be treated as a rooming house.

Member Ford asks staff if it is within purview of the ZBA to add additional performance criteria within conditions. Assistant Director SantucciRozzi states the requirements discussed by the Building Inspector need to be done prior to the issuance of a Decision. A Decision takes 1-2 weeks to file. The activity due by May 29 will happen prior to the filing of a Decision. She suggests that the ZBA flip the requirement to state if the items mentioned above are not done, they will be back before the ZBA at the June meeting. Member Ford clarifies that his request was related to getting the outside structure or the shell of the house done within a certain time. Staff clarifies that the Board could condition minimum plantings or a certain number of trees. Chairman Karll and Member Ford would like the Applicant to come back in June with a landscaping plan for review by ZBA.

Alternate Member Sciascia states it might not be a bad idea to put a condition about the design of the house being consistent with the neighborhood; Chairman Karll states he does not want to get into that.

Alternate Member Walker is scared because he wants to hear that the Applicant has a plan to build a house on the property in a timely fashion. He wonders if the money is in place. Chairman Karll asks if the funds are in place to build this house. Mr. Chan states the funds are in place.

It is clarified to the Applicant that the Decision is filed within 14 days of the meeting date, and the 20-day appeal period begins on the date the Decision is filed. Once the appeal period is concluded, the Building Permit can be issued.

Member Ford states, based on discussions tonight, we are approving a new foundation; with that, the Applicant will need the lot level and the pile of dirt has to be gone. There will not be any more material brought in.

Assistant Director SantucciRozzi will be making sure that all plans match up correctly before the Decision is filed. She will include the conditions stated by Member Ford and Chairman Karll, and she will ensure that there is an update to the driveway as well as the condition for the foundation plan.

On a motion duly made and seconded, the Board unanimously (3-0) voted to approve this Petition, with the May 29 requirements and additional conditions stated at this meeting.

APPROVED

- 3) **Petition Number: 19-15**
Petitioner: William H. Rogers
RE: 20 Marisa Drive

The Chairman reads into record the legal advertisement: William H. Rogers, 20 Marisa Drive, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 609 and 701 to construct second story addition (additional +/- 353 sq. ft. building footprint); proposed project would intensify pre-existing nonconforming side yard setback and is pre-existing nonconforming with regard to lot area and width. 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 20 Marisa Drive, Braintree, MA 02184 and is within a Watershed Residence B Zoning District and Open Space Conservancy District, as shown on Assessors Map 1074, Plot 22 and contains a total land area of +/- 16,144 sq. ft.

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

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified; there are no recommendations of the Planning Board due to timing and staffing issue.

William H. Rogers, the property owner, explains that the genesis of this project was that his daughter and her family came back to live with them. They first wanted to enlarge the garage, taking into consideration any non-conforming issues. They don't make the 10-foot setback any worse. Mr. Rogers states the house isn't set square on the lot. Assistant Director SantucciRozzi clarifies with the applicant that he has an existing two car garage, and he is adding behind the existing garage. Chairman Karll confirms the applicant is 6.5 feet from the end of garage to the lot line. Mr. Rogers is proposing to add an additional bedroom over the entire garage, but stay within the original footprint.

Member Ford asks if there are two kitchens in this house. Mr. Rogers states no. Mr. Rogers states they changed the lower level to a family room and crawl space storage. Member Ford confirms they are kicking the garage out to make room for an additional car and adding a master bedroom above the garage.

Assistant Director SantucciRozzi has concerns about height and states the back of the property may be about 10 feet higher than the front. She is looking at spot elevations. They are calculating height as if ground is level, but spot grades tell us otherwise.

Paul Hamilton is here on behalf of his father-in-law that is 90 years old and located at 12 Marisa Drive next door. He noticed the courtyard on the plans and asks, if we are not going to do the courtyard, could that be removed. Assistant Director SantucciRozzi states the drawings are not consistent. Member Ford confirms that it is a quiet cul-de-sac. Mr. Hamilton states a lot is going on in the street. Assistant Director SantucciRozzi states the driveway is about 40 feet deep and could hold 4 cars, and there are 3 cars in the garage. Mr. Rogers states the horseshoe was made for egress out of the driveway. Chairman Karll states we need a set of plans that match exactly what you are doing; we cannot guess at this. Chairman Karll states the Board is not opposed, the concept is okay, but they need a valid, consistent and concrete set of plans; there is also a question about the elevation. Chairman Karll suggests continuing the Petition to next month's meeting because we cannot approve this without clear plans.

Assistant Director SantucciRozzi states we don't want to see front yard parking, and this is introducing front yard parking with cars parked where we should have landscaping. We typically discourage this type of parking, and she wanted to note that to the Board.

On a motion duly made and seconded, the Board unanimously (3-0) voted to continue this Petition to the Zoning Board of Appeal meeting on Monday, June 24, 2019, at 7:00 PM.

Alternate Member Sciascia mentions the house is completely out-of-scale with other houses in the neighborhood, and he feels we should let the Applicant know before they go back to the drawing board. Chairman Karll clarifies that the Applicant needs 2 out of 3 votes on a finding.

**4) Petition Number: 19-16
Petitioner: Margaret and Edward Mason
RE: 35 Harrison Avenue**

The Chairman reads into record the legal advertisement: Margaret and Edward Mason, 35 Harrison Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403 and 701 to construct one-story, front and rear additions (additional 485 sq. ft. building footprint); proposed project would intensify pre-existing nonconforming right side yard setback and is pre-existing nonconforming with regard to lot area, width and right yard 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 35 Harrison Avenue, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2015, Plot 32 and contains a total land area of +/- 6,446 sq. ft.

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

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified; there are no recommendations of the Planning Board due to timing and staffing issue.

The architect, Phillip Baker, 86 Cedar Street, appearing on behalf of the petitioner, Margaret and Edward Mason, who own a pre-existing non-conforming on the lot area and the right side set-back. They are looking for relief in extending a pre-existing, non-conforming on the right-hand side and creating a first floor master bedroom suite. The front addition is not impeding on front set-back, and the rear addition is not impeding on rear setback. The encroachment is increasing slightly on the right from 7.15 inches to 7.12 inches.

Chairman Karll confirms that the rear setback will be 30.1 inches away; Member Karll states the problem is looking from the rear on the left-hand side the encroachment goes from 7.15 to 7.12. The front encroachment changes from 27.2 to 22.2, which is over the 20 foot minimum setback. Mr. Baker states the front is an extension of family room/play room/living space and the rear is the master suite. Mr. Baker states it will be a vaulted ceiling so that they cannot build over it.

Chairman Karll states staff was in favor of this Petition with certain conditions.

Assistant Director SantucciRozzi clarifies that the front is just a single story that looks like an enclosed porch. Staff states this petition includes good drawings and good plans.

Michelle Mason, 35 Harrison Avenue, is here on behalf of her parents.

APPROVED

There is no opposition.

Chairman Karll closes hearing and opens discussion by Members. There are no questions or issues from Members.

On a motion duly made and seconded, the Board unanimously (3-0) voted to approve this Petition, with conditions, with a finding that it is not more detrimental to the neighborhood.

5) Petition Number: 19-17
Petitioner: Paul A. Segota and Claire McCormack
RE: 48 Newton Avenue & Vacant Land

The Chairman read into record the legal advertisement: Paul A. Segota and Claire McCormack, 48 Newton Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403, 407 and 701 for 48 Newton Avenue (Plot 103) and adjacent vacant land (Plot 35), which are combined for zoning purposes due to common ownership and can be separate lots with zoning relief. Plot 103 (#48 Newton Avenue) would be 6,590 sq. ft. and maintain an existing single family dwelling. Plot 35 (Vacant Land) would be 6,443 sq. ft. and provide a new two-story, single family dwelling (+/- 925 sq. ft. building footprint). The existing and proposed lots are deficient with regard to lot size, width and front yard setback. The applicant seeks a permit, variance and/or finding that the proposed project is not substantially more detrimental to the neighborhood. The properties are located at 48 Newton Avenue and Plot 9, Braintree, MA 02184 and are within a Residence B Zoning District, as shown on Assessors Map 3050, Plot 103 and Assessors Map 3052, Plot 35, and contains a combined land area of +/- 13,039 sq. ft.

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

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified; there are no recommendations of the Planning Board due to timing and staffing issue.

Staff is recommending denial based on the opinion that no hardship exists for creating an undersized lot.

Chairman Karll reads a letter into record with concerns from Don Cleaves, resident at 49 Cotton Avenue, who has concern with drainage and groundwater issues. New construction could exacerbate their situation. Mr. Cleaves requests that this proposed construction does not add to these issues.

Michael Modestino representing the applicants, Paul A. Segota and Claire McCormack, explains that his clients purchased the properties in 2005; they met with the former Zoning Administrator a number of times and thought that they had answered all his issues. The relief is the minimum lot size for Residence B of 15,000 square feet, the width of the lot of 100 feet, and proposed setbacks of 20 feet. Attorney Modestino points out that his client's intent is to build a small house, 1870 square feet, with 3 bedrooms and 2 bathrooms that would suit their family. The house at 48 Newton Avenue would be sold.

Attorney Modestino provides a letter of support from Jim and Marie Kilrain, 39 Newton Avenue, who feel a new home would improve the neighborhood.

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Attorney Modestino explains that the new structure would be a modest home. House lots are relatively small in that neighborhood. Presently the two lots are combined under common ownership. They were two separate lots previously. Attorney Modestino thinks the request is reasonable. It is not substantially more detrimental to the surrounding neighborhood. The applicant has sought out his neighbors and discussed it with them. The combined square footage of both lots is 13,000 square feet. If the combined lots were cut in half, it is not anything unusual to the neighborhood. They want to keep roots in Braintree. With regards to hardship, there is a vacant lot created in 1910. It was always intended that something be built on that vacant lot. Staff is stating hardship is not enough. There is high ledge on both lots; the soil is very thin. The existing house lot on 48 Newton Avenue slopes front to back (north to south), and it also slopes downward. There are no wetland issues here. The sloping of the lots is definitely an issue. Attorney Modestino feels that all issues brought up in the vetting process have been addressed. The lots were separate for some time. Attorney Modestino states a new home would add to the town's tax base.

Chairman Karll states we have been getting more of these cases. We would like to see people remain in the neighborhood, but when you create your own hardship it is difficult.

Member Ford states they had a similar proposal last month. The difference in that proposal was that the two lots were always separate. For whatever reason, these lots were combined. Member Ford feels to split a lot and create a greater non-conformity on both lots is a slippery slope. Member Ford states subdividing lots is something that this Board has been very consistent with.

Attorney Modestino states the history of these lots is a bit unusual.

Member McDonough understands the uniqueness of the lots.

Rob Pellegrini, owns 49 Newton Avenue and 111 Newton Avenue, has a few questions. It is clear that it is one property. Mr. Pellegrini asked for clarification on the staff recommendation. Chairman Karll explains why the staff opposed the petition is because there was no hardship given to the lot shape, soil or topography. Chairman Karll explains it is not a negative statement; it is something that has to be shown in order to grant a variance. Mr. Pellegrini asks why the variance is necessary, and Chairman Karll explains the issue being that the lot is small and dimensions will be closer to the lot lines than allowed. Mr. Pellegrini states the house they are living in now doesn't have much space all around. Chairman Karll explains that it was built before there were zoning requirements. Chairman Karll explains the difference between having one lot or two lots. Mr. Pellegrini feels there is enough room on the lot, and he thinks these neighbors are extremely nice people, with good character. Chairman Karll states that 90 Newton Avenue, an 11,000 square foot lot, was denied for the same reason. The Zoning Board must show consistency. Mr. Pellegrini doesn't have a problem with an additional house.

Member Ford states, for the record, he has no problem with the house; however, his issue is creating your own non-conformity and setting precedent for the rest of the town. There is a concern with the impact it has on the entire town. They cannot be arbitrary and capricious.

Brian Shaban, 53 Newton Avenue, has no problem with this petition. He confirms that it is a full foundation. His only concern is the ledge. He feels that his lot is smaller than the one being proposed. Chairman Karll explains this is a very hard question, and the ZBA is trying to be consistent.

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Assistant Director SantucciRozzi will look into 47 Cotton Avenue.

Mike Walsh, 90 Newton Avenue, feels it would be nice to have a nice house and not a vacant lot in the area. He is in favor.

Paul Segota, wanted to address the issue with 90 Newton Avenue and the prior owner's petition. His recollection of the discussion was that the house had to be put in sideways on the lot. The drop-off was considerably more. There is a lot behind Mr. Pellegrini's house on Bickford that was built.

Assistant Director SantucciRozzi clarifies that 90 Newton Avenue had nothing to do with Mr. Gabriel; the house behind Mr. Pellegrini was a stand-alone parcel that was undersized and not a splitting of a lot to create non-conformities. There are individual circumstances for each property.

Chairman Karll explains to Attorney Modestino that this petition will have a tough road and wonders if Attorney Modestino would like to speak with his client about withdrawing without prejudice. Attorney Modestino does not see how it changes the character of the neighborhood and is substantially more detrimental; there is no concern with neighbors. He will speak to his client about withdrawal, but would like the Zoning Board to judge this matter fairly.

Member Ford states he has no issue with the home, but this is strictly a zoning question. The fact that we are creating a new non-conformity is the issue.

Member McDonough interjects that the main issue is creating a non-conforming lot. Member McDonough understands that everyone has presented it as a home that is reasonable, fits, common sense, etc.

The Applicants and their attorney take a moment to discuss the possibility of withdrawing the application.

Attorney Modestino expresses, with the Zoning Board's permission, the Applicants would like to withdraw their application.

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the Applicants the ability to withdraw their application, without prejudice, for Petition Number 19-17.

- 6) **Petition Number: 19-18**
Petitioner: Steve Nguyen
RE: 74 Davis Road

The Chairman read into record the legal advertisement: Steve Nguyen, 64 Edward Street, Unit 2, Medford, MA 02155 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to demolish existing one-story, single family dwelling (+/- 960 sq. ft. building footprint) at 74 Davis Road and construct a new, 1.5-story single family dwelling (+/- 3,620 sq. ft. building footprint); proposed project would intensify pre-existing nonconforming lot area. The applicant seeks a permit, variance and/or finding that the proposed project is not substantially more detrimental to the neighborhood. The property is located at 74 Davis Road, Braintree, MA 02184 and is within a Residence A Zoning District, as shown on Assessors Map 2042, Plot 65, and contains a land area of +/- 20,000 sq. ft.

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

Chairman Karll is satisfied that the abutters and abutters to the abutters within 300 feet have been duly notified; there are no recommendations of the Planning Board due to timing and staffing issue.

Chairman Karll reads staff recommendation, which states the proposal is well designed and appropriately scaled to the lot. Assistant Director SantucciRozzi states the former Zoning Administrator had been working with applicants to ensure new developments would comply with proposed zoning bylaw. Because Mr. Nguyen's house is proposed at a height of 30 feet, his side yard setback would need to be 15 feet. Assistant Director SantucciRozzi clarifies the situation with proposed changes to bylaw impacting any new applications. It is a "buyer beware".

The Applicant, Steve Nguyen, states if it makes it easier to meet the proposed bylaw, he will amend the left setback from 12 feet to 15 feet. The right setback will be reduced to 40 feet. Mr. Nguyen was given the opportunity to purchase this lot, and they are expecting their first child next month. They wanted a single-story home, with a different look for a house. They are aiming for a modern farmhouse style. Living space is 2480 square feet; bonus room will be done on the second floor; there will be four bedrooms. All Zoning Board Members feel that it is a good looking home.

Member Ford approves subject to plans and adjusted plot plan with a 15 foot setback.

On a motion duly made and seconded, the Board unanimously (3-0) voted to approve the petition subject to the plans and adjusted plot plan with a 15 foot setback rather than 12 and staff recommendations.

APPROVAL OF MINUTES:

On a motion duly made and seconded, the Board voted 5-0 to accept the April 22, 2019 meeting minutes.

The Board adjourned the meeting at 9:43 PM.

Respectfully submitted,
Louise Quinlan