



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

January 24, 2012

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

**ALSO PRESENT:** Russell Forsberg, Inspector of Buildings  
Carolyn Murray, Town Solicitor  
Elizabeth Driscoll, paralegal with the Town Solicitor's office

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

#### NEW BUSINESS:

- 1) Petition Number 12-1**  
**Gabriel Homes, Inc.**  
**RE: 6 Bowditch Street**

Present: Gary Gabriel of Gabriel Homes, Inc., petitioner

This is a petition filed by Gabriel Homes, Inc., 73 Holbrook Avenue, Braintree, MA regarding the property at 6 Bowditch Street, Braintree, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-407, 701 and 809A. The applicant is seeking a variance to construct a house that will violate the side yard setback and to construct a driveway that will not meet the required depth, all in accordance with the plans of record. The property is in a Residential B Zoning District as shown on Assessors Plan No. 3011, Plot 18 and contains +/-5,537 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 January 24, 2012 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition were Chairman, Steve Karll, and members Jack Gauthier and Michael Calder, with member Jay Nuss as an alternate.

#### Evidence

Gary Gabriel of Gabriel Homes, Inc., the property owner, presented this petition to the Board, explaining that he razed an existing dwelling on this property and intends to rebuild a single family dwelling. When the foundation was poured for the new house, the contractor discovered a 12" water culvert, and in order to avoid interfering with the culvert, the foundation was shifted back so that the foundation encroaches into the side yard setback. It should be noted that this is a corner lot located on the corner of Front and Bowditch Streets. The foundation encroaches into the westerly side yard setback, offering a setback of only 9.6 feet at its closest point, where the Zoning By-law requires a side yard setback of 10 feet; therefore a variance is required.

In addition, the front of the proposed house, as measured from the Bowditch Street line, will be set back 17 feet, whereas a front yard setback of 20 feet is required by the Zoning By-laws. However, Section 135-701 Note 1 of the Zoning By-law provides: "In an established neighborhood, the front setback may be the average of the setbacks of the other buildings within 200 feet of the locus on the same side of the street." The setback of 17 feet has been reviewed by the Building Division and Planning Department staff and determined to be consistent with the neighborhood.

The applicant also proposes to construct a driveway off the Bowditch Street side of the lot. According to Section 135-809.A of the Zoning By-law, each full-size parking space is required to be 8 ½ feet wide and 18 feet long. The proposed driveway is 14'-15' in length at its shallowest points, and therefore a variance is required.

The applicant's lot is pre-existing, nonconforming. The Residence B Zoning District requires a minimum lot size of 15,000 SF, but this lot contains only 5,537 SF. The Lot also lacks the required 100 feet of width, as the lot offers only 45 feet of width.

As grounds for the variances, the applicant noted the severely undersized nature of the lot, its irregular shape with angled lot lines, and its unique location as a corner lot. The applicant also noted the location of the culvert, which has since been removed, which forced the readjusted location of the house. Finally, the applicant advised that the prior dwelling was located right on the Bowditch Street lot line in nearly the same location as the proposed driveway.

The petitioner submitted a plan entitled "Plot Plan showing Location of Foundation at 6 Bowditch Street, Braintree, MA," dated November 1, 2011, prepared by Neponset Valley Survey Assoc., Inc. of Quincy, MA.

The Planning Board voted 4-0-0 to take no action due to the lack of the applicant's participation in the full process. No one else spoke in favor of or opposition to the petition.

### **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 and the irregular shape of the lot resembling a rhomboid. The Board also noted that the lot is unique given the presence of the culvert. The Board also found that the encroachment into the side yard setback by .4 feet is a de minimus deviation from the setback requirement. Therefore, 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.

**2) Petition Number 12-2**

**Thomas and Mary Matthews, Trustees of the Matthews Nominee Realty Trust.**

**RE: 24 Portland Road**

Present: Mary Mabey, authorized representative and cousin of the petitioners

This is a petition filed by Thomas and Mary Matthews, Trustees of the Matthews Nominee Realty Trust. The property at issue in this petition is located at 24 Portland Road, Braintree. The applicants are seeking relief from the Town of Braintree Zoning By-laws Sections 135-403, 407 and 701 to acquire +/-406 SF from the neighboring property at 30 Portland Road, thus making a pre-existing, non-conforming lot larger and bringing it closer to conformity. The property is located in a Residential B Zoning District as shown on Assessors Map 1098, Plot 36, and contains a land area of +/-8,697 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 January 24, 2012 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 Jay Nuss with member Michael Calder as an alternate.

**Evidence**

Mary Mabey, a cousin of the petitioners, appeared on behalf of the petitioners and presented this petition to the Board, explaining that the applicant proposes to acquire +/-406 SF of land from the neighboring lot at 30 Portland Road, in order to straighten the lot line and improve the aesthetic appearance of the two lots. Ms. Mabey explained to the Board that this conveyance of land was originally pursued in 2003, when the owners of 30 Portland Street attempted to convey this +/-406 SF of land to 24 Portland Road, and the owners submitted an Approval Under the Subdivision Control Law Not Required Plan ("ANR Plan"), which was endorsed by the Planning Board and recorded at the Registry of Deeds in late 2003. However, Zoning Board of Appeals approval of this 2003 ANR Plan was needed but not acquired, so the applicants are now seeking approval. The applicant noted that similar related relief was granted by the Board to the owners of 30 Portland Street.

The applicant's lot is pre-existing and non-conforming. The conveyance will bring the lot closer to conformity in that it will increase the lot size by +/-406 SF. The Residential B Zoning District requires a minimum lot size of 15,000 SF while this lot only contains 8,697 SF now, but if this petition is approved, the lot will contain 9,103 SF after the conveyance.

Since the applicant proposes to alter a pre-existing nonconforming lot, a finding pursuant to G.L. Chapter 40A, Section 6 is requested. As grounds for the finding, the applicant noted that while the lot is already undersized, the addition of the +/-406 SF of land will bring the lot closer to conformity. The conveyance of the 406 SF of land will straighten the lot line between 24 and 30 Portland Road as opposed to the jagged line that currently exists, thus improving the shape of each lot.

The applicant submitted a plan entitled "Subdivision Plan of Land, Portland Road, Braintree, MA" dated November 10, 2003, prepared by John Paronich, PLS, which was recorded with the Norfolk County registry of Deeds on December 22, 2003.

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

### **Findings**

The Board found that the conveyance of 406+/- SF from 30 Portland Street will increase the size of the lot at 24 Portland Road, thus making a pre-existing, non-conforming lot larger, and therefore, more conforming. The Board also found that the jagged line between the two properties will be straightened out after the conveyance of +/-406 SF. The Board found that granting the requested relief would not be substantially more detrimental to the neighborhood than the configuration of the existing 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. Nuss and seconded By Mr. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented.

#### **3) Petition Number 12-3**

**Aaron Katz, Manager, Win-Win Properties, LLC**  
**RE: 165 Hancock Street**

Present: Aaron Katz, petitioner and Jeremy Davenport

Following a presentation by the petitioner and discussion between the applicant and Appeals Board Members, it was recommended by Chairman Karll that the applicant seek a 30-day extension to this hearing during which time they could consider alternative locations for the intended wall sign.

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

#### **4) Petition Number 12-4**

**David Pellegrino**  
**RE: 78 Prospect Street North**

Present: David Pelligrino

This is a petition filed by David Pellegrino of 78 Prospect Street North, Braintree, MA, regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws Sections 135-402, 403, and 701. The applicant is seeking a permit, variance and/or finding to construct a second story addition measuring 7' wide by 16.2' deep on top of an existing first floor bump out of the same dimensions. The applicant is also seeking a permit, variance, and/or finding to finish off existing attic space by constructing two shed dormers on the third story, all in accordance with the plans of record. The property is located in a Residential B Zoning District as shown on Assessors Plan No. 2032, Plot 5 and contains +/-5,383 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 January 24, 2012 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 Jay Nuss with member Michael Calder as an alternate.

### **Evidence**

David Pellegrino, the property owner, presented this petition to the Board, explaining that this is an existing two-family home, with one unit on the first floor and a second unit on the second floor. The applicant proposes to construct a second story addition measuring 7' wide by 16.2' deep on top of an existing first floor bump out of the same dimensions. Mr. Pellegrino noted that this bump out on the first floor houses the kitchen for that unit, and he would like to expand the kitchen of the second story unit to fit the same dimension and footprint of the first floor kitchen. The third floor is currently an attic, and he proposes to construct two 33 foot long shed dormers running nearly the full length of the roof while maintaining a 2 foot gable on either end.

The applicant's lot and existing dwelling are pre-existing nonconforming, as is the use as a two-family. The Residence B District requires a minimum lot size of 15,000 SF, but this lot contains only 5,383 SF. The lot lacks the required 100 feet of width, as the lot offers only 55 feet of width. The lot also lacks the required depth of 100 feet, as this lot offers only 85 feet. The structures on the lot also fail to conform to all of the setback requirements. Since this is a corner lot, the Zoning By-law requires a front yard setback of 20 feet, but the house is located 10.5 feet from the front lot line on the Abbott Street side. The proposed alterations to the structure will not create any new nonconformities, but as the applicant is altering a pre-existing nonconforming structure, a finding under G.L. Chapter 40A, Section 6 is required.

The applicant explained that he would like to use the second story addition for additional kitchen space and use the third story addition to construct two bedrooms and a family room. The applicant explained that he had initially wished to construct the shed dormers on the third floor with a pitch of 4/12, but the Planning Board expressed concern that the size of the shed dormers in relation to the lot size would give the appearance of a massive intensification of the use. The Planning Board also expressed concern that the proposed 4/12 pitch of the roof would not be consistent with the age of the house nor aesthetically appealing. The Planning Board recommended a roof with a 6/12 pitch, to which the applicant agreed.

The petitioner submitted a plan entitled "Plan Showing Proposed Shed Dormer & Second Story Addition, 78 Prospect St. North, Braintree, MA, 02184," dated December 5, 2011, prepared by Bayview Survey of Abington, MA, along with three pages of renderings of the exterior alterations and three sheets of existing and proposed floor plans.

The Planning Board voted 4-0-0 to take favorable action if the proposal was revised to an outer edge dormer height of 5' with a rood pitch of 6/12 or greater. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the lot, structure and use are pre-existing nonconforming and that the proposed alterations would not create any new nonconformities. Additionally, the Board found that the third story shed dormers will also be within the footprint of the existing house and therefore no further encroachments will occur. While the overall living space of the house would be increased, it will still be maintained as a two-family use. Therefore, the Board found that the granting of the requested relief would not be substantially more detrimental to the neighborhood than the existing structure and use. 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. Gauthier, it was unanimously voted to grant the requested relief, subject to the plan presented and on the condition that the dormers have a pitch of at least 6/12.

**5) Petition Number 12-5**  
**Christopher and Arlene 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 135-402, 403, 407 and 701. The applicant is seeking a permit and/or variance to construct a 4' deep by 18' wide extension to the rear of the previously approved garage addition (ZBA Petition 11-27) with a full second story over the entire footprint, 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. 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 January 24, 2012 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 with member Jay Nuss as an alternate.

**Evidence**

Christopher Boyle, the property owner, presented this petition to the Board, explaining that he proposes to construct a 4' deep by 18' wide extension to the rear of a proposed garage. The garage was previously granted a variance by this Board under Petition No. 11-27. Since submitting that prior petition for zoning relief, the applicant has been advised that the size of the garage is insufficient to house his vehicles. As a result, the applicant proposes to construct a 4' deep by 18' long addition to the rear of the proposed garage with a full second story over the entire footprint. With the 4' deep by 18' wide addition, the garage will measure 20' deep by 18' wide in total. This lot is located on a corner lot at the intersection of Massachusetts Avenue and Marion Avenue, which is a paper street. At its closet point, the addition will be 1.9 feet off the front yard lot line on the Marion Avenue side. The Zoning By-law requires a front yard setback of 20 feet, and therefore, a variance is required.

The applicant's lot and existing dwelling are pre-existing nonconforming. The Residence B Watershed Protection Zoning 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 structures on the lot are 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 side yard setback of 10 feet, but the existing dwelling is 8.9 feet from the side yard lot line on the northwesterly side. Therefore, the applicant also requests a finding under G.L. Chapter 40A, Section 6.

The applicant explained that the Zoning Board previously approved a garage addition (Petition No. 11-27) with a full second story over the entire footprint. The petitioner sought that approval so he could re-build a deteriorating garage as well as build a family room on the second floor of the garage. That addition has not yet been constructed. During the design period, the petitioner realized that he would require an additional 4' of depth in order to accommodate the size of his vehicles which are to be housed in the garage. The proposed

extension measures 4' deep by 18' wide. In total, the garage will measure 20' deep by 18' wide. The proposed extension of 4' deep by 18' wide will maintain the same 1.9 foot setback from the front lot line along Marion Avenue that the Board previously approved for the garage. 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. At the hearing on the first variance, the applicant also submitted evidence of another house directly behind his whose garage is even closer to the Marion Avenue lot line.

The petitioner submitted a plan entitled "Plot Plan 18 Mass Ave, Braintree, MA," dated November 29, 2011, prepared by James McGrath, PLS of Weymouth, MA.

The Planning Board voted 4-0-0 to take no action due to the lack of the applicant's participation in the full process. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the applicant had presented a hardship based on the shape of the lot, specifically the extremely undersized nature of the lot, as well as the unique location of the lot being considered a corner lot because of its location along a paper street. The Board also noted that the existing garage (prior to the Board's approval of Petition No. 11-27) encroaches into the Marion Avenue front lot line, 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.

#### **6) Petition Number 12-6 Volvo Construction Equipment rentals, Inc., d/b/a Volvo Rents RE: 115 Wood Road**

Present: Frank Marinelli, Attorney representing petitioner,  
David Ritz, Regional manager of Volvo Rents,  
Mike Bullock, Regional Sales Manager of Volvo Rents

This is a petition filed by Volvo Construction Equipment Rents, Inc. d/b/a Volvo Rents regarding the property located at 115 Wood Road in Braintree. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.2(A) to install six wall signs and three 30 ft. flag poles bearing signs. The property is located in a Highway Business Zoning District and contains +/- 2.43 acres of land, as shown on Assessors' Map No. 2056, Plot 2B.

### **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 January 24, 2012 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michael Calder. Member Jay Nuss recused himself.

### Evidence

The petition was presented by Attorney Frank Marinelli of Braintree, MA, David Ritz, Regional Manager of Volvo Rents and Mike Bullock, Regional Sales Manager of Volvo Rents. The site is the former Ryder Truck Center on Wood Road, which will now be used as a rental center for Volvo construction equipment. A permit has been issued for a compliant ground sign. There is no other existing signage. The applicant seeks to install six wall signs and three flag poles, each bearing a sign, to be consistent with Volvo's national brand.

The applicant proposes to install the following six wall signs for a total of 36 SF:

- Install three blue fascia bands at the top of the building's northerly, easterly and southerly sides measuring 22" in height with "Volvo" lettering on the left side measuring 12" in height and "Rents" lettering on the right side with the "R" measuring 12" in height and the "ents" measuring 10" in height. The total area of all six wall signs is 36 SF.

Section 135-904.2(A) (5) (g) of the Zoning By-laws provides: "No more than one wall sign for each store or business occupying a building shall be permitted. The aggregate total of all signage allowed shall not exceed 150 square feet in area." Since six wall signs are proposed, a variance is required for these wall signs.

In addition to the wall signs, the applicant originally proposed to install the following ground signs:

- Install three flag poles, each measuring 30' in height that will fly three flags, each measuring 5' high by 8' wide flag that reads "Volvo" in 10" high lettering. The total area of the flag is 120 SF.
- Following the Planning Board meeting on this application, the petitioner revised this application and now proposes to install three 30 ft. high flag poles, one of which will fly a 5 ft. by 8 ft. "Volvo" sign. The other two flag poles will fly a United States flag and a Commonwealth of Massachusetts flag. Therefore, the applicant is seeking relief for the 40 SF "Volvo" ground sign only.

Section 135-904.2(A) (1) (d) of the Zoning By-laws provides that "no more than one ground sign visible to the major artery for a lot shall be permitted." The applicant already has one ground sign on the property that is visible from the access road. Since the petitioners seek to install a flag pole with a Volvo flag that will be visible to the major artery in addition to the existing ground sign, a variance is required.

In addition, Section 135-904.2(A) (1) (g) of the Zoning By-laws provides that "one secondary ground sign may be permitted by the Zoning Board of Appeals if it determines that the nature of the use of the premises, the architecture of the building, or the location with reference to the street or way is such that additional ground signs should be granted in the public interest. The total of all ground signs visible to the access road shall not exceed 150 square feet in area." Since the petitioners seek to install a secondary ground sign in the form of a flag pole with a Volvo flag, a variance is required.

As grounds for the variances, Attorney Marinelli explained that the irregular shape of the lot, the topography of Wood Road, specifically the steep grade drop from north to south, and a bend in Wood Road necessitates the

signage so that patrons may identify the location of the business and so that the traveling public may be safely directed to the business. Attorney Marinelli also noted the size of the building and location of the building set back from Wood Road and asserted that the wall signage was necessary to identify the site of the business and the size of the signage appropriate to the size of the building. Additionally, Attorney Marinelli noted that the new signage is part of the Volvo national brand. In response to inquiry from the board, the petitioners indicated that the American flag would be flown higher than the other two flags.

The petitioner submitted three pages of renderings of the proposed signs with their dimensions, prepared by Sign Services Group of Nashville, TN and dated October 5, 2011.

By a vote of 4-0-0, the Planning Board recommended favorably on the wall signs and the revised flag pole scenario that includes one Volvo flag, one American flag and one Massachusetts State flag, as opposed to the original plan which included three Volvo flags. 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 wall signs and ground sign are necessary to identify the location of the business as it is located on Wood Road which has a steep drop off in grade from north to south and has a bend in the road and therefore reduced visibility. The Board found that the proposed wall signs and ground sign would increase the business' 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 neither the wall signs nor the ground sign will face any residential area. Finally, the Board 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 American flag be flown higher than the other two flags.

The Board adjourned the meeting at 8:10 pm.