



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

July 2, 2013

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jack Gauthier, Member  
Michael Calder, Member  
Michael Ford, Member

**ALSO PRESENT:** Russell Forsberg, Inspector of Buildings

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

#### **OLD BUSINESS:**

**1) Petition Number 13-15**  
**Jeff Leung**  
**RE: 53 Joseph Road**

Present: Jeff Leung, petitioner and property owner; John Mento, Builder; Don Rosa, Surveyor

A hearing on this petition was scheduled for June 25, 2013, but due to the special state election on said date, was rescheduled to July 2, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA.

After a brief discussion between the Board members and the petitioner, the petitioner requested to withdraw the petition without prejudice.

On a motion by Mr. Calder and seconded by Mr. Gauthier, the Board voted to grant the request to withdraw the petition without prejudice.

**2) Petition Number 13-16**  
**Susan Siegler, Petitioner**  
**RE: 40 McCue Drive**

Present: Susan Siegler, petitioner

This is a petition filed by Susan Siegler of 40 McCue Drive, Braintree, MA regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to build a bedroom over an existing garage, all in accordance with the plans of record. The property is located within a Residential B Watershed Zoning District as shown on Assessors' Map 1069, Plot 72, which contains a land area of +/- 15,528 Sq. Ft.

### **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 scheduled for June 25, 2013, but due to the special state election on said date, was rescheduled to July 2, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Michael Calder and Michael Ford, with alternate, Jack Gauthier.

### **Evidence**

The petitioner, Susan Siegler, represented herself and explained that she is seeking permission to construct a bedroom, measuring 12 feet by 18.5 feet over an existing garage. The structure currently encroaches into the side yard setback, as it is located between 2.5 feet and 3.6 feet from the southerly lot line. With the proposed addition of the bedroom, the structure would not further encroach into this same side yard lot line. The petitioner's lot is also undersized, as it offers only 15,528 SF, whereas the Watershed Protection District requires a minimum lot size of one acre.

According to the petitioner, the original owners of the house sought variances in 1988 and again in 1991. In 1988, the prior owners discovered during a refinancing survey that their existing carport was approximately 4 feet from the side lot line, so a variance was sought and apparently granted by the Board. In 1991, the same owners decided to convert the carport into a garage, so they sought and obtained permission from the Board for this conversion. However, it appears that neither ZBA decision was ever recorded at the Registry of Deeds. Therefore, the petitioner seeks a variance for the encroachment into the side yard setback.

As grounds for the variance, the petitioner noted the existence of ledge outcroppings on the northerly side of the lot and a steep slope towards the Barstow Drive side of the lot, forcing the structures to be placed closer to the southerly lot line.

The petitioner submitted a plan entitled "Plot Plan Showing a Proposed Addition No. 40 McCue Drive, Braintree, MA," dated April 12, 2013, prepared by Don Rosa, PLS of Randolph, MA.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board voted to recommend favorable action on the petition, based on the prior zoning relief.

### **Findings**

The Board found that the petitioner had demonstrated a hardship owing to the topography of the site, specifically the ledge outcroppings and steep slope on the northerly side of the lot, forcing the structure to be built towards the southerly lot line, where the structure encroaches 7.5 feet into the minimum side yard setback. The Board also found that the proposed alteration of the existing structure by the addition of a second story bedroom over the garage would fall within the footprint of the existing dwelling and not create any further encroachments. 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. Ford, it was unanimously voted to grant the requested relief, subject to the plan presented.

#### **3) Petition Number 13-17**

**Beth Israel Deaconess HealthCare c/o John Marino**

**RE: 501 John Mahar Highway**

Present: John Marino, on behalf of Beth Israel Deaconess HealthCare, petitioner

This is a petition filed by John Marino on behalf of Beth Israel Deaconess HealthCare, 501 John Mahar Highway, Braintree, MA regarding the same property. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.2 to install two wall signs, all in accordance with the plans submitted. The property is located in a Highway Business Zoning District and contains +/- 8.38 acres of land, as shown on Assessors' Map No. 1030, Plot 1G.

### **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 scheduled for June 25, 2013, but due to the special state election on said date, was rescheduled to July 2, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder, with alternate, Michael Ford.

### **Evidence**

The petition was presented by John Marino of NHS Print of Franklin, MA, as agent for Beth Israel Deaconess HealthCare, a tenant that has recently located at the subject property. The petitioner seeks to install two wall signs, one on the southerly elevation of the building and the other on the easterly elevation. Each sign states "Beth Israel Deaconess HealthCare" and contains a medical logo, all in black and white acrylic. The logo measures 45.5 inches in height by 34 inches in length. The capital letters are 18 inches in height, and the length of the words span 24 feet. The overall size of each sign is 48 SF, for a total of 96 SF of signage requested.

Both signs are proposed to be located on the third story of the building. According to Section 135-904.2 5(f), "Wall signs for businesses occupying other than the first floor may be permitted by the Zoning Board of Appeals...Secondary wall signs shall not exceed 48 square feet in area. No more than two such secondary wall signs shall be allowed for any building." The pending petition seeks 96 SF of wall signage; therefore a variance is required.

South Shore Savings Bank is also located at this building and has wall signs on the first story on both the southerly and easterly elevations. Section 135-904.2 5 (g) of the Zoning By-law limits the aggregate total of all wall signs to 150 SF, unless additional signage is approved by the Board. The aggregate total of the South Shore Savings Bank and Beth Israel Deaconess HealthCare signs, if approved, at this site would exceed 150 SF. Therefore, permission of the Board is required.

As grounds for the relief requested, Mr. Marino explained that, at its closest point, the building is set back over 200 feet from John Mahar Highway, causing visibility issues. The signs themselves would be located over 250 feet from John Mahar Highway. Therefore, additional signage is needed to identify the health care center and to safely direct the traveling public to the site.

No one else spoke in favor of or opposition to the petition. By a vote of 5-0-0, the Planning Board recommended favorable action on the petition.

The petitioner submitted three sheets of color renderings of the proposed signage prepared by NHS Print of Franklin, MA. The petitioner also submitted one color aerial view of the site with distances measured from John Mahar Highway.

### **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 signage was warranted based on the location of the building on the lot and the distance that the building is setback from the main access route. The Board further found that the proposed signage was necessary to identify the health care center and to safely direct the public traveling to the site, which, in turn would lead to safer traffic conditions and greater public convenience. The Board also concluded 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 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.

#### **4) Petition Number 13-18 Naseem and Zobra Khan, petitioners RE: 86 Alfred Road**

Present: Naseem Khan, petitioner

This is a petition filed by Naseem and Zohra Khan of 86 Alfred Road, Braintree, MA regarding the same property, in which the applicant is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-403, 407, and 701. The applicant seeks a permit, variance and/or finding to construct a second story addition over the existing dwelling with a two foot overhang, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 2088, Plot 33, which contains a land area of +/- 9,890 Sq. Ft.

### **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 scheduled for June 25, 2013, but due to the special state election on said date, was rescheduled to July 2, 2013 before the Zoning Board of Appeals at 7 p.m. at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members Jack Gauthier and Michael Calder, with alternate, Michael Ford.

### **Evidence**

The petitioner, Naseem Khan, represented himself and explained that he is seeking permission to construct a full second story over the main portion of the existing dwelling, with a two foot overhang along the front of the dwelling. The second story will allow for three bedrooms and one bathroom. The smaller bump-out on the rear of the existing dwelling will remain as a single story.

Both the lot and structure on the lot are nonconforming. The lot contains only 9,890 SF of area, while the Zoning By-law requires a minimum lot size of 15,000 SF. The Zoning By-law requires a rear yard setback of 30 feet, while the existing house is located 16.8 feet from the rear yard setback at its closest point, and an attached shed is located 13.1 feet from the rear lot line. The applicant's lot is also irregularly shaped like a pie and is located at the end of a cul-de-sac. The applicant represented that he received similar relief from the Board two years ago but never constructed the second story. The proposed addition will not create any new nonconformity; therefore a finding is required under General Laws Chapter 40A, Section 6.

The petitioner submitted a plan entitled "Plot Plan in Braintree, Massachusetts, 86 Alfred Road," dated June 7, 2010, prepared by Borderland Engineering, Inc. of West Bridgewater, MA.

No one else spoke in favor of the petition. By a vote of 5-0-0, the Planning Board voted to recommend favorable action on the petition. David MacKinnon of 225 Walnut Street, the abutter to the rear, spoke in opposition to the petition, claiming that the proposed addition will negatively impact his privacy.

### **Findings**

The Board found that the proposed alteration of the existing structure by the addition of a second story over the existing dwelling with a two foot overhang would primarily fall within the footprint of the existing dwelling and not create any further encroachments. 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 May 21, 2013.

Mr. Gauthier advised the Board that he is submitting his resignation from the Zoning Board of Appeals effective on July 2, 2013.

The Board adjourned the meeting at 8:00 pm.