



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

**December 28, 2010**

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

**ALSO PRESENT:** Eric Erskine, Local Building Inspector

Mr. Karll called the meeting to order at 7:02pm.

#### **OLD BUSINESS:**

- 1) Petition Number 10-38**  
**Thichthien Hue**  
**RE: 155 Quincy Avenue**

Present: Diane P. Evers, architect with D.P. Evers Architecture

On a motion made by Mr. Karll, a 90-day continuance was proposed regarding this petition, in that one of the original voting members was not present; and that due to conflicts in schedule the necessary quorum would not be available until the February 22, 2011 hearing. On a second by Mr. Calder, the Board voted unanimously to approve the continuance.

#### **NEW BUSINESS:**

- 2) Petition Number 10-39**  
**Chris Comoletti**  
**RE: 29 Howie Road**

Present: Susan Comoletti, wife of petitioner

This is a petition filed by Chris Comoletti of 29 Howie Road, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicant seeks a permit and/or variance to construct an addition under an existing carport roof, all in

accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2061, Plot 6 and contains 7,560 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 28, 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, Jay Nuss and Michael Calder.

### **Evidence**

The applicant, Chris Comoletti, represented by his wife, Susan, explained to the Board that they are seeking permission to convert an existing carport into a family room. The carport measures 14 feet by 19.2 feet, and the family room will have the same measurements. The applicant's existing dwelling and lot are both pre-existing nonconforming. The lot is undersized, containing only 7,560 SF of land, while the Zoning By-law requires a minimum lot size of 15,000 SF, and the lot lacks the 100 foot minimum lot width, as it offers only 72 feet of width. The existing structure on the lot is also nonconforming as the carport currently encroaches into the side yard setback. The Zoning By-law requires a side yard setback of 10 feet, yet the carport is located 4.9 feet off the side lot line. The proposed family room would be within the same footprint as the carport and will not create any new nonconformities, and therefore a finding under G.L. Chapter 40A, Section 6 is required.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted a recommendation in favor of the requested relief.

The applicant submitted a plan entitled "Certified Plot Plan Located at 29 Howie Road, Braintree, MA," dated October 13, 2010, prepared by Boston Survey, Inc. of Charlestown, MA.

### **Findings**

The Board found that proposed alteration of the pre-existing nonconforming structure will maintain the existing setbacks and not create any new nonconformities under the Zoning By-law. The Board also found that granting the relief requested would not be substantially more detrimental to the existing neighborhood. Further, 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. Calder and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plan presented.

### **3) Petition Number 10-40**

**Paul Reggio**

**RE: 119 Cleveland Avenue**

Present: Paul Reggio, petitioner

This is a petition filed by Paul Reggio of 119 Cleveland Avenue, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and

701. The applicant seek a permit and/or variance to construct an addition consisting of a mud room, connecting the house and an existing garage, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 2017, Plot 23 and contains 39,510 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 28, 2010 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, Jay Nuss and Michael Calder.

### **Evidence**

The applicant, Paul Reggio, explained to the Board that he is seeking permission to construct a mud room to connect his existing house to his existing garage. The mud room will measure 7.5 feet by 8.5 feet. The applicant's existing dwelling and lot are both pre-existing nonconforming. The lot lacks the 100 foot minimum lot width, as it offers only 70 feet +/- of width. At its closest point, the existing detached garage is located 4 feet from the side lot line, whereas the Zoning By-law requires a setback of 5 feet for a detached garage. However, with the construction of the mudroom between the garage to the house, the garage will become an attached garage, for which the Zoning By-law requires a 10 foot setback. Therefore, a variance and a finding under G.L. Chapter 40A, Section 6 is required. The proposed mud room will be constructed between the house and garage and will not create any new nonconformities.

As grounds for the variance, the applicant noted the location of the existing structures on the lot, making it difficult to locate a mud room elsewhere in conformance with the Zoning By-laws. The applicant also noted a number of other houses on Cleveland Avenue with mud rooms connecting houses to the garages.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted a recommendation in favor of the requested relief.

The applicant submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 119 Cleveland Ave.," dated November 17, 2010, prepared by C.S. Kelley, Land Surveyors of Pembroke, MA.

### **Findings**

The Board found that the applicant had demonstrated a hardship based on the shape of the lot and the location of existing structures on the lot. The Board also found that the relief from the side yard setback could be granted without substantial detriment to the existing neighborhood, as the garage is an existing structure which will maintain its current location on the lot and the addition of the mud room will not impact the setback encroachment. Further, 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. Nuss and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

**4) Petition Number 10-41  
Eugene Caruso  
RE: 282 Middle Street**

Present: Eugene Caruso, petitioner

Mr. Caruso advised the Board that further refinements of the design of the proposed alterations to his home would be required and would need the review of the Planning Board. As such, he requested a 60-day continuance regarding this appeal, but believed that he would be ready to present his proposal to the Zoning Board of Appeals at their January 25, 2011 hearing.

On a motion made by Mr. Calder and seconded by Mr. Nuss, the Board voted unanimously to approve a 60-day continuance until the Zoning Board of Appeals meeting on February 22, 2011.

**5) Petition Number 10-42  
Dennis Malloy  
RE: 45 Fountain Street**

Present: Dennis Malloy, contractor representing the property owner, Joseph Butler

This is a petition filed by Dennis Malloy of 10 Song Sparrow Lane, Duxbury, MA 02332 regarding the property located at 45 Fountain Street in Braintree. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 and seeks a permit and/or variance to replace an existing house with a modular house, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1027, Plot 27 and contains 5,000 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 28, 2010 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, Jay Nuss and Michael Calder.

**Evidence**

The applicant is the contractor, representing the owner of the property, Joseph Butler. The applicant explained to the Board that he is seeking permission to demolish an existing 1 ½ story single family dwelling and replace it with a 1 ½ story modular dwelling, which will conform to all of the setback requirements of the Zoning By-laws. The applicant's lot and existing dwelling on the lot are pre-existing nonconforming. The lot is nonconforming as to lot size, containing only 5,000 SF of land, while the Zoning By-law requires a minimum lot size of 15,000 SF, and the lot lacks the 100 foot minimum lot width, as it offers only 50 feet of width. The existing structure on the lot is also nonconforming as to the 20 foot front yard setback, offering a setback of only 19.7 feet. The existing dwelling also encroaches into the side yard setback, as the existing structure is located 14.7 to 4.3 feet off the side lot line, while the Zoning By-law requires a side yard setback of 20 feet.

The new structure will correct the front yard setback encroachment, as it will be located 20.5 feet off the front yard lot line. However, the new structure will be located 10.5 to 15.5 feet off the side yard lot line, which is still nonconforming, but more conforming than the existing structure. The new structure will not create any new nonconformities. Therefore, a finding under G.L. Chapter 40A, Section 6 is required.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board submitted a recommendation in favor of the requested relief.

The applicant submitted a plan entitled "Plot Plan, Fountain Street, Braintree, Mass." dated November 24, 2010, prepared by Douglas Bailey, Co., Land Surveyors of Pembroke, MA.

### **Findings**

The Board found that the proposed modular dwelling would conform to the front yard setback, unlike the existing dwelling, which the applicant proposes to raze. The Board also found that, while the proposed modular dwelling will encroach into the side yard setback by 4.5 to 9.5 feet, the new dwelling will be more conforming to the Zoning By-law than the existing dwelling, which encroaches 5.3 to 15.7 feet into the side yard setback. The Board also found that the proposed modular dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling. Further, 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. Karll and seconded by Mr. Nuss, it was unanimously voted to grant the requested relief, subject to the plan presented.

### **APPROVAL OF MINUTES:**

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

The meeting adjourned at 8:01 pm