



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

March 23, 2010

**IN ATTENDANCE:** Stephen Karll, Chairman  
John Gauthier, Member  
Jay Nuss, Member  
Michael Calder, Member

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

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

#### **NEW BUSINESS:**

- 1) Petition Number 10-09  
Beth & Jeff Lanigan  
RE: 365 Shaw Street**

Present: Beth & Jeff Lanigan, petitioners

This is a petition filed by Beth and Jeff Lanigan of 365 Shaw Street, Braintree, MA regarding the same property. The applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, Section 407, and 701, in order to construct an in-law addition to the rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residential B and C Zoning District, as shown on Assessors Plan No. 3050, Plot 108 and contains 10,044+/- 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 March 23, 2010 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 Michael Calder.

#### **Evidence**

The petitioners, representing themselves, stated that the alteration desired was to construct an in-law apartment for Mrs. Lanigan's aging parents. The addition measures 22 ft. x 30 ft. for a total of 660 SF and is proposed to be located to the rear of the property, so as to continue and fit within the lines of the existing dwelling. The addition will provide a bedroom, computer room, bathroom and kitchenette.

The petitioner explained that the lot and existing dwelling structure do not meet the dimensional and density standards under section 135-701, as both are pre-existing nonconforming. This is a corner lot located on the corner of Shaw Street and Hillside Avenue. The lot is also split into two zoning districts, with the proposed addition located in, and therefore subject to, the Residence C Zoning District requirements. In 2004, the petitioners purchased 1,710 SF of land in the rear of the property from their abutter to the north, and in 2006, this area was combined with the larger portion of the lot via an Approval Under the Subdivision Control Law Not Required plan filed with the Planning Board. Pursuant to Section 135-701 of the Zoning By-laws, the minimum lot area is 15,000 SF, yet this lot only has 10,044 SF. The minimum lot width for this zoning district is 200 ft., yet this lot offers only 57 feet of width.

The proposed addition will not conform to the Residence C Zoning dimensions, and therefore, variances are required. The minimum front yard side yard setback is 50 ft., as the Hillside Avenue side of the house must be considered the front lot line, yet the proposed addition, yet the existing dwelling is located 14.7 feet from this lot line. The proposed addition will continue this lot line encroachment and be located 13.5 feet from this lot line. Also, the minimum rear yard setback in a residence C Zoning District is 50 feet, yet the existing dwelling is located approximately 33.6 feet at its closest point from the rear lot line. The proposed addition will add to this encroachment, with the addition to be located 11.6 feet from the rear lot line at its closest point. Since the existing dwelling and lot are pre-existing nonconforming, the petitioners also seek a finding under G.L. Chapter 40A, Section 6.

As grounds for a variance, the petitioners noted the irregular "L" shape of their lot, and the fact that their lot is undersized, such that any addition would require a variance. The petitioners also noted that the topography is uneven in the rear of their property and submitted a photo of their backyard with a retaining wall holding back the higher elevation. The petitioners also asserted that the addition would not be more detrimental to their surrounding neighborhood and presented photos of various houses in their neighborhoods where the dimensional setbacks are not satisfied.

The Chairman noted that the Planning Board voted 5-0 to take no action on this petition, but the Planning Department's report suggested that the petitioners relocate the addition to the easterly side of their house, which is a larger area where the pool is located. The Chairman asked the petitioners if they considered the Planning Department's suggestion, to which the petitioners explained that if they moved the addition to the Berwick Road side of the property, they would still need two variances from setback requirements. The petitioners also explained that, to locate the addition on the Berwick Road side of the house would require them to relocate their pool to the rear of the house, and the petitioners had been advised by the Building Department that they would need a variance for the placement of the pool because they are required to leave a sufficient amount of room along the basement window wells for egress from the basement. Therefore, the petitioners prefer to go forward with their original plan, placing the addition to the rear of the house.

The petitioners submitted a plan entitled "Plan Showing Proposed Addition in Braintree, MA," dated January 28, 2010, prepared by Hoyt Land Surveying of Weymouth, MA.

Georgette Floyd of 9 Hillside Avenue, the abutter to the rear of the property, spoke in favor of the petition, noting that she felt the addition would look better in the rear of the existing dwelling. William Floyd, also of 9

Hillside Avenue noted that Hillside is not really a street at this end, as it is disconnected from the rest of Hillside, so it is more like a driveway.

Mr. Gauthier asked whether the petitioners would remove the second stairwell on the Hillside Avenue side of the house, to which the petitioners agreed.

No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the proposed addition to the rear of the property, while encroaching into the front yard setback, will be consistent with the line and setback of the existing dwelling. The Board also found that the petitioner had proven a hardship based on the irregular "L" shape of the lot and the uneven, uphill topography in the rear of the lot. The Board also 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. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented and on the condition that the petitioners remove the second stairwell on the Hillside Avenue side of the property.

## **2) Petition Number 10-10 Stacey Fitzgerald RE: 11 Wayne Avenue**

Present: Stacey Fitzgerald, petitioner and her husband, Bob Fitzgerald

This is a petition filed by Stacey Fitzgerald of 11 Wayne 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 single-story addition to the rear of the house, to add a 13 ft. x 23 ft. garage to the existing garage, to add a 13 ft. x 22 ft. deck behind the garage, and to add a shed dormer in the back of the house, all in accordance with the plans of record. The property is located in a Residential B Zoning District, as shown on Assessors Plan No. 1041, Plot 53 and contains 8,382 +/- 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 March 23, 2010 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, Michael Calder.

### **Evidence**

The petitioner, appearing with her husband, stated that their house is currently a three bedroom ranch, with five people living in it, so the additions are needed to increase living space. The addition to the rear of the house

will be 16 feet by 52 feet and will consist of a living room, dining room, master bedroom and bath. The addition will require a variance from the rear yard setback, as it is proposed to be located 25.6 feet from the rear lot line at its closest point, whereas the Zoning By-law requires a setback of 30 feet. The petitioner also seeks to add one stall to their existing garage by adding a 13 ft. by 23 ft. addition to the existing garage. The petitioners also seek to add a 13 ft. by 22 ft. deck to the rear of the new garage stall. Finally, the petitioners want to add a shed dormer to the rear roof of their property, which will be within the existing footprint of the existing dwelling.

The petitioner explained that the lot and existing dwelling structure do not meet the dimensional and density standards under section 135-701, as both are pre-existing nonconforming. This is a corner lot located on the corner of Wayne Avenue and Sherman Road. The petitioners acquired the adjacent lot, containing 6,436 SF of land, and the two parcels are taxed as a single lot, and therefore are considered a single lot for purposes of zoning. Pursuant to Section 135-701 of the Zoning By-laws, the minimum lot area is 15,000 SF, yet the lot on which the house is located contains only 8,382 SF of land; however, when combined with the adjacent lot, the lot is still deficient in area, offering only 14,818 SF. The minimum front yard setback is 20 feet, while this dwelling is located 14.7 feet from the Sherman Road side of the lot. The lot is also deficient as to lot depth, offering only 89 feet where the Zoning By-law requires 100 feet. The lot is similarly deficient as to lot width, offering only 85 feet, whereas the Zoning By-law requires 100 feet.

As grounds for a variance, the petitioners noted the soil on the Wayne Avenue side of the lot has a high water table, and therefore, the soil will not support an addition, leaving the rear of the property as the only viable location for an addition. The petitioner stated that their abutter to the rear was in favor of the proposed addition.

The petitioners submitted a plan entitled "Plan of Land in Braintree, MA," dated February 16, 2010, prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the proposed addition to the rear of the property, while encroaching into the rear yard setback, will be less than 5 feet, and therefore, is a de minimus encroachment. The Board also found that the petitioner had proven a hardship based on the irregular rhomboidal shape of the lot and the high water table on the easterly side of the lot. The Board also 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 10-11**

**Dr. Mark Logan**

**RE: 1681 Washington Street**

Present: Dr. Mark Logan, petitioner

This petition was filed by Mark Logan of 1681 Washington Street, Braintree, MA regarding the same property. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Section 135-407 and 904.1.A.5 to install a 3 ft. x 16 ft. wall sign. The property is within a General Business Zoning District and contains 1.8 +/- acres of land, as shown on Assessors' Map No. 1055, Plot 132.

### **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 March 23, 2010 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, members, John Gauthier and Michael Calder.

### **Evidence**

The petitioner, representing himself, explained that he has recently moved his office into the office building at 1681 Washington Street, the site of the former Highland Pharmacy. The applicant seeks to affix one wall sign above the entrance to his office space to replace the sign previously installed by Highland Pharmacy. The applicant's proposed sign will measure 3 feet by 16 feet, or 48 SF, which is no larger than the former Highland Pharmacy sign. The sign will state: "South Shore Spine & Sports Injury", "Chiropractic Care", and will contain a phone number of the business, as well as a design logo.

According to Article IX, Section 135-904.1.A.5.a of the Zoning By-laws: "No wall sign shall be more than four feet overall in height and a wall sign shall not exceed the lesser of 150 square feet or one square foot in area for each linear foot of frontage for each business. Walls signs of businesses occupying other than the first floor shall not exceed 48 square feet in area." The applicant's business occupies the first floor of the building; however, the total linear frontage of this business is 16 feet. According to the Zoning By-law, the applicant's sign should not exceed 16 SF in area, and therefore, a variance is required.

Dr. Logan reiterated that the proposed sign was simply replacing the previous nonconforming sign. The applicant explained that the signage was necessary for identification purposes, to direct traffic on Washington Street safely to the site, and to direct customers to the main entrance of his business. Dr. Logan also explained that the sign would be lit with white lights from behind the sign and will be illuminated between the hours of 5pm and 11 pm. As grounds for the variance, Dr. Logan also noted that the office building is set back from Washington Street, and with the street being a busy route (Route 37 at this section), the signage is needed to identify and direct clients to the site, as they drive along this highly-traveled corridor.

The applicant submitted two renderings of the proposed sign with this petition.

By a vote of 5-0, the Planning Board voted to take no action on the relief requested.

No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. The Board concluded that the proposed signs would increase visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic off the road and into the parking lot.

The Board also concluded that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

**Decision**

On motion made by Mr. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented and on the condition that the lights go off by 11 pm.

**APPROVAL OF MINUTES:**

On a motion made by Mr. Gauthier and seconded by Mr. Nuss, the Board voted unanimously to accept the meeting minutes of February 23, 2010.

The meeting adjourned at 7:50 pm