



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

Braintree, Massachusetts 02184

### Meeting Minutes

August 12, 2008

#### IN ATTENDANCE:

Stephen Karll, Chairman  
Jack Gauthier, Member  
Michelle Lauria, Member  
Jay Nuss, Member

#### ALSO PRESENT:

Russell Forsberg, Local Building Inspector  
Marybeth McGrath, Director of Municipal Licenses and Inspections  
Carolyn Murray, Town Solicitor

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

#### 1) **Petition Number 08-33** **Barbara Lemieux** **RE: 95 Howard Street**

Present: Francis Kenneally, Attorney representing petitioner

This is a petition filed by Barbara Lemieux of 95 Howard Street, Braintree, MA, regarding the same property, in which Mrs. Lemieux is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 407 and 701. Mrs. Lemieux seeks a permit and/or variance to divide her lot into two smaller, non-conforming lots in order to construct a single family home on the newly created lot, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3060, Plots 1, 7, 16 and 18, and contains 20,246 +/- SF of land.

#### Notice

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on August 12, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, John Gauthier and Jay Nuss, with Alternate, Michelle Lauria.

#### Evidence

The petitioner, represented by Attorney Francis Kenneally of Weymouth, explained to the Board that Mrs. Lemieux owns three adjoining lots that are separately taxed, which are shown as lots numbered 1, 17, and 18 on the plan submitted. Mrs. Lemieux is seeking permission to divide her current 20,246 SF lot into two lots, one containing 7,885 SF, on which her current home is located, and the new lot, consisting of 12,361 SF, on which Mrs. Lemieux proposes to build a 2 ½ story single family home. In so doing, Mrs. Lemieux would be creating two undersized lots, as the Zoning By-law requires a minimum lot size of 15,000 SF in a Residence B Zoning District. Therefore, Mrs. Lemieux requires two variances to create the undersized lots. The newly created lot would also require a variance from the minimum lot depth, as the lot provides 58.73 feet of depth, where the Zoning By-law requires a minimum of 100 feet.

As grounds for a hardship, Attorney Kenneally explained that the property has been subject to two land takings which have significantly decreased the size of the lot. The first taking was in September, 1951, when 3,692 SF was taken, and the second occurred in 1991, when an additional 742 SF of land was taken. As a result of these governmental actions, Mrs. Lemieux has been deprived of 4,434 SF of land. In support of a hardship necessary for the grant of a variance, Attorney Kenneally submitted two Massachusetts Appeals Court cases that are on point. The first case cited, Bateman v. Board of Appeals of Georgetown, 56 Mass. App. Ct. 236 (2002) stands for the proposition that a hardship for a variance was proven based on governmental takings, through no fault of the applicant, that deprived the applicant of sufficient land area. The second case, Adams v. Brolly, 46 Mass. App. Ct. 1 (1998), noted that a hardship was proven due to the extrinsic act of the Metropolitan District Commission taking of the petitioner's land, thereby rendering the lot nonconforming. Similarly, Attorney Kenneally asserted that Mrs. Lemieux's lot has been reduced in size due to two governmental actions beyond her control. Attorney Kenneally also submitted samples of other lots in the neighborhood which are significantly smaller than the proposed lots. In fact, Attorney Kenneally noted that the proposed lot is 82% larger than most lots in the surrounding neighborhood, and therefore, the requested relief can be granted without substantially derogating from the intent of the Zoning By-law. Attorney Kenneally also referred to the Board's decision in Petition No. 02-104 as precedent, as the ZBA granted the relief in that instance based on the unusual shape of the lot, which contained only 5,500 SF owned by Robert Lo of 80 Howard Street. Attorney Kenneally also submitted a memo from Police Sgt. Sean Lydon, who noted that the additional home would have no impact on traffic or create any other safety issues. Finally, Attorney Kenneally noted that Mrs. Lemieux has a financial hardship in that the upkeep on the existing house has become difficult for her in her older age, and being able to subdivide the property and build a home on it will substantially increase the property value and provide additional security to her in her later years.

No one else spoke in favor of the petition. A number of neighbors spoke in opposition to the petition including: Patsy O'Neill (Salamone) of 81 Howard Street, who noted that the area was too congested and the lots too small to support two houses; Angela Marseglia of 81 Howard Street, who noted that truck traffic would make it unsafe to exit via the proposed driveway; Tracy Horrigan of 74 Howard Street, who expressed concern about traffic speeding down Howard Street, making it difficult and unsafe for vehicles to exit the proposed driveway; Kevin and Donna McClellan of 418 Shaw Street, stated that the development of this other lot would negatively impact the value of their lot. In addition, James O'Neill of 193 Granite Street, Richard Juliano of 69 Howard Street, Robert Lo of 80 Howard Street, Laura Barnes of 73 Howard Street, William and Jean DeStefanis of 76 Howard Street, Cliff Grueare of 57 Skyline Drive, and Jpyce Gaudette of 77 Howard Street, submitted letters in opposition to the petition.

The petitioner submitted a plan entitled "Plan of Land Showing Proposed Residence at 85 Howard Street, in Braintree, Mass.", dated September 12, 2007, prepared by Neponset Valley Survey Assoc., Inc. of Quincy, MA.

By a vote of 4-0-0, the Planning Board voted that this was not a repetitive petition, noting that this petition was previously denied by the ZBA as Number 07-65, but was not heard on the substance or merits of the petition. The Planning Board also voted 4-0-0 to take no action on the recommendation for the relief requested.

### **Findings**

The Board noted, that although Mrs. Lemieux owns several adjoining lots that are separately taxed, such lots are considered merged for purposes of zoning under G.L. c. 40A, §6. The Board also found the petitioner's arguments relative to the governmental taking to be unavailing, noting that even if neither land taking had occurred, the lot would still lack the required 30,000 SF to divide this parcel into two conforming lots. As a general rule, the Board is opposed to creating undersized lots, particularly where proof of hardship is lacking. The Board also noted that this is not the case of a "close call", noting that one of the proposed undersized lots is less than half of what is required as a minimum lot size for a Residence B Zoning District. The Board noted that even if the lot was divided equally, the two new lots would be approximately 10,000 SF each, which is still 1/3 less than the required lot size. Noting that the Board has an obligation to maintain the minimum lot size standard, the Board expressed opposition to the creation of these two undersized lots.

Attorney Kenneally requested that the petition be withdrawn, but the Chairman indicated that the matter had progressed too far in the process to be withdrawn.

### **Decision**

On a motion made by Mr. Gauthier and seconded, it was unanimously voted to deny the requested relief.

## **2) Petition Number 08-34 Owen and Nancy White RE: 111 Monatiquot Avenue**

Present: Owen and Nancy White, applicants

This is a petition filed by Owen and Nancy White of 111 Monatiquot Avenue, Braintree, MA, regarding the same property, in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The petitioners seek a permit and/or variance to enclose an existing screened in porch and to add a second story over the porch for an additional bathroom, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2035, Plot 33 and contains 12,840 +/- SF of land.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on August 12, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, John Gauthier and Michelle Lauria, with Alternate, Jay Nuss.

### **Evidence**

The petitioners, representing themselves, explained to the Board that they are seeking permission to build a single story addition on top of and within the footprint of a pre-existing non conforming deck. The petitioners' lot size is currently nonconforming, as it contains 12,840 SF where the minimum lot size under the Zoning By-law is 15,000 SF and provides 78.76 feet of lot depth, where the By-laws requires a minimum of 100 feet. In addition, the petitioners' home is a pre-existing nonconforming structure, as the rear of the structure is located 16 feet to 23.9 feet off the rear yard line, where the By-law requires a rear yard setback of 30 feet. The petitioners propose to enclose the existing deck/porch and to construct a 4.2 ft. x 8 ft. addition on top of the porch to accommodate a master bathroom. The addition will fall within the existing footprint of the non-conforming structure and will not create any new non-conformities.

The petitioner submitted a plan entitled "Plan of Land in Braintree, MA", dated June 6, 2008, prepared by Hoyt Land Surveying of Weymouth, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 4-0-0, the Planning Board voted to recommend favorable action on the relief requested.

### **Findings**

The Board noted that the petitioners' addition was within the existing footprint of the current nonconforming structure, and therefore, the proposed addition would not create any new nonconformities. Based on this, the Board found that the proposed additional would not be substantially more detrimental to the neighborhood than the existing structure and that the relief could be granted without derogating from the intent of the Zoning By-laws.

### **Decision**

On a motion made by Mr. Gauthier and seconded, it was unanimously voted to approve the requested relief, as shown on the plan submitted.

**3) Petition Number 08-35**  
**Victor Varrasso**  
**RE: 148 Hancock Street**

Mr. Karll advised the Board that a letter was submitted by the applicant to withdraw the petition.

The Board voted unanimously to accept the request to withdraw the petition.

**4) Petition Number 08-36**  
**Nicholas and Nicole Choukas**  
**RE: 9 Peach Street**

Present: Nicholas and Nicole Choukas

This is a petition filed by Nicholas and Nicole Choukas of 9 Peach Street, Braintree, MA, regarding the same property, in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The petitioners seek a permit and/or variance to order to construct an extension of an

existing rear deck. The property is located in a Residence B Watershed Zoning District as shown on Assessors Plan No. 1090, Plot 13 and contains 4,835 +/- SF of land.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on August 12, 2008 at 7 p.m. and continued to August 26, 2008 at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, John Gauthier and Jay Nuss, with Alternate, Michelle Lauria.

### **Evidence**

The petitioners, represented themselves, explained to the Board that their house and lot are pre-existing nonconforming. The lot is undersized, providing 4,835 SF of area, where the Zoning By-law requires a minimum of 1 acre. The lot is also deficient as to lot width and depth, as the lot is 50 feet wide, where the Zoning By-laws requires 100feet, and the lot is 97.6 feet deep, where the Zoning By-laws requires 100 feet. In addition, the existing single family home on the lot is nonconforming, as it encroaches into the side yard setback, offering 2.2 feet of setback, where the Zoning By-law requires 10 feet. The house also encroaches into the rear yard setback, offering 27.3 feet of setback, where the Zoning By-law requires 30 feet.

The petitioners seek permission to rebuild an existing nonconforming deck located on the side of the house and to build a new deck measuring 21 feet wide by 12 feet deep to the rear of the dwelling. The new portion of the deck will further encroach upon the rear yard setback, as it would be located 15.2 feet from the rear lot line, and therefore, a variance is required. The existing portion of the deck measures 17.5 feet by 7.5 feet and currently encroaches into the rear and side yard setbacks, as it is located 27.3 feet from the rear yard line and 2.2 feet from the side yard line. However, since this deck is pre-existing nonconforming, the petitioners have a right to rebuild it. The proposed deck will be located 2.4 feet from the side yard setback, which is less intrusive than the existing deck. The petitioners also wish to expand the deck into the rear by adding a 21 ft. by 12 ft. extension, which will further encroach upon the rear yard setback, offering only 15.2 feet of setback.

As grounds for a hardship, the petitioners noted that their lot is severely undersized and the present location of the structure on the lot limits the placement of a proposed expanded deck.

The petitioner submitted a plan entitled "Plan Showing Proposed Deck in Braintree, Mass.," dated May 30, 2008, prepared by Hoyt Land Surveying of Weymouth, MA. By a vote of 4-0-0, the Planning Board recommended favorably that the relief be granted.

No one else spoke in favor of the petition. Ron Brodeur of 14 Cochetto Street, the abutter to the rear of the property spoke in opposition to the petition, noting that the expanded deck will significantly encroach upon his rear yard line and may decrease the value of his property. Mr. Brodeur also remarked that, with the expanded deck, the petitioners would be more likely to store their belongings, such as garbage cans, yard tools, and children's toys up against his property line. A brief recess was taken to allow the petitioners and Mr. Brodeur to discuss the proposal. After the recess, Mr. Brodeur indicated that he preferred the petitioners build a staircase off the existing deck and install a patio in the rear. The petitioners indicated they did not want a patio; they preferred a deck with lattice work underneath, which would provide a hidden storage area for their belongings. Mr. Gauthier asked Mr. Brodeur if he would be satisfied if the proposed deck was squared off with the bump out in the rear of the house, and Mr. Brodeur indicated he would be satisfied. With the agreement of

the petitioners, the Board voted unanimously to table this matter to the next meeting, to allow the petitioners and Mr. Brodeur to reach a possible compromise.

**5) Petition Number 08-37**  
**Thayer Public Library**  
**RE: 798-816 Washington Street**

Present: Jeffrey Kunz, Chairman of the Trustees of Thayer Public Library; Bob Lake, Trustee; John Cobble, President of the Friends of the Thayer Public Library.

This is a petition filed by the Trustees of Thayer Public Library regarding the main library located at 798-816 Washington Street, Braintree, MA in which the petitioners seek relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, 701, 806A and 812. The petitioners seek a permit and/or variance to expand an existing parking lot from 43 spaces to 66 spaces. The property is located in a General Business/Residence B Zoning District as shown on Assessors Plan No. 1005, Plots 64 and 4 and contains 48,668 +/- SF of land.

**Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on August 12, 2008 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steven Karll, and members, John Gauthier and Jay Nuss. Michelle Lauria noted that she could not hear this petition due to a potential conflict.

**Evidence**

The petitioners, represented by Trustee, Bob Lake, explained to the Board that Thayer Public Library had recently acquired the adjoining the building and parcel at 816 Washington Street. The commercial structure has been demolished, and the site is being prepared for an expansion of parking to serve the main library. Mr. Lake reminded the Board that a prior variance was granted for this site in 1997, when the new library was built, and at that time, the Library was granted a variance from the parking requirements and allowed to have just 43 parking spaces. With the acquisition of the adjoining parcel, the library can now offer 66 parking spaces. Although the 66 spaces are still short of the 120 spaces required under the Zoning By-laws, Mr. Lake noted that the addition of 23 parking spaces is a vast improvement to the site.

Mr. Lake also explained that the Library requires a variance from the maximum lot coverage. In 1997, the Trustees requested several variances from the Board, which should have included Lot Coverage and Open Space variances; however, a review of the prior Board decision does not clearly articulate that this relief was in fact granted. Therefore, the Trustees now request a variance from the maximum lot coverage requirement, offering 75.6% coverage, where the Zoning By-law limited coverage to 70%. With the new lot and parking area, the Library site will increase lot coverage to 78.7%. In addition, the Library is nonconforming as to Open Space, as the present configuration provided 24.4 % open space, while the Zoning By-laws require 30% open space. The new lot and parking area will decrease open space, providing only 21.3%. Mr. Lake noted that it appeared to be the intent of the Board to grant this relief in 1997, although the decision is unclear. As the newly proposed parking lot will intensify these nonconformities, the Trustees seek this additional relief.

As grounds for a hardship, Mr. Lake noted that this site has been the home of the Library for several decades and has become a pre-existing nonconforming site as to the size of the lot. Mr. Lake also noted that the lot slopes to the rear of the property.

The petitioners submitted 4 plans entitled "Draft Existing Conditions Plan," dated July 7, 2005, prepared by Daylor Consulting Group, Inc. , along with three sheets entitled "Thayer Library Layout Plan" dated May 14, 2008, prepared by the Town Engineers.

No one else spoke in favor of or opposition to the petition. By a vote of 4-0-0, the Planning Board voted to recommend favorable action on the relief requested.

### **Findings**

The Board acknowledged the prior relief granted to the Library and noted that the proposed parking layout, albeit still nonconforming, is more complaint than existing conditions on the site. In addition, the Board noted that the requested relief relative to lot coverage and open space were de minimus. The Board found that the proposed relief could be granted without substantial derogation from the purpose and intent of the Zoning By-laws.

### **Decision**

On a motion made by Mr. Gauthier and seconded, it was unanimously voted to approve the requested relief, as shown on the plan submitted.

#### **6) Petition Number 08-38 MetroPCS RE: 100 Grandview Road**

Mr. Forsberg advised the Board that the applicant requested this petition be tabled until the September meeting so that they can address Planning Board modifications.

Mr. Karll requested that the applicant forward a letter to the Board agreeing to a continuance to the September 2008 meeting.

#### **Other Business:**

- Mr. Forsberg advised the Board that the department would like to establish a decision signature page procedure for petitions. Signature pages would be prepared for each petition and available for Board members to sign after a petition is heard and voted. The request to consider this procedure is in an effort to expedite the filing of the decision documentation with the Town Clerk and not inconvenience the Board members. Further, once the decisions are prepared they will be forwarded to each Board member for final review by email communication from the Town Solicitor.
- Mr. Forsberg advised the Board that Attorney Carl Johnson, representing Reservoir Crossing located at 614 Pond Street will be scheduled on the August 26, 2008 agenda to request As-Built approval.
- Mr. Forsberg advised the Board that the appeal applications would contain optional relief, in the form of a finding, a variance or both to give an applicant a more appropriate option(s) in the form of relief sought from the Board.
- Mr. Forsberg advised the Board that we will be creating a form that may be utilized for the specific purpose of appealing a permit or action of the Building Division.

- Ms. McGrath advised the Board that the approvals of the meeting minutes for the June 2008 and August 2008 meetings will be placed on the September 2008 agenda.
- Mr. Forsberg advised the Board that the meeting packets for each monthly meeting will be prepared for the Board members at least two weeks prior to each meeting, and placed in the ZBA mailbox at Town Hall to allow for convenient pick up and review prior to each meeting.

**Executive Session:**

A roll call vote was taken by the Board at 8:35pm to go into Executive Session for the purpose of discussing pending litigation.

Roll Call Vote:       Michelle Lauria-Yes  
                          Jack Gauthier-Yes  
                          Stephen Karll-Yes  
                          Jay Nuss-Yes

The Board came out of Executive Session at 8:43pm.

The meeting adjourned at 8:43pm



The meeting adjourned at 8:30pm

