



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

October 25, 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 11-39**  
**Tony DePalma**  
**RE: 451 Quincy Avenue**

Present: Tony DePalma, petitioner

This is a petition filed by Tony DePalma of 3 David Road in Randolph, MA regarding the property located at 451 Quincy Avenue 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 second story addition over an existing structure in order to accommodate a group home for handicapped people, all in accordance with the plans of record. The property is located in a Highway Business Zoning District as shown on Assessors Plan No. 3046, Plot 5F and contains 5,770 +/- SF of land.

#### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town, posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on August 23, 2011 and was continued to September 27, 2011 and then to October 25, 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 alter a pre-existing nonconforming lot and structure by constructing a second-story addition in order to convert the building to a group home for handicapped people, operated by VinFen, a group whose use of the site is entitled to certain protections under G.L. Chapter 40A, Section 3. The structure will contain 5 bedrooms, 2 full bathrooms, kitchen, dining area, and living room on the first floor with addition space on the second floor for storage and staff rooms. The addition will stay within the footprint of the existing building and will not create any new nonconformities; therefore a finding under G.L. Chapter 40A, Section 6 is required. The petitioner noted that parking is only needed for staff and to accommodate vans picking up and dropping off residents. Inspector of Buildings, Russ Forsberg, advised that the Quincy Avenue side of the building can accommodate four parking spaces, while another two parking spaces will fit in the rear of the lot.

The lot is pre-existing nonconforming, as it offers only 5,770 SF where the Zoning By-law requires a minimum lot area of 25,000 SF. The lot lacks the minimum width, offering only 50 feet of width where 150 feet is required under the Zoning By-law. The lot also lacks the minimum frontage, as the lot offers 50 feet of frontage, while the Zoning By-law requires a minimum frontage of 100 feet. The lot also exceeds the maximum lot coverage of 75% and does not provide the maximum open space of 25%, as 100% of this lot is covered by impervious surface.

The existing structure on the lot is also pre-existing nonconforming. The structure encroaches into the front, rear and side yard setbacks. The structure is located on a corner lot. On the Quincy Avenue side, the structure is located 25.9 feet from the front lot line, and on the Patten Avenue side, the structure is located 5.6 feet from the lot line, while the Zoning By-law requires a front yard setback of 50 feet. The structure is also located 20.8 feet off the rear lot line, while the Zoning By-law requires a setback of 50 feet. Further, the building exceeds the maximum building coverage of 25%, as 37% of the site is covered by the building.

The petitioner submitted a plan entitled "Plan of Land in Braintree, Massachusetts, 451 Quincy Ave.," dated June 20, 2011 and revised September 27, 2011, prepared by C.S. Kelley Land Surveyors of Pembroke, MA. Hoyt Land Surveying of Weymouth, MA along with two sheets depicting the first and second floor plans and four sheets of undated renderings of the front elevation, cross section at existing and new roof, left side elevation, and floor plan.

Philip and Lucia Smith of 11 Patten Avenue spoke in opposition to the proposed alteration, stating that they felt it is a detriment to the neighborhood. The Smiths requested more information about the operations of the group home, specifically, who would live in the house and who would be responsible for maintaining it. Chairman Karll explained that VinFen is a reputable organization whose residents consist of handicapped adults; this is not a drug rehabilitation facility or a half-way house. Mrs. Smith also questioned the height of the second story. Inspector of Buildings, Russ Forsberg, advised that the second floor has a height of 14 feet, which when added to the existing building, results in a total height of 22 feet. Chairman Karll advised that the height limit under the Zoning By-law is 35 feet. Mrs. Smith advised that this building is 20 feet from her bedroom window, to which Chairman Karll suggested some landscaping be used to create a screen. Mr. Smith asked about the chimney used by a veterinarian, a former tenant of the building, and Mr. DePalma committed to removing the chimney from the site. The Smith also presented an email message from Richard Diaute of Diaute Bros at 475 Quincy Avenue in opposition to this development.

The Board suggested this matter be continued one month to allow the petitioner to confer with the Smiths about a landscaping plan. Mr. Gauthier also requested plans designating the parking spaces, second floor elevations, and means of egress.

At the continued hearing on September 27, 2011, Mr. DePalma indicated that he had met with the Smiths but was not able to reach agreement as to any landscaping. The Smiths confirmed that they will undertake any Page

landscaping on their property. The Smiths renewed their concerns about the height of the building and the wisdom of using this site, in a commercial district and on a hill, for handicapped residents. Mrs. Smith also questioned other uses or improvements that Mr. DePalma could make to this property. Chairman Karll advised that group residences are allowed in any zoning district and it is not within the Board's purview to second-guess where a group home should be located. As for the height of the building, Chairman Karll noted the plans reflect a height of 24 feet or 10 feet 4 inches more than the current structure and advised that the second floor may be used as office and storage space by the staff. Mr. DePalma advised that the building has no basement, and therefore the second story is the only option for storage or meeting space for staff.

Mr. Gauthier noted that the plans lack the building elevations as requested. Mr. Gauthier also requested a landscaping plan and any plan to grade the site. Finally, Mr. Gauthier questioned whether the handicapped ramps were suitable for access. The Board continued the matter until October to allow the plans to be amended to reflect the elevations of the building and to submit a plan showing any site improvements, such as ramps, paving, landscaping and marking of parking spaces.

At the October 25, 2011 hearing, Mr. DePalma submitted revised plans as requested. Mr. DePalma explained that the building would be 25 feet 6 inches at its highest elevation. The plan also showed paving, handicapped ramps and landscaping.

No one else spoke in favor of or opposition to the petition. The Planning Board voted 5-0-0 in favor of the requested relief.

### **Findings**

The Board found that the applicant's current lot and existing building on the lot are pre-existing nonconforming under the Zoning By-law. The Board further found that the proposed addition to the building would conform to the existing footprint of the building and not create any new nonconformities, and therefore, the Board concluded that the proposed alteration to the existing building would not be substantially more detrimental to the neighborhood than the existing building on the lot. 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 revised plans presented and subject to the removal of the chimney/crematorium.

### **NEW BUSINESS:**

#### **2) Petition Number 11-42**

**Samar Richa**

**RE: 34 Fairmount Avenue**

Present: Samar Richa, petitioner

This is a petition filed by Samar Richa of 34 Fairmount Avenue, 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 construct a second story addition over an existing single-family home, all in accordance with the plans of record. The property is located in a Residence B Zoning District as shown on Assessors Plan No. 3054, Plot 37 and contains 7,862 +/- 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 October 25, 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 herself, appeared before the Board and explained that she is seeking permission to alter a pre-existing nonconforming structure by constructing a second-story addition to her home in order to expand an existing bathroom. The addition is proposed to be built over an existing projecting entryway for the front entrance to the house, measuring 9.4 feet by 6 feet. The house is a pre-existing nonconforming structure on a pre-existing nonconforming lot. The addition will stay within the footprint of the existing dwelling and will not create any new nonconformities; therefore a finding under G.L. Chapter 40A, Section 6 is required.

The lot is pre-existing nonconforming, as it offers only 7,862 SF where the Zoning By-law requires a minimum lot area of 15,000 SF. The lot lacks the minimum width, offering only 80 feet of width where 100 feet is required under the Zoning By-law. The lot also lacks the minimum depth, as the lot is 99 feet deep, while the Zoning By-law requires a minimum depth of 100 feet. The existing dwelling is also a pre-existing nonconforming structure, as the house encroaches into the front and side yard setbacks. The house is located 8.4 feet from the front lot line, while the Zoning By-law requires a 20 foot setback. In addition, the house is located 8.7 feet from the northwesterly side lot line, while the Zoning By-law requires a side yard setback of 10 feet. The proposed addition will fall within the footprint of the entryway and will also be located 9.4 feet from the front lot line.

The petitioner submitted a plan entitled "Plan of Land, 34 Fairmont Ave., Braintree, Massachusetts," dated August 15, 2011 and revised on September 1, 2011, prepared by Hoyt Land Surveying of Weymouth, MA along with three sheets of renderings of the front elevation, first floor plan, and second floor plan pages of the proposed addition prepared by HOMESTYLE designs of Weymouth, MA. The petitioner also submitted photos of the façade of the house and of the interior existing bathroom.

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 applicant's current lot and existing dwelling on the lot are pre-existing nonconforming under the Zoning By-law. The Board further found that the proposed addition to the dwelling would conform to the existing footprint of the dwelling and not create any new nonconformities, and therefore, the Board concluded that the proposed alteration to the existing dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling on the lot. 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.

**3) Petition Number 11-43  
Castle Gard, LLC c/o Michael J. Gardner  
RE: 464 Quincy Avenue**

Present: Michael Gardner, petitioner; Frank Marinelli, attorney representing petitioner; Scott McDonald, General Manager of CastleGard; and David Kelly, engineer from Kelly Engineering Group, Inc.

This is a petition filed by CASTLEGARD LLC c/o Michael J. Gardner of 259 Union Street, Braintree, MA regarding the property located at 464 Quincy Avenue, Braintree, MA. The applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 403A, 407, 701 and 806B to construct an addition to an existing structure, all in accordance with the plans of record. The property is located in a Highway Business Zoning District as shown on Assessors Plan No. 3049, Plot 5 and contains 64,895 +/- 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 October 25, 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**

At the opening of the hearing, Chairman Stephen Karll disclosed that he rents storage space at CASTLEGARD but has no other financial interest in the facility. However, there being only three members of the Board present at the meeting and there being no objection expressed by anyone present, the Chairman invoked the rule of necessity and sat on this petition.

Michael Gardner, the owner of CASTLEGARD LLC, appeared on behalf of the petition, represented by Attorney Frank Marinelli, who was accompanied by Scott McDonald, general manager of the CASTLEGARD LLC facility, and David Kelly, the engineer from Kelly Engineering Group, Inc. Attorney Marinelli explained to the Board that CASTLEGARD is an existing self-storage facility, located on the site and within the footprint of the former Ashmont discount store, and is seeking permission to construct a three-story 6,848 SF addition to the north side of the facility to add 163 storage units with the addition maintaining the same height as the existing building. Attorney Marinelli explained to the Board that at the time that CASTLEGARD acquired the site of the former Ashmont discount store, the Town encouraged Mr. Gardner to rehabilitate the existing structure, rather than demolish the structure. Mr. Gardner respected the Town's wishes and rehabilitated the building to provide 553 storage units.

The existing lot and structure are pre-existing nonconforming. The lot is described as a "pork chop" shaped lot and lacks the minimum required frontage of 100 feet, as it only provides 67 feet of frontage. The lot also lacks the maximum lot coverage of 75% or minimum open space of 24% by providing 76% lot coverage or 24% open space. The existing building is also a pre-existing nonconforming structure. The building encroaches into the southerly side yard setback, as the existing building is located 5.6 feet off the side lot line, while the Zoning By-law requires a side yard setback of 30 feet. The existing building also encroaches into the rear yard setback, as the building is located 7.1 feet from the rear lot line, while the Zoning By-law requires a rear yard setback of 50 feet. The building also exceeds the 25% maximum building coverage, as 38.8% of the lot is currently covered.

The proposed addition will intensify these nonconformities, and therefore, a finding under G.L. Chapter 40A, Section 6 is required. Also, the proposed addition will create new nonconformities, and therefore, several variances are required. Specifically, the proposed addition will maintain the existing 7.1 ft. rear yard setback, so that the addition will be flush with the current building. The addition is proposed to be located 5.6 feet off the northerly lot line, and thus, not comply with the 30 foot side yard setback. The proposed addition will increase the building coverage to 49%, thereby adding 10.2% to the existing building coverage and exceeding the maximum building coverage under the Zoning By-law by 24%. The proposed addition will also increase the maximum lot coverage from the existing 76% to 80% and exceed the maximum lot coverage allowed under the Zoning By-law by 5%. Likewise, the proposed addition will reduce the open space on the site from the existing 24% to 20% and exceed the maximum open space required under the Zoning By-law by 5%.

As grounds for the variances, Attorney Marinelli reiterated that the former Ashmont building was not razed but was retrofitted when purchased in 2005, and therefore, the petitioner inherited the existing nonconforming location of the structure on the lot. The existing structure does not comply with current rear or side yard setbacks, making it difficult to construct an addition that conforms to the interior flow of the building without further encroaching into these setbacks. Attorney Marinelli also noted the irregular "pork chop" shape of the lot, making it difficult to place an addition anywhere else on the lot but where it is proposed. Further, Attorney Marinelli noted the topography of the site, with its varying grades. Also due to the irregular shape of the lot, two separate parking areas are required to be constructed, thus adding to the lot coverage and decreasing the open space.

With respect to drainage, Attorney Marinelli submitted a Stormwater Management Summary prepared by Kelly Engineering Group, Inc., which concluded that on-site drainage would be improved by this proposed development. In addition, Attorney Marinelli submitted a report by Rick Bryant, P.E. for Tetra Tech, analyzing potential traffic and parking impacts associated with this proposed addition. Attorney Marinelli noted that the Zoning By-law does not set the number of parking spaces required for a self-storage facility; rather, the parking requirement is set by the special permit granting authority, which is the Planning Board. Nonetheless, Attorney Marinelli advised the Board that Tetra Tech's survey highlighted the minimal impact that a self-storage facility generates. According to the report, a self-storage facility generates .72 vehicle trips for every 300 units during its peak hours, and the addition will create a 0.1 % increase in the number of vehicle trips. Currently, the site offers 25 parking spaces, and with the new addition, the site proposes 30 parking spaces.

The petitioner submitted plans entitled "Site Development Plans for 464 Quincy Avenue, Braintree, MA," dated October 18, 2011, prepared by Kelly Engineering Group, Inc. of Braintree, consisting of three sheets entitled "Existing Conditions Plan", "Layout Plan", and Site Plan." The petitioner also submitted five color photos of the site depicting the sloping grade between the site and adjoining property and existing setbacks.

Mrs. Lucia Smith of Patten Avenue was recognized. Mrs. Smith indicated that she was not opposed to the addition to this facility but questioned some of the traffic and parking data, as she has observed more than 5 cars on the site at one time, often with large moving trucks. She also questioned the use of the parking lot of the adjacent restaurant as a cut-through.

Mr. Gauthier questioned the drainage report, and Mr. Kelly explained that two additional catch basins will be added to the existing two catch basins on the site, with the roof leaders connected to these basins to improve drainage.

Mr. Gauthier also questioned the relatively small amount of parking for such a large building and wondered about the adequacy of parking for future owners or tenants of the site. The Building inspector advised that any future owner or tenant would have to comply with the parking requirement for their use or obtain a variance.

Mr. Gauthier also questioned whether the facility could expand on top of the existing building and preserve as much parking as possible, to which Mr. Gardner advised that it was not economically feasible to expand vertically, as the elevator would have to be replaced at a great cost.

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 applicant's current lot and existing dwelling on the lot are pre-existing nonconforming under the Zoning By-law. The Board further found that the proposed addition to the dwelling, while creating new nonconformities, would be consistent with the existing building, and therefore, the Board concluded that the proposed alteration to the existing building would not be substantially more detrimental to the neighborhood than the existing structure on the lot. Further, the Board found that the petitioner had presented proof of hardship owing to the shape and topography of the lot as well as the existing location of structures on the lot. Specifically, the Board found the lot to be an irregular "pork chop" shape lot, noted the sloping topography of the lot, and noted the location of existing structures on the lot, making it difficult to construct an addition that would comply with all setback requirements. The 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 October 18, 2011 plan presented.

#### **4) Petition Number 11-44 Scott Warner and Brenda Campbell RE: 26 Windemere Circle**

Present: Scott Warner and Brenda Campbell, petitioners

This is a petition filed by Scott Warner and Brenda Campbell, of 26 Windemere Circle, Braintree, MA regarding the same property. The applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to construct a second story addition over an existing attached 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. 2036, Plot 68 and contains 8,970 +/- 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 October 25, 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 petitioners, representing themselves, appeared before the Board and explained that they are seeking permission to alter a pre-existing nonconforming structure by constructing a second-story addition over an

existing attached garage to increase their living space. The proposed addition measures 19 feet by 18.4 feet and will be within the footprint of the existing garage, and will not create any new nonconformities; therefore a finding under G.L. Chapter 40A, Section 6 is required.

The lot is pre-existing nonconforming, as it offers only 8,970 SF where the Zoning By-law requires a minimum lot area of 15,000 SF. The lot lacks the minimum width, offering only 78 feet of width where 100 feet is required under the Zoning By-law. The existing dwelling is also a pre-existing nonconforming structure, as the house encroaches into the side yard setback. The house is located 6 feet from the northerly side lot line, while the Zoning By-law requires a side yard setback of 10 feet. The proposed addition will fall within the footprint of the garage and will also be located 6 feet from the side lot line.

The petitioners submitted a plan entitled "Plot Plan showing Lot Stakeout Points for 26 Windemere Circle in Braintree, Mass." dated June 4, 2004 prepared by Milton Survey Associates, Inc. of Milton, MA along with one undated sheet of renderings of the front and left side elevations of the proposed addition prepared by Rockwood Design, Inc. of Marshfield, 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 applicant's current lot and existing dwelling on the lot are pre-existing nonconforming under the Zoning By-law. The Board further found that the proposed addition to the dwelling would conform to the existing footprint of the dwelling and not create any new nonconformities, and therefore, the Board concluded that the proposed alteration to the existing dwelling would not be substantially more detrimental to the neighborhood than the existing dwelling on the lot. 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.

**5) Petition Number 11-45  
John Mento, Mento Enterprises  
RE: 239 Hancock Street**

Present: No representative present

On a motion made by Mr. Karll and seconded by Mr. Calder, it was unanimously voted to grant a 30-day extension of the petition, as no one was present at this meeting. Therefore, the petition will be heard at the Zoning Board of Appeals meeting on November 22, 2011.

### **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 September 27, 2011.

The meeting adjourned at 8:20 pm