



Joseph C. Sullivan  
Mayor

# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

### Meeting Minutes

December 22, 2009

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jack Gauthier, Member  
Jay Nuss, Member  
Joseph Mulligan, Member

**ALSO PRESENT:** Russell Forsberg, Inspector of Buildings  
Carolyn Murray, Town Solicitor

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

Mr. Karll advised the Board that effective at the end of this meeting, member Joseph Mulligan has tendered his resignation from the Zoning Board of Appeals.

#### OLD BUSINESS:

- 1) Petition Number 09-42**  
**Valquiroio Mendonca**  
**RE: 54 Edgemont Road**

Mr. Forsberg advised the Board that Mr. Mendonca has submitted a letter requesting a 30-day extension on the previous deadline for the petitioner to relocate his shed five feet from the property line, in accordance with the Board's November 24, 2009 decision.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to approve a 30-day extension.

#### NEW BUSINESS:

- 2) Petition Number 09-45**  
**Lisa Smith**  
**RE: 224 Common Street**

Present: no representative present

Mr. Karll advised the Board since no representative was present for this hearing that the matter should be continued to the next meeting on January 26, 2010.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to continue the hearing until January 26, 2010.

**2) Petition Number 09-46**

**James J. Rust**

**RE: 100 Weston Avenue**

Present: James Rust, petitioner

This is a petition filed by James J. Rust of 100 Weston Avenue, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, Section 407, and 701, in order to construct a second story addition over an existing bump-out on the first story, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors Plan No. 2046, Plot 9B and contains 6,930+/- 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 December 22, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier, and Jay Nuss, with alternate, Joseph Mulligan.

**Evidence**

The petitioner, James Rust, represented himself. The petitioner stated that the alteration desired was to construct a closet and master bathroom over an existing portion of the building. The petitioner explained that the lot and structure do not meet the dimensional and density standards under section 135-701, as both are pre-existing nonconforming. Pursuant to Section 135-701 of the Zoning By-laws, the minimum lot area is 15,000 SF, yet this lot only has 6,930 SF. The minimum lot width for this zoning district is 100 ft., yet this lot offers only 68 feet of width. The minimum side yard setback is 10 ft., yet the existing dwelling is located 5.6 feet from the westerly side lot line. The proposed addition will be located on top of the bump-out of the existing dwelling, where the current structure encroaches into the side yard setback; however, the second story addition would be within the footprint of the existing structure and would not create any new nonconformity. Therefore, a finding under G.L. Chapter 40A, Section 6 is required.

The petitioner submitted an undated plan entitled "Plan of Land in Braintree, MA – 100 Weston Ave.", prepared by C. S. Kelley Land Surveyors of Pembroke, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 in favor of the requested relief.

**Findings**

The Board found that the proposed addition will be in within the footprint of the existing dwelling and will not create any further encroachment into the westerly side yard setback. Therefore, the Board found that the

proposed alteration of the pre-existing nonconforming structure would not be substantially more detrimental to the neighborhood than the existing structure. 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.

**Decision**

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plan presented.

- 3) Petition Number 09-47**  
**Donna M. Blischke and Mary Ellen Sanders**  
**RE: 1393 Liberty Street**

Present: Attorney Bill Orinberger, representing the petitioners

Mr. Karll advised the Board that he would like to conduct a site visit at the subject property before he rendered a decision on this matter, and request the Board's continue this matter to the January 26, 2010 meeting.

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to continue the hearing until January 26, 2010. Additionally, a meeting will be scheduled to occur between the Zoning Board and representatives of the Planning Board/Department prior to the meeting on January 26, 2010.

**APPROVAL OF MINUTES:**

On a motion was made by Mr. Gauthier and seconded by Mr. Nuss, it was unanimously voted to approve the meeting minutes of November 24, 2009.

**Motion By:** Mr. Gauthier to adjourn at 8:07pm.  
**Second By:** Mr. Nuss  
**Unanimously Voted**