



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

July 26, 2011

**IN ATTENDANCE:** Stephen Karll, Chairman  
John Gauthier, 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.**

#### **OLD BUSINESS:**

- 1) Petition Number 11-24**  
**Arlene M. Powers**  
**RE: 153 Middle Street**

Present: Arlene Powers, petitioner; Frank Colpoys, Attorney representing applicant; Paul Marabito, surveyor.

The Board and petitioner discussed the request to subdivide the property into two lots. After discussion with both the petitioner and the opponents to the petition, Chairman Karll determined that a further viewing of the property would be necessary prior to any decision by the Board.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to continue the hearing to the Zoning Board of Appeals meeting on August 23, 2011.

- 2) Petition Number 11-25**  
**Thomas J. King, Jr. and Catherine M. King**  
**RE: 42 Jersey Avenue**

Present: Thomas and Catherine King, petitioner

Mr. Karll advised the Board that the petitioner is requesting to withdraw the appeal without prejudice.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board vote unanimously to allow the petitioner to withdraw the appeal without prejudice.

**3) Petition Number 11-26**

**Guang Lin**

**RE: 250 Granite Street**

Present: Grant Gao of Excel Signs of Quincy

This is a petition filed by Guang Lin on behalf of Tokyo Steakhouse regarding the property located at 250 Granite Street in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 135-407 and 904.2 to install a second wall sign on the exterior of the restaurant. The property is located in a Highway Business District and contains 111.645 +/- acres of land, as shown on Assessors' Map No. 2089, Plot 22.

**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 July 26, 2011 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 petition was presented by Grant Gao of Excel Signs of Quincy, who has been hired to design and install the signs at Tokyo Steakhouse, which is located at the former Rock Bottom site at the South Shore Plaza. This site is a free standing building within the South Shore Plaza complex, located behind the Pizzeria Uno's and across from the parking area along the Nordstrom's wing. Mr. Gao explained that the restaurant wants to install two wall signs with channel lettering. One wall sign consists of two Japanese characters that stand for Tokyo, which measures approximately 6 SF in area and would be located directly over the main entrance. The second wall sign is approximately 36 SF in area and consists of two rows of lettering stating "Tokyo Japanese Steakhouse"; this sign is proposed to be located at the top of the building facing the parking area along the Nordstrom's wing of the South Shore Plaza. Both signs will be back lit with white lights. In response to questions from the Board, Mr. Gao explained that the lights are activated by a sensor as well as a timer. The Chairman also questioned the time that the sign is turned off at night, and Mr. Gao indicated that the sign could go off at the same time as all other signs at the plaza.

According to Section 135-904.2(A)(5)(g) of the Zoning By-laws, only one wall sign is permitted for each store or business occupying a building, and the total aggregate of all allowed signage shall not exceed 150 SF in area, unless authorized by the Zoning Board of Appeals. The total area of the two signs is 42 SF, which is well below the 150 SF aggregate limit imposed by the by-law. Nonetheless, since two wall signs are requested, a variance is required.

As grounds for the variance, Mr. Gao explained the location of the restaurant, as it is recessed from the primary access way, Granite Street, and tucked in behind Pizzeria Uno's directly opposite the parking area along the Nordstrom's wing. Because of its location, the restaurant is not visible from Granite Street. Mr. Gao stated that the second wall sign is needed to identify the restaurant and to safely direct the traveling public to the restaurant. Mr. Gao also noted that Rock Bottom had signs at the same locations.

The petitioner submitted two renderings of the proposed signs, prepared by Excel Signs of Quincy, MA, dated December 4, 2010.

By a vote of 4-0-0, the Planning Board recommended favorably on this petition. 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. Specifically, the Board found that the proposed secondary exterior wall sign was necessary to identify the location of the store within the larger expanse of the South Shore Plaza. The Board found that the proposed sign would increase the store's visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic to the site. The Board also noted that the sign will not face any residential area and 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 3-0 to grant the requested relief, subject to the plans presented and with the condition that the lights of the signs go off at the same time as all other restaurants at the South Shore Plaza.

#### **4) Petition Number 11-27 Christopher Boyle RE: 18 Massachusetts Avenue**

Present: Christopher Boyle, petitioner

This is a petition filed by Christopher Boyle of 18 Massachusetts 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 is seeking a permit and/or variance to erect an addition to the garage which will include a second floor addition to this same garage, all in accordance with the plans of record. The property is in a Residential B Watershed Zoning District as shown on Assessors Plan No. 1080, Plot 38 and contains 7,414 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 June 28, 2011, but continued the matter to conduct a site visit. The continued public hearing was held on July 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

### **Evidence**

Christopher Boyle, the proper owner, presented this petition to the Board, explaining that he proposes to construct 5.7' X 20' addition to the garage and to construct a full second story over the entire expanded garage. At its closet point, the addition will be 1.9 feet off the front yard lot line. The Zoning By-law requires a front

yard setback of 20 feet, and therefore, a variance is required. This lot is located on a corner lot at the intersection of Massachusetts Avenue and Marion Avenue.

The applicant's lot and existing dwelling are pre-existing nonconforming. The Residence B Watershed District requires a minimum lot size of 1 acre, but this lot contains only 7,414 SF. The Lot also lacks the required 100 feet of width, as the lot offers only 75 feet of width. The structures on the lot also fail to conform to all of the setback requirements. The Zoning By-law requires a rear yard setback of 30 feet, but the house is located 29.7 feet from the rear lot line. The Zoning By-law requires a front yard setback of 20 feet, yet the garage is currently located 7.6 feet from the front lot line on the Marion Avenue side. In addition, the applicant's house is currently nonconforming as to the rear yard setback; the Zoning By-law requires a rear yard setback of 10 feet, but the existing dwelling is 8.9 feet from the rear yard lot line on the northwesterly side. Therefore, the applicant requests a finding under G.L. Chapter 40A, Section 6.

The applicant explained that the existing garage was in disrepair and needs to be demolished. The applicant wants to rebuild an expanded garage with a family room above. The proposed addition measures 5.7 ft. x 20 ft., which will further encroach into the front lot line on Marion Avenue, as it is proposed to be located 1.9 feet off the lot line. As grounds for the variance, the applicant noted the severely undersized nature of the lot. The applicant also noted the current location of structures on the lot, and specifically, the location of the garage, noting that the garage could only be re-built in this location. Although this is treated as a corner lot, the applicant stated that Marion Avenue is referred to as a paper street, and but for the paper street, his proposed addition would be subject to a 10 foot side yard setback. The applicant also submitted evidence of another house directly behind his whose garage is even closer to the Marion Avenue lot line.

The applicant advised that he had spoken with his neighbors, the Whalens, the Newells and the Murrays, and all indicated their support for his petition. Town Councilor Charles Kokoros appeared before the Board and expressed his support for this petition.

The petitioner submitted a plan entitled "Plot Plan 18 Mass Ave, Braintree, Ma," dated March 21, 2011, prepared by James E. McGrath of Weymouth, MA.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 4-0-0 to recommend denial of the requested relief, based on their position that the applicant could scale back his proposed addition to minimize the encroachment.

### **Findings**

The Board found that the applicant had presented a hardship based on the shape of lot, specifically the extremely undersized nature of the lot. The Board also noted that the existing garage encroaches into the Marion Avenue front lot line, which is a paper street, and that another house directly behind the applicant's has a garage located even closer to this lot line. Therefore, the Board found that the granting of the requested relief would not be substantially more detrimental to the neighborhood than the existing structure. 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. Gauthier and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

**NEW BUSINESS:**

**5) Petition Number 11-28**  
**Kathleen O'Connell**  
**RE: 118 Park Street**

Mr. Karll advised the Board that since there was no one in attendance for this petition that the Board consider granting a 30-day deferral of this appeal until the Zoning Board of Appeals meeting on August 23, 2011.

On a motion made by Mr. Gauthier and seconded by Mr. Calder, the Board voted unanimously to approve a 30-day deferral until the Zoning Board of Appeals meeting on August 23, 2011.

**6) Petition Number 11-29**  
**John Barrett and Emily Hoard**  
**RE: 206 Allen Street**

Present: John Barrett and Emily Hoard, petitioners

This is a petition filed by John Barrett and Emily Hoard of 206 Allen Street Braintree, MA, regarding the same property, in which the applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403,407 and 701. The applicants seek a permit and/or variance to construct an addition to the rear corner of their existing residence, all in accordance with the plans of record. The property is located in a Residence C Zoning District as shown on Assessors Map 3008, Plot 14D, and contains a land area of 5,678 SF +/- of land.

**Notice**

Pursuant to an Order for remand issued by Norfolk Superior Court in the matter of Barrett, et al. v. Braintree Zoning Board of Appeals, Civil Action No. 10-01544 and 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 July 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder.

**Evidence**

John Barrett and Emily Hoard, the property owners, presented this petition to the Board, explaining that they propose to construct a 15' X 3' addition to the rear corner of the existing residence. The addition is to be utilized as a bedroom closet. At its closet point, the addition will be 8.4 feet off the easterly side lot line and at its farthest point will be 8.8 feet off the side lot line. The Zoning By-law requires a side yard setback of 30 feet, and therefore, a variance is required.

The applicants' lot and existing dwelling are pre-existing nonconforming. The Residence C Zoning District requires a minimum lot size of 43,560 SF, but this lot only contains 5,678 SF. The lot also lacks the required lot width of 200 feet, with only 55 feet provided. The lot also lacks the required lot frontage of 100 feet, as the lot provides only 55 feet. In addition, the lot lacks the required depth of 200 feet, as it offers only 101 feet of depth. Further, the structure on the lot does not conform to the front yard and side yard setbacks. The existing structure is located 26 feet from the front yard lot line, whereas the Zoning By-law requires a front yard setback of 50 feet. The existing structure also encroaches into the side yard setback. The Zoning By-law requires a side yard setback of 30 feet, yet the structure is located 16.7 feet off the westerly side lot line and 12.1 feet off the easterly side lot line. Therefore, the applicants request a finding pursuant to G.L. Chapter 40A, Section 6.

As grounds for the variance, the applicants noted the severely undersized nature of the lot and presented pictures to the Board illustrating the house's 660 SF of current living space. The applicant also noted a topographic hardship due to a sloping backyard which drops off and requires a retaining wall, as well as the presence of ledge. The applicant also noted the location of the house situated on the lot which renders the construction of the addition ineffective in any other location.

The petitioner submitted a plan entitled "Plot Plan #206 Allen Street Braintree, MA, Parcel : 3008 0 14D," dated May 22, 2011, prepared by James E. McGrath. The applicant also submitted plans of the existing floor plans, proposed floor plans, existing and proposed front and side and rear elevation. As well as 7 color photos depicting the house and yard.

No one else spoke in favor of or opposition to the petition. Because this matter was presented to the Board via an order for remand, the Planning Board offered no recommendation on this petition.

### **Findings**

The Board found that the applicants had presented a hardship based on the shape, soil and topography. Specifically, the Board found the applicants' lot to be extremely undersized, particularly as to lot width. The Board also found a topographical hardship due to the presence of ledge and the sloping topography of the land in the rear of the dwelling. The Board also noted that the existing location of the house on the lot and the interior configuration of the house renders it virtually impossible for the applicants to locate this addition elsewhere. The Board found that granting the requested relief would not be substantially more detrimental to the neighborhood than the existing structure. 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. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

**7) Petition Number 11-30**  
**Michael and Denise Calderara**  
**RE: 11 Reservoir Avenue**

Present: Michael and Denise Calderara, petitioner

This is a petition filed by Michael and Denise Calderara of 11 Reservoir Avenue, Braintree, MA regarding the same property, in which the applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701. The applicant is seeking a permit and/or variance to the required setback for a cabana/pool filters/ pump shelter. The property is located in a Residential B Zoning District as shown on Assessors Plan No. 2082, Plot 25 and contains 9,678 SF +/- of land.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posed 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 July 26, 2011 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Michael Calder.

### **Evidence**

Michael and Denise Calderara, the property owners, presented this petition to the Board, explaining that they built a cabana/pool filter/ pump shelter without the proper building permit. The cabana/pool filter/ pump shelter is located 1.74 feet to 2.35 feet off the side lot line shared with the Flaherty School and is located 1.59 feet off the rear lot line also shared with the Flaherty School. The cabana is 8 ft. x 20 ft. and houses the pool filter and related pool equipment. The Zoning By-law requires a setback of 5 feet off each lot line for such an accessory structure, and therefore, a variance is required.

The applicant's lot and existing dwelling are pre-existing nonconforming. The Residence B Zoning District requires a minimum lot size of 15,000 SF, but this lot contains only 9,678 SF. The lot fails to meet the minimum lot width of 100 feet, as the lot contains only 99.5 feet of width.

As grounds for the variance, the applicant noted the irregular shape of the lot and the location of the existing pool and pump equipment. The applicant states that the pool was built prior to their ownership with the pool filter and related equipment in its current location. Due to the location of the pool, all underground piping for the pool filtration and electrical power would have to be relocated from existing location to be in order to bring the cabana into compliance with the 5 ft. setback.

The applicants also submitted a petition letters in support of their application signed by twelve neighbors. Patricia Gillespie of 7 Reservoir Avenue, who is the immediate abutter, spoke in favor of the petition and emphasized that the pool was constructed in its present location in 1964. Angela Kelly of 1 Reservoir Circle located directly opposite the petitioners spoke in favor of the petition. Erin O'Toole of 25 Blake Road, Anna Miner of 14 Blake Road, and Steve Bonfiglioli of 435 West Street spoke in favor of the petition. No one else spoke in favor of or opposition to the petition.

The Planning Board noted that this application is subject to a special permit pursuant to Section 135-702B and tabled this matter for further action.

The petitioner submitted a plan entitled "Plan Showing Cabana in Braintree, MASS", dated May 31, 2011, prepared by C.W. Garvey Co, Inc. of Whitman, MA.

### **Findings**

The Board found that the applicant had presented a hardship based on the shape, soil and topography. Specifically, the Board noted the irregular shape of the lot. The Board also noted that the cabana cannot be moved to another location because it houses the existing underground piping, pool filter, and electrical power, making another location not feasible. The Board also found that the cabana was not substantially more detrimental to the neighborhood than the existing structures on the lot. 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. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

**8) Petition Number 11-31**  
**Brian McGourty**  
**RE: 268 Peach Street**

Present: Brian McGourty, petitioner and contractor

This is a petition filed by Brian McGourty of 2 Garden Park, Braintree, MA on behalf of the property owner, Brian Doherty, regarding the property located at 268 Peach Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135- 403, 407 and 701 to construct a 12 ft. x 16 ft. deck to the rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1098, Plot 1 and contains 15,913 +/- 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 July 26, 2011 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, Jack Gauthier and Michael Calder.

### **Evidence**

The petitioner, Brian McGourty, is the contractor for the single family home recently built on this lot. This parcel, identified as lot 4A on the plan submitted, along with the adjoining lot 4B shown on the same plan, were all one lot until a recent subdivision into two lots was approved by the Planning Board. Both lots contain the required 15,000 SF minimum lot size for a Residence B zoning district. The single family home recently constructed on this lot meets the front, side and rear yard setbacks required under Section 135-701 of the Zoning By-laws. The lot and structure on the lot currently conform to the minimum frontage, lot depth, and lot width as required under Section 135-701 of the Zoning By-law.

According to Section 135-701 Note 2 of the Town's Zoning By-laws: "No portion of a principal building shall be located on a portion of a lot where the lot width is less than the minimum lot width, and said minimum lot width shall be maintained to a point 20 feet beyond the rear portion of the principal building." With the addition of the deck, the structure will not satisfy the minimum lot width of 100 feet required under the Zoning By-law; instead, there will only be 90 feet of lot width. Therefore, a variance is requested for the construction of the deck.

As grounds for the variance the applicant noted the irregular shape of the lot, which is pie-shaped, making it difficult to provide the required lot width throughout the entire lot. Mr. McGourty also advised the Board that he encountered ledge on the lots after subdividing the property, such that one house is situated over 7 feet to ground level. Mr. McGourty also emphasized that the lot and structure meets or exceeds all other zoning requirements.

By a vote of 5-0, the Planning Board recommended unfavorably on the requested relief, finding that the applicant had created his own hardship by subdividing the property and constructing the house in its present location of the lot. Planning staff advised Mr. McGourty at the time the subdivision was submitted that the building envelopes for any houses on these lots would be limited. In reliance upon Booe v. ZBA of the City of Shelton, 151 Conn. 681 (1964) and its progeny, the Planning Board took the position that the applicant should be denied zoning relief for having created his own hardship.

Building Inspector, Russell Forsberg, advised the Board that there was a disagreement as to the interpretation and application of Section 135-701 Note 2 of the Town's Zoning By-laws. Specifically, Mr. Forsberg noted that a deck does not provide shelter and under the State Building Code, the deck would not be considered a building; therefore, he advised the Board that the deck may not be considered part of the principal building for

purposes of measuring and maintain minimum lot width under the Zoning By-law. The Chairman advised that he considered the deck to be part of the principal building under the Zoning By-law.

The petitioner submitted a plan entitled "As/Built Plan, Lot 4A, No. 268 Peach Street, Braintree, MA," dated March 4, 2011 and revised as of May 17, 2011, prepared by Donald G. Rosa, PLS of Randolph, MA.

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

### **Findings**

The Board found that the applicant had demonstrated a hardship owing to the shape, soil, and topography of the lot. Specifically, the Board found that lot has an irregular pie shape and contains ledge. The Board further found that, while the construction of the deck will reduce the minimum lot width, as that term is defined under Section 135-701 Note 2 of the Town's Zoning By-law, the reduction will be 10 feet (from the required 100 feet to 90 feet), which the Board found to be a de minimus deviation. The Board also found that the construction of the deck and reduction of the minimum lot width would not be substantially more detrimental to the neighborhood than the existing dwelling. 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. Calder and seconded by Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

#### **9) Petition Number 11-32**

**Brian McGourty**

**RE: 1275 Liberty Street**

Present: Brian McGourty, petitioner and contractor

This is a petition filed by Brian McGourty of 2 Garden Park, Braintree, MA on behalf of the property owner, Brian Doherty, regarding the property located at 1275 Liberty Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135- 403, 407 and 701 to construct a 12 ft. x 16 ft. deck to the rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 1068, Plot 26 and contains 15,706 +/- 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 July 26, 2011 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, Jack Gauthier and Michael Calder.

### **Evidence**

The petitioner, Brian McGourty, is the contractor for the single family home recently built on this lot. This parcel, identified as lot 4B on the plan submitted, along with the adjoining lot 4A shown on the same plan, were

all one lot until a recent subdivision into two lots was approved by the Planning Board. Both lots contain the required 15,000 SF minimum lot size for a Residence B zoning district. The single family home recently constructed on this lot meets the front, side and rear yard setbacks required under Section 135-701 of the Zoning By-laws. The lot and structure on the lot currently conform to the minimum frontage, lot depth, and lot width as required under Section 135-701 of the Zoning By-law.

According to Section 135-701 Note 2 of the Town's Zoning By-laws: "No portion of a principal building shall be located on a portion of a lot where the lot width is less than the minimum lot width, and said minimum lot width shall be maintained to a point 20 feet beyond the rear portion of the principal building." With the addition of the deck, the structure will not satisfy the minimum lot width of 100 feet required under the Zoning By-law; instead, there will only be 86 feet of lot width. Therefore, a variance is requested for the construction of the deck.

As grounds for the variance the applicant noted the irregular shape of the lot, which is pie-shaped, making it difficult to provide the required lot width throughout the entire lot. Mr. McGourty also advised the Board that he encountered ledge on the lots after subdividing the property, such that one house is situated over 7 feet to ground level. Mr. McGourty also emphasized that the lot and structure meets or exceeds all other zoning requirements.

By a vote of 5-0, the Planning Board recommended unfavorably on the requested relief, finding that the applicant had created his own hardship by subdividing the property and constructing the house in its present location of the lot. Planning staff advised Mr. McGourty at the time the subdivision was submitted that the building envelopes for any houses on these lots would be limited. In reliance upon Booe v. ZBA of the City of Shelton, 151 Conn. 681 (1964) and its progeny, the Planning Board took the position that the applicant should be denied zoning relief for having created his own hardship.

Building Inspector, Russell Forsberg, advised the Board that there was a disagreement as to the interpretation and application of Section 135-701 Note 2 of the Town's Zoning By-laws. Specifically, Mr. Forsberg noted that a deck does not provide shelter and under the State Building Code, the deck would not be considered a building; therefore, he advised the Board that the deck may not be considered part of the principal building for purposes of measuring and maintain minimum lot width under the Zoning By-law. The Chairman advised that he considered the deck to be part of the principal building under the Zoning By-law.

The petitioner submitted a plan entitled "As/Built Plan, Lot 4B, No. 1275 Liberty Street, Braintree, MA," dated March 4, 2011 and revised as of May 17, 2011, prepared by Donald G. Rosa, PLS of Randolph, MA.

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

### **Findings**

The Board found that the applicant had demonstrated a hardship owing to the shape, soil, and topography of the lot. Specifically, the Board found that lot has an irregular pie shape and contains ledge. The Board further found that, while the construction of the deck will reduce the minimum lot width, as that term is defined under Section 135-701 Note 2 of the Town's Zoning By-law, the reduction will be 14 feet (from the required 100 feet to 86 feet), which the Board found to be a de minimus deviation. The Board also found that the construction of the deck and reduction of the minimum lot width would not be substantially more detrimental to the neighborhood than the existing dwelling. 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.

#### **10) Petition Number 11-33**

**Brian Eng**

**RE: 55 Lake Street**

Present: Brian Eng, petitioner

This is a petition filed by Brian Eng of 55 Lake Street, 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 is seeking a permit and/or variance to construct a modular house, all in accordance with the plans of record. The property is located in a Residential B Watershed Protection Zoning District as shown on Assessors Plan No. 1068, Plot 26, and contains a land area of 7,533 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 July 26, 2011, at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Jack Gauthier and Michael Calder.

### **Evidence**

Brian Eng, the property owner, presented this petition to the Board, explaining that the previous house on this lot was in disrepair and was demolished. He proposes to construct a modular house on the lot, measuring 27.4 ft. x 48.1 ft. When the old house was torn down and the new foundation poured, ledge was discovered, causing the foundation to be shifted slightly into the southerly side yard lot line. As a result, the foundation is located 9 ½ feet from the southerly side lot line. The Zoning By-law requires a side yard setback of 10 feet; therefore, a variance is requested.

The applicant's lot is pre-existing nonconforming. The Residence B Watershed Protection Zoning District requires a minimum lot size of 1 acre, but the applicant's lot contains only 7,533 SF. The lot also lacks the requisite lot width providing 89.7 feet instead of the required 100 feet. In addition, the lot does not comply with the lot depth requirement of 100 feet, as the lot offers only 85 feet of depth.

As grounds for the variance, the applicant noted the topographic nature of the lot and presented evidence to the Board demonstrating the amount of ledge located on the property. The applicant attempted to remove the ledge to install the current foundation and expended \$10,000 in doing so. The applicant stated that the movement of the current foundation would require the removal of substantially more rock ledge at a greater expense.

The petitioner submitted a plan entitled "plot plan showing Existing Foundation at 55 Lake Street, Braintree, MASS" dated June 17, 2011, prepared by Neponset Valley Survey Assoc., Inc. The applicant also submitted building plans prepared by KBS Building Systems, Inc.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 3-0-0 to recommend favorable action on the requested relief.

### **Findings**

The Board found that the applicant had presented a hardship based on the topography of the lot, specifically, the presence of rock ledge. The Board also noted that the existing parcel does not meet the requisite acreage and due to the rock ledge the foundation of the house could not be constructed in any other location. The Board found that the granting of the requested relief would not be substantially more detrimental to the neighborhood than the existing structure. 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.

### **Decisions**

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.

#### **11) Petition Number 11-34**

**Paul DeCoste, representing New Cingular Wireless PCS, LLC dba AT & T Mobility**

**RE: 10 Plain Street**

Present: Attorney Michael Dolan of Brown Rudnick in Providence, RI representing the petitioner.

This is a petition filed by New Cingular Wireless PCS, LLC d/b/a AT&T Mobility, 550 Cochituate Road, Framingham, MA regarding the property located at 10 Plain Street in Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407, 701 and 1601 et seq. and seeks a permit and/or variance to modify and upgrade the wireless communication facility located on the roof of the building, all in accordance with the plans of record. The property is located in a Commercial Zoning District as shown on Assessors Plan No. 1031, Plot 5 and contains 435,600 +/- 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 July 26, 2011 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, Jack Gauthier and Michael Calder.

### **Evidence**

The petitioner, represented by Attorney Michael Dolan of Brown Rudnick in Providence, RI, explained to the Board that the petitioner is seeking permission to relocate five of six existing antennas on the rooftop of the building. Those six antennas are installed at a centerline height of 79 feet on the existing penthouse of the building. The petitioner seeks to move four of the existing antennas to the existing AT&T equipment shelter on the rooftop at a centerline height of 75 feet, and move one over several feet next to the remaining antenna, with these two antennas remaining at a centerline height of 79 feet. The petitioner also seeks to install three new 8 ft. high antennas, one of which is proposed to be located on the existing penthouse at a centerline height of 79 feet, while the two others are proposed to be located on the existing AT&T equipment shelter at a centerline height of 75 feet. Further, the applicant seeks to install two remote radio heads and surge arrestor, along with associated antenna and electronic equipment.

The reason for the alterations to this site is that AT&T is in the process of building out and upgrading its network service to provide high speed data services commonly referred to as long term evolution ("LTE").

AT&T has identified a gap in coverage, and these installations will provide adequate and reliable wireless communications services in and around Braintree. In support of the requested relief, the applicant submitted two color maps, one depicting current AT&T LTE coverage and gaps in coverage without the new installations and a map showing the gaps in coverage are significantly diminished with the new installations at the site.

The existing building and penthouse at this site are pre-existing nonconforming as to height. The building height is 58.5 feet, while the Zoning By-law limits building heights in this zoning district to 50 feet. In addition, the penthouse height is 76.5 feet high, or 16 feet higher than the building itself, while the Zoning By-law limits the height of a structure such as the penthouse to 12 feet above the roofline. The building height and penthouse height are not being altered by this proposed installation; however, structures and antennas will be attached to the rooftop and penthouse beyond the maximum height limits of the Zoning By-law. The proposed height of the antennas will be 83 feet, while the Zoning By-law limits the maximum height of an antenna to 10 feet beyond the roofline, or 68.5 feet. Therefore, a variance from the height limit is required. The applicant noted that its current installations on this rooftop are at a maximum height of 82.77 feet. The applicant also noted that other wireless carriers located on this site are at a higher elevation. Since the applicant is seeking to modify a pre-existing nonconforming structure, a finding is also required under G.L. c. 40A, Section 6.

As grounds for the variance, the applicant explained its gap in coverage, despite obtaining zoning relief from the Board for its current installation at the site in Decision No. 09-23. The applicant emphasized that its current installations on this rooftop are at a maximum height of 82.77 feet, so an extension to 83 feet is de minimus. The petitioner claims that the new installations will look very similar to the antennas currently located on the building and will have little visual impact to the surrounding neighborhood. In fact, some of the antennas are proposed to be lowered, thereby reducing their visual impact. The petitioner noted that the Federal Telecommunications Act encourages co-location of wireless communications equipment on existing facilities, and this installation conforms to this goal. The location of these antennae at this site is needed to service this area, as supported by a statement of Kevin Breuer, a radio frequency engineer for AT&T. The applicant also asserted that the proposed installations will benefit those living and working in the Braintree community, particularly those in public safety, by providing them with upgraded telecommunications services. To the extent possible, the site is screened from view, and therefore, the installations will not adversely impact the surrounding neighborhood. The facility will not generate any objectionable noise, odor, glare or traffic and will have no negative impact on property values.

The Board members asked the applicant if they ever remove antennas when upgrading their network, noting that this site appears to be at its maximum capacity for wireless facilities. Kevin Breuer explained that at one time AT&T had 12 antennas in Braintree, but as AT&T was upgrading its system in 2005/2006, six of those antennas were removed. The Board also inquired as to whether a structural analysis is performed to determine whether the roof of this building can support all of these installations, to which the Building Inspector responded affirmatively.

The petitioner submitted seven sheets entitled "AT&T Mobility, Site Number: MA 1397, Site Name: Braintree Plain Street," dated April 11, 2011 with revisions through June 21, 2011, prepared by Turning Mill Consultants, Inc. of Sandwich, MA. The petitioner also submitted an aerial photo simulation of the site.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0 in favor of the requested relief, pending the submission of service coverage maps and proposed build-out map.

### **Findings**

The Board found that the petitioner had satisfied the goals of co-location as promoted under the Telecommunications Act and that the location of antenna on the existing tower was needed to provide service to

the area. The Board found that relocating five of the existing six antennas on the rooftop and the addition of three new antennas and associated equipment on the roof would not be substantially more detrimental to the neighborhood than the pre-existing nonconforming structure on the lot. Further, the Board found that the petitioner had demonstrated a need for a variance under the Telecommunications Act and found that allowing the petitioner to install antennas at a maximum height of 83 feet, which is .23 feet higher than AT&T's existing installations is de minimus. 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. Calder and seconded by Mr. Karll, it was unanimously voted to grant the requested relief, subject to the plan presented.

#### **12) Petition Number 11-35**

**Paul J. Wolenski, representing Sterling Jewelers, Inc. AKA Jared the Galleria of Jewelry**

**RE: 20 Forbes Road formerly 37 Forbes Road**

Present: Paul Wolenski representing Sterling Jewelers, Inc.

This is a petition filed by Sterling Jewelers, Inc. AKA Jared the Galleria of Jewelry of 375 Ghent Road, Akron, OH regarding the property located at 20 Forbes Road (formerly 37 Forbes Road) in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 135-407 and 904.2 to install three wall signs on the exterior of the jewelry store to be constructed at this location. The property is located in a Highway Business District and contains 5.36 +/- acres of land, as shown on Assessors' Map No. 2043, Plot 01.

### **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 July 26, 2011 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 petition was presented by Paul Wolenski on behalf of Sterling Jewelers, Inc. Mr. Wolenski explained that the jewelry store is to be constructed at the redeveloped Sheraton Hotel site off Forbes Road and is to be constructed as a free standing building. The petitioner proposes to install three wall signs consistent with their national brand, each measuring 9 feet high and to be located on the parapet wall that extends above the building's roof. Each sign will state:"JARED" with "The Galleria of Jewelry" underneath in channel letters, and above "Jared" is a large diamond. Each wall sign measures 73.43 SF for a total of 220.29 SF of signage requested. The signs are proposed to be located on three sides of the building, one on the side parallel to Forbes Road, one on the side parallel to the Route 93 interchange, and one on the southeasterly side of the building.

Mr. Wolenski explained that the new building is part of the redevelopment of the former Sheraton Hotel site and will be located behind the current TGI Friday's on the site. All signs will be back lit with white lights. In response to questions from the Board, Mr. Wolenski explained that the lights are activated by a sensor as well

as a timer. The Chairman inquired as to the store's hours of operation and was advised that they are open weekdays from 10 am to 10 pm and Sundays from 12 pm to 6 pm.

According to Section 135-904.2(A)(5)(g) of the Zoning By-laws, only one wall sign is permitted for each store or business occupying a building, and the total aggregate of all allowed signage shall not exceed 150 SF in area, unless authorized by the Zoning Board of Appeals. The total area of the three signs is 220.29 SF. Therefore, variances are required for multiple wall signs, as well as the total square footage of the signs.

As grounds for the variances, Mr. Wolenski explained that the proposed store is a regional destination jewelry store. The building will be set back a considerable distance from both Forbes Road and Granite Street, which is the primary means of accessing this site. Mr. Wolenski also explained that the proposed store will be tucked in behind TGI Friday's restaurant. Because of its location, the store is not immediately visible from Granite Street or Forbes Road. Mr. Wolenski stated that the three wall signs are needed to identify the location of the store and to safely direct the traveling public to the store, particularly since the public will be accessing the site from the heavily traveled Granite Street/Route 93 intersection.

The Board expressed concern about signage at the development as a whole and questioned whether a ground sign was proposed for the site, and if so, whether the petitioner planned on having space on this ground sign. The Building Inspector advised that he had no knowledge of a proposed ground sign at this site. Lacking a vision of the total proposed signage for this site, the Board expressed concern about setting a precedent with excessive signage.

Frank Marinelli, attorney for the property owner, advised the Board that the property owner supports this application, but he could not commit as to whether the redevelopment of the site includes a ground sign. KARMA TRUSTEE LLC, as trustee of Karma Nominee Trust submitted a letter in support of this petition.

The petitioner submitted renderings of the proposed signs entitled, "Jared, the Galleria of Jewelry, Store #2518, Space #, 37 Forbes Road, Braintree, MA 02184," with sheets numbers pages 1 of 5 through 5 of 5, prepared by Ruggles Sign Company of Versailles, KY dated December 22, 2010. The petitioner also submitted a plan entitled, "Braintree Hotel & retail Complex, Braintree, MA," drawing OS-1, prepared by RJ O'Connell & Associates, Inc., of Stoneham, MA dated September 16, 2010.

By a vote of 5-0-0, the Planning Board recommended unfavorably on three signs but noted that the signs on the east and north facing facades were acceptable to the Board. 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. Specifically, the Board found that the proposed additional exterior wall signs were necessary to identify the location of the store within the overall site, which is planned to be redeveloped with a hotel and retail uses. The Board found that the proposed signs would increase the store's visibility and improve traffic circulation which would lead to safer traffic conditions and greater public convenience in directing traffic to the site. The Board also noted that the signs will not directly face any residential area and 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 3-0 to grant the requested relief, subject to the plans presented and with the conditions that the lights of the signs be illuminated only from dusk to two hours after closing and that there be no further awning signs or window signs.

**13) Petition Number 11-36**

**Steve Pedro, Ayoub Engineering, Inc. representing J & N Associates, LLC.**

**RE: 384 Washington Street**

Present: Steve Pedro of Ayoub Engineering

This is a petition filed by Ayoub Engineering, Inc. of 414 Benefit Street, Pawtucket, RI regarding the property located at 384 Washington Street in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 135-407 and 905 to modify the existing ground sign by replacing the manually changing price panels to automatic changing price panels with numbers illuminated with red LED lights. The property is located in a General Business District and contains 0.277 +/- acres of land, as shown on Assessors' Map No. 2024, Plot 60.

**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 July 26, 2011 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 petition was presented by Steve Pedro of Ayoub Engineering, who explained that the subject property is a Shell gas station. Currently, the gas station has a ground sign with black numbers on a yellow background that is changed manually to reflect current gas prices, and the sign can display three vertically stacked prices. The applicant seeks to modify this sign to replace the manual price displays with an automated price display, consisting of red LED numbers on a black screen.

Section 135-905 of the Zoning By-laws prohibits automatically changing message signs and signs using anything, but white lights. Therefore, a variance is requested. As grounds for a hardship, the applicant explained that the sign is necessary to alert the traveling public as to the presence of the gas station and to inform the public as to the current price of gasoline. The applicant further explained that gas prices fluctuate constantly, requiring the manual panels to be updated frequently. Mr. Pedro also stated that these manual price panels are being replaced industry-wide with automatic price panels and noted that many other gas stations in Braintree use similar price panels.

The Board asked the applicant if the red lights could be replaced with white, and Mr. Pedro advised that these LED lights were only available in red or amber, thus making it impossible for the applicant to comply with the Zoning By-law.

The applicant submitted a plan entitled, "Freestanding I.D. Sign," prepared by Ayoub Engineering for J&N Associates, LLC, dated June 22, 2011.

By a vote of 5-0-0, the Planning Board recommended favorably on this petition. 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. Specifically, the Board found that the proposed automatically changing price panel was necessary to inform the traveling public of the current cost of gasoline offered at the site. The Board took note of the fact that other gasoline stations in Town have similar signs and found that the proposed sign would increase the visibility of gas prices which would lead to safer traffic conditions and greater public convenience in directing traffic to the site. 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 3-0 to grant the requested relief, subject to the plans presented.

#### **14) Petition Number 11-37**

**Matt Donovan**

**RE: 5 Peach Street**

Present: Matt Donovan, petitioner

This is a petition filed by Matt Donovan of 5 Peach Street, Braintree, MA regarding the same property. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to build an "L" shaped deck along the side and rear of the existing dwelling, all in accordance with the plans of record. The property is located in a Residence B Watershed Protection Zoning District as shown on Assessors Plan No. 1090, Plot 12 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 July 26, 2011 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, Jack Gauthier and Michael Calder.

### **Evidence**

The petitioner, representing himself, appeared before the Board and explained that he is seeking permission to remove an existing porch on the side of his house and replace it with a wrap-around deck that measures 4 ft. wide by 23 ft. long along the side lot line which expands to a 12 ft. by 21 ft. deck on the rear of the dwelling,

The applicant's lot and structure are pre-existing nonconforming. Under the Zoning By-law, the minimum lot size for this zoning district is one acre, yet this lot contains only 4,822 SF. The lot also contains only 50 feet of lot width, whereas the Zoning By-law requires a minimum lot width of 100 feet. In addition, the lot lacks the 100 feet of required depth, as it offers only 97.6 feet of depth. The existing dwelling on the lot is also pre-existing nonconforming, as the existing porch is located 7 feet from the westerly side lot line. The proposed deck will further encroach into this side yard setback, as it is proposed to be located 6 feet from this same side lot line. Therefore, the applicant requests a finding under G.L. Chapter 40A, Section 6 to alter the pre-existing nonconforming structure and a variance to encroach into the side yard setback.

As grounds for a hardship, the applicant explained that his lot is extremely undersized and narrow and noted the location of utility boxes on the lot, making it difficult to locate the deck elsewhere.

The petitioner submitted a plan entitled "Proposed Deck, plot Plan of Land, 5 Peach Street in Braintree, Mass.," dated June 27, 2011, prepared by Richard P. Smith, PLS of Walpole, MA.

Nicholas Choukas of 9 Peach Street spoke in favor of the petition. Ron Brodeur, the neighbor to the rear, requested to view the plan, and thereafter noted he had no objection to the petition.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0-0 in opposition to the requested relief, finding the applicant failed to prove a hardship.

### **Findings**

The Board found that the applicant had demonstrated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the applicant's lot was extremely undersized and lacked half of the width required for the zoning district. The Board also found that the existing structure encroaches into the side yard lot line by three feet and the further encroachment of the proposed deck into the side lot line by an additional foot was deemed to be de minimus. The Board further found that the proposed alteration would not be substantially more detrimental to the neighborhood than the existing dwelling. 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.

### **APPROVAL OF MINUTES:**

On a motion made by Mr. Calder and seconded by Mr. Gauthier, the Board voted unanimously to accept the meeting minutes of June 28, 2011.

The meeting adjourned at 10:15 pm