



Department of Municipal Licenses and Inspections

Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

Meeting Minutes

November 26, 2013

IN ATTENDANCE: Stephen Karll, Chairman
Michael Calder, Member
Michael Ford, Member
Richard McDonough

ALSO PRESENT: Russell Forsberg, Inspector of Buildings
Carolyn Murray, Town Solicitor

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

Mr. Karll, Mr. Calder and Mr. Ford welcomed the newly appointed Board member, Richard McDonough.

OLD BUSINESS:

- 1) Petition Number 13-38**
Richard and Catherine Gallagher
RE: 50 Hickory Road

Mr. Karll advised the Board that the petitioner has requested to withdraw the petition.

On a motion made by Mr. Calder and a second by Mr. Ford, the Board voted unanimously to approve the request to withdraw the petition.

- 2) Petition Number 13-39**
F.X. Messina Enterprises/Granite Plaza Limited Partnership
RE: 727 Granite Street

Present: Ronald Cibotti, Director of Leasing for F.X. Messina Enterprises

This is a petition filed by F.X. Messina Enterprises/Granite Plaza Limited Partnership on behalf of Planet Fitness regarding the property located at 727 Granite Street, Braintree, MA. The petitioner seeks relief from the Zoning By-law requirements under Chapter 135, Sections 403, 407, and 904.2 to add a sign panel to an existing pylon sign, all in accordance with the plans submitted. The property is located in a Highway Business

Watershed Protection Zoning District and contains +/- 313.13 acres of land, as shown on Assessors' Map No. 2048, Plot 32.

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 October 22, 2013 and continued until November 26, 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, Richard McDonough.

Evidence

The petition was presented by Ronald Cibotti, Director of Leasing for F.X. Messina Enterprises. Mr. Cibotti explained that a new tenant, Planet Fitness, is moving into the retail plaza located at 727 Granite Street. Planet fitness will be located in the "elbow" of the plaza, which is set back a significant distance from Granite Street. The petitioner seeks to add a new panel to the existing pylon sign to indicate the location of the new business. The panel measures 27 inches by 156 inches and is double-sided for a total area of 29.25 SF per side. The existing pylon sign currently contains panels for the property owner and multiple tenants for a total of 650 SF of double-sided signs.

According to Section 135-904.2.A (1) (a) of the Zoning By-law, "No ground sign shall exceed 150 square feet in area." As noted above, the existing pylon sign is 325 SF per side or 650 SF of total sign area. The proposed panel would add 29.25 SF of sign area per side. Therefore, a variance is required.

In addition, Section 135-904.2.A(1)(f) of the Zoning By-law states, "One ground sign visible to the road or way which provides direct access to the property may be permitted. Said ground sign shall be no larger than 60 square feet in area and be no more than 20 feet in overall height. Bottom capping of sign shall be no less than 24 inches above ground level." The existing pylon sign for the plaza is visible to Granite Street, by which direct access is gained to the plaza. This pylon sign far exceeds the 60 SF limitation, and the height is approximately 30 feet. Therefore, a variance is required.

As grounds for the variances, the petitioner noted the setback of the retail store within this shopping center in relation to the main access road, Granite Street. The petitioner also noted that Planet Fitness will be tucked in the corner of the plaza with limited visibility. By adding a panel to the existing pylon sign, the traveling public will be alerted to the presence of Planet Fitness within this plaza and will be safely directed to its location.

No one else spoke in favor of or opposition to the petition. By a vote of 4-0-0, the Planning Board recommended favorable action on the petition.

The petitioner submitted a color photograph depicting the existing pylon sign with the additional panel along with a plan entitled "Plan to Show Sign of 727 Granite Street in Braintree, MA," prepared by Andrews Survey and Engineering, Inc. dated 9/17/13.

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 business within the retail plaza, the setback of the plaza from the main access road, and the fact that Planet Fitness will have limited visibility from the main access road. The Board further found that the proposed signage was necessary to

identify the business 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. Calder and seconded by Mr. Ford, it was unanimously voted 3-0 to grant the requested relief, subject to the plans presented.

3) Petition Number 13-40 Meridith and Keith Duffy RE: 1486 Liberty Street

Present: Meridith Duffy, Petitioner and Property Owner; David Oliver, Builder

This is a petition filed by Meridith and Keith Duffy, owners of the property located at 1486 Liberty Street, 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 an addition which will exceed the maximum lot coverage limit, all in accordance with the plans of record. The property is located within a Residential B Watershed Protection Zoning District as shown on Assessors' Map 1035, Plot 142, which contains a land area of +/- 14,077 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 held scheduled for October 22, 2013 and continued until November 26, 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 were Michael Calder, Michael Ford and Richard McDonough. Chairman, Stephen Karll recused himself, as he is related to the petitioner.

Evidence

The petitioner, Meridith Duffy, appeared with her contractor, David Oliver. The petitioner explained that she is seeking permission to construct a 16 foot wide by 24 foot deep addition on the westerly side of the existing single-family dwelling and a 12 foot deep by 15.8 foot wide deck to the rear of the proposed addition. The addition will comply with current setback requirements; however, the proposed addition will add to the total lot coverage. The existing dwelling, two car garage and existing deck provide 3,186 SF of area. The proposed addition will add 768 SF of area. The Zoning By-law limits the maximum lot coverage to 20 % in this zoning district. With the proposed addition, total lot coverage will be greater than 20%. Therefore, a variance is required.

The lot is nonconforming. The Watershed Protection District requires a minimum lot size of one acre, whereas this lot contains only 14,077 SF. However, the lot size was the subject of a variance granted in 2007 pursuant to petition number 07-63. The lot is also nonconforming as to lot width. The Zoning By-law requires a minimum lot width of 100 feet, and this lot contains only 99 feet.

As grounds for the variance, the petitioner explained that the requested relief was a de minimis variation from the Zoning By-law requirements. The Planning Board suggested that a small section of impervious surface, the

driveway, could be removed in order to bring the lot coverage into compliance. However, the petitioner would have to incur a further expense to remove a section of driveway and that aesthetically, the overall appearance would be negatively impacted. The petitioner also noted that the lot is irregularly shaped with an angled lot line along Old Liberty Street, and as a result, the house is not square with the front lot line.

The petitioner submitted a plan entitled "Plot Plan, #1486 Liberty Street, Braintree, MA," dated July 6, 2013, prepared by James E. McGrath, PLS.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the lot was undersized by virtue of a previous variance, which would make it difficult for any proposed additions to the property to comply with the 20% lot coverage limit. The Board also found that the proposed lot coverage caused by the addition was a de minimis deviation from the Zoning By-law. 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. Ford and seconded by Mr. McDonough, it was unanimously voted to grant the requested relief, subject to the plan presented.

NEW BUSINESS:

4) Petition Number 13-43 Francesco and Karen Montillo RE: 6 Sunset Road

Present: Francesco and Karen Montillo, petitioner and property owners

This is a petition filed by Francesco and Karen Montillo of 6 Sunset 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 legitimize the construction a detached two-car garage that encroaches into the side yard setback, all in accordance with the plans of record. The property is located within a Residential B Watershed Protection Zoning District as shown on Assessors' Map 1041, Plot 20, which contains a land area of +/- 18,100 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 held on November 26, 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, Richard McDonough.

Evidence

The property owners, representing themselves, explained that they obtained a building permit to construct a detached two-car garage in the southwesterly corner of their property. The applicants left the existing fence in place when the garage was built. The applicants and/or their surveyor believed that the fence was located two feet in from the property line, when in fact, the fence was located only one foot in from the property line. Once constructed, however, it was discovered that the garage is set 4.4 feet to 4.6 feet from the side lot line. Section 135-701, note 4 of the Zoning By-laws require that an accessory building, such as a garage, must be located at least 5 feet from any lot line. Therefore, a variance is required.

As grounds for the variance, the applicants explained that this was a mistake. They had an existing garage located on the opposite side of the house, closer to Sunset Lake, that was within the 100 foot buffer strip. The applicants demolished that garage and constructed a new garage on the opposite side of the house, outside the buffer strip. There is less space available on this side of the lot to accommodate a driveway and garage. The driveway curves around the side of the house and widens behind the house. As roots were being cleared and the foundation poured, the location of the garage shifted closer to the side lot line. The applicant was his own architect and contractor for this project; he did not challenge the surveyor's measurements. The side yard encroachment is only 6 to 8 inches. While he could move the wall of the garage 6 to 8 inches, the impact to the neighbor would be the same.

The petitioner submitted the following plans:

1. "Plan of Land in Braintree, Massachusetts, 6 Sunset Road," dated 9/19/12 prepared by Christopher S. Kelley, PLS;
2. "Foundation As Built in Braintree, Massachusetts, 6 Sunset Road," dated 9/23/13 prepared by Christopher S. Kelley, PLS;
3. "As Built Plans and Photos, Montillo Res. Garage," dated 9/30/13 prepared by Francesco Montillo; and
4. "As Designed Elevation, Montillo Res. Garage," dated 9/30/13, prepared by Francesco Montillo.

By a vote of 5-0-0, the Planning Board voted to recommend favorable action on the requested relief, subject to a condition that the garage only be used for storage and shall not be converted to another use.

Attorney Chas Fisher appeared on behalf of neighbors, Deborah and Joseph Cerilli and the neighbors across the street, Mr. and Mrs. Sheehan. Attorney Fisher explained that the neighbors were opposed to the granting of the variance. Although the original plan complied with all setback requirements, the final plans show a setback closer to 4 feet, but there is also a roof overhang that the neighbors claim further encroaches into the setback. Attorney Fisher also expressed concern that a one and one-half story garage with a dormered window may be converted to an occupied structure and not used solely for storage space. Attorney Fisher also stated that the abutter's views of the lake are obstructed by the height of the garage.

Building Inspector Forsberg clarified that the setback is measured from the primary wall, not the roof overhang and that the permissible height is 35 feet.

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

Findings

The Board found that the petitioner had failed to demonstrate a hardship owing to the shape, soil and topography of the lot, and therefore a variance for the side yard encroachment was not warranted.

Decision

On a motion made by Mr. Ford and seconded by Mr. Calder, it was unanimously voted to deny the requested relief.

5) Petition Number 13-44

Matthew McIntyre, Christine McIntyre, Joseph Murphy, Jane Murphy, Tony Monaco, Melissa Monoco, Cynthia Manganello
RE: 38 Myrtle Street

Present: Matthew McIntyre, Christine McIntyre, Joseph Murphy, Jane Murphy, Tony Monaco, Melissa Monoco, Cynthia Manganello-petitioners

Matthew McIntyre, as the designated representative for the petitioners presented to the Board their position on this matters, as well as additional case law in support of said position.

After hearing testimony from petitioners, the Board then elected to defer the hearing to December 17, 2013, in order to review the material provided and determine its relevance as it relates to their petition.

On a motion made by Mr. Karll and seconded by Mr. Calder, the Board voted unanimously to defer the petition to the December 17, 2013 Zoning Board of Appeal meeting.

6) Petition Number 13-45

Theresa M. Lento and Neil Shay
RE: 209 Washington Street

Present: Theresa M. Lento and Neil Shay, petitioner and property owners

This is a petition filed by Theresa Lento and Neil Shay, owner of the property located at 209 Washington Street, Braintree, MA regarding the same property, in which the applicants are 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 legitimize the construction of a shed build without a building permit and in violation of the five foot setback, all in accordance with the plans of record. The property is located within a Residence B Zoning District as shown on Assessors' Map 2062, Plots 17 and 18, which contain a combined land area of +/- 8,365 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 held on November 26, 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, Richard McDonough.

Evidence

The property owners, representing themselves, explained that their house is built on a slab and they needed the shed for storage. They ordered and began building the shed without applying for a building permit. Construction of the shed ceased when the Building Inspector issued a Stop Work order. The shed is 12.5 feet by 16.5 feet and is located 3.4 feet from the southerly lot line. Section 135-701, note 4 of the Zoning By-laws

require that an accessory building, such as a shed, must be located at least 5 feet from any lot line. Therefore, a variance is required.

As grounds for the variance, the applicants explained that they have an irregular, “pork-chop” shaped lot, as there is a long, narrower neck leading to a wider section. While their home address is technically Washington Street, there is no direct access to their house from Washington Street, due to a 1979 state land taking to accommodate the construction for Route 3 and the subsequent layout of the Capen Circle intersection. In 1996, the state deemed the taken property surplus and sold it back to the petitioners, which accounts for the two plots

comprising this site. Access to this house is via a driveway off Cavanaugh Road extending approximately 120 feet to the house, along the entire length of the neck.

The existing house and lot are nonconforming. The total area of both lots is 8,365 SF, while the Zoning By-laws require a minimum lot size of 15,000 SF. The house, located in the wider, back section of the lot off the neck, is located 12 feet from the rear yard lot line, whereas the Zoning By-law requires a 30 foot setback. The shed is located to the south of the house, closer to Washington Street. The petitioner explained that it was not possible to locate the shed on the easterly side of the house because of the driveway, nor is there sufficient room to locate the shed on the westerly side of the house. As the petitioners explained, the shape of the lot and the location of existing structures on the lot limit the placement of a shed.

The Planning Board voted 5-0-0 to recommend favorable action on the relief as requested.

The petitioner submitted a plan entitled “Plan of Land in Braintree, Massachusetts, 209 Washington Street,” dated September 23, 2013, prepared by C.S. Kelley, Land Surveyor of Pembroke, MA.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the lot was undersized and irregular in shape, resembling a “pork-chop”, making it difficult to construct a shed that would comply with all dimensional setbacks. The Board also found that the placement of the existing dwelling and driveway on the lot restricted the location for a shed. 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. Ford and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented.

- 7) Petition Number 13-46**
Don Nguyen a/k/a Dung Ngoc Nguyen
RE: 126 Celia Road

Present: Don Nguyen, petitioner and property owner

This is a petition filed by Dung Ngoc Nguyen, owner of the property located at 126 Celia 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 24 foot by 24 foot attached two-car garage, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 1126, Plot 35, which contains a land area of +/- 16,694 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 held on November 26, 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, members Michael Calder and Michael Ford, and alternate, Richard McDonough.

Evidence

The petitioner, representing himself, explained that he is seeking permission to construct a 24 foot by 24 foot attached two-car garage on the easterly side of the existing dwelling. The proposed garage will encroach into the side lot line, as the garage will be located between 1.9 feet and 4.9 feet from the easterly side lot line. The Zoning By-law requires a side yard setback of 10 feet, and therefore, a variance is required.

The lot and the existing dwelling on the lot comply with all zoning requirements. As grounds for the variance, the applicant noted the irregular shape of the lot, remarking that the shape resembles a trapezoid. The easterly lot line, where the garage is proposed to be built, is angled towards the existing structure. The applicant also noted the location of the existing structure on the lot presents a hardship. The house is situated in the middle of the lot with 28.9 feet on the westerly side and 28.9 feet to 25.9 feet from the easterly side lot line. The applicant is not able to construct an attached two-car garage on either side of the house without encroaching into the 10 foot side yard setbacks. The Planning Board questioned the ability to locate the garage to the rear of the house and avoid the need for a variance. Based on the internal configuration of the house, the applicant explained that the easterly side is the logical location for a garage. South Middle School is the direct abutter to the east, so the applicant did not feel that any neighbor would be negatively impacted by the addition. However, the applicant will have to obtain a special permit from the Planning Board to locate the garage within 30 feet of the school, which is located within an Open Space Conservancy Zoning District.

The petitioner submitted a plan entitled "Plan of Land in Braintree, MA, 126 Celia Road," dated August 27, 2013, prepared by Christopher Kelley, Land Surveyor of Pembroke, MA. The petitioner also submitted four color photos depicting the sides and rear of the house.

By a vote of 4-1-0, the Planning Board voted in favor of the requested relief, subject to obtaining a special permit from the Planning Board.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board noted the irregular shape of the lot, resembling a trapezoid, and the location of existing structures on the lot, making it difficult to build a compliant garage. 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.

8) Petition Number 13-47

William F. Frazier

RE: 52-60 Pearl Street, 0 Randall Avenue (Unnumbered Parcel) and 30 Randall Avenue

Present: Attorney Frank Marinelli represented the petitioner; the Trustee, William Frazier; Ron Muller of Ron Muller and Associates, Traffic Engineers; David Kelly of Kelly Engineering Group; and Greg Anderson, realtor.

This is a petition filed by Sunset Realty Trust and William Frazier, Trustee, owner of the property located at 52-60 Pearl Street, 0 Randall Avenue and 30 Randall Avenue, 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, 613, 701, 705, 806, and 812. The applicant seeks a permit, variance and/or finding to redevelop the existing building by constructing a two-story addition for a proposed mixed uses consisting of retail, office and residential, all in accordance with the plans of record. The property is located within a General Business/Village Overlay Zoning District as shown on Assessors' Map 1006, Plots 36, 37, 40 and 41, which contain a combined land area of +/- 24,900 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 held on November 26, 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, Richard McDonough.

Evidence

Attorney Frank Marinelli represented the petitioner and appeared along with the Trustee, William Frazier; Ron Muller of Ron Muller and Associates, Traffic Engineers; David Kelly of Kelly Engineering Group; and Greg Anderson, realtor. Attorney Marinelli explained that this is a proposed redevelopment of an existing structure, previously used for automotive sales, automotive repair, storage of vehicles and related offices. Under the proposed redevelopment, a second and third floor will be added within the footprint of the existing structure, excluding the portion over the existing hair salon, which will remain one story. The prior automotive repair, sales and storage of vehicles will cease and will be replaced by retail/office uses, which are allowed as of right in the zoning district, and 18 residential units (16 one-bedroom units and two studio units) with associated parking. The multi-unit residential use requires a special permit from the Planning Board. An existing hair salon, occupying approximately 1500 SF will remain on the first level. The proposed redevelopment will also include an aesthetically appealing façade, improved landscaping, less impervious surface, and defined parking.

As noted above, this redeveloped site consists of several parcels:

1. The parcel known as 52-60 Pearl Street on which the existing structure and 11 parking spaces are located consisting of 13, 227 SF of area;
2. The parcels known as 0 and 26 Randall Avenue have been combined and are now referred to as 30 Randall Avenue, consisting of 11,684 SF of area. These parcels were previously used for storage of vehicles and will be used for parking to support the redeveloped site.

3. The parcel known as 84 Pearl Street will provide additional parking for the site through a covenant or other acceptable agreement, as allowed under Section 135-805 of the Town's Zoning By-laws.

In order to accomplish the redevelopment of this site, a number of variances and/or findings are required:

1. The existing lot and structure on the lot are pre-existing nonconforming. The minimum lot area for the General Business Zoning District is 15,000 SF. The lot on which the existing business uses are located and on which the proposed mixed uses will be exercised consists of only 13,227 SF of area. This lot also lacks the required lot width of 100 feet, as the 52-60 Pearl Street parcel offers only 86 feet of width. In addition, the lot violated the 10 foot front yard and 10 foot side yard setbacks required in the General Business Zoning District, as the existing building provides no front or side yard setback on Randall Avenue or Pearl Street, as the existing building is set right at the lot line. The proposed redeveloped structure will maintain these nonexistent setbacks. Therefore, findings are required pursuant to G.L. Chapter 40A, Section 6 to alter this pre-existing nonconforming structure and lot.
2. The newly-combined lot known as 30 Randall Avenue is also deficient in terms of lot size and width for the General Business Zoning District. This lot contains 11,684 SF of area, while the minimum lot size required in the General Business Zoning District is 15,000 SF. This combined lot offers 96 feet of width, while the Zoning By-law requires a minimum lot width of 100 feet. Therefore, findings are required pursuant to G.L. Chapter 40A, Section 6 to alter this pre-existing nonconforming lot.
3. Section 135-705 of the Zoning By-laws permit multifamily dwellings in a General Business Zoning District, provided the minimum lot size is 43, 560 SF, minimum frontage is 100 feet, minimum open space is 2,000 SF per dwelling unit. As noted in paragraphs 1 and 2 above, the total combined area of 52-60 Pearl Street and 30 Randall Avenue is 24,900 SF. Also as noted above, both parcels lack the required 100 feet of frontage. As 18 residential units are proposed, the minimum open space required is 36,000 SF. The parcel known as 52-60 Pearl Street offers 1,854 SF of open space, while the parcel known as 30 Randall Avenue offers 6,685 SF of open space. Therefore, variances are required.
4. Section 135-705 of the Zoning By-laws also permits multifamily dwellings in a General Business Zoning District, provided the site allows 5,000 SF for each one bedroom unit or studio unit. Applying this ratio to this proposed development, 90,000 SF of area would be required for the 18 residential units. Stated another way, the total area of the site, consisting of 52-60 Pearl Street and 30 Randall Avenue, only offer 24,900 SF of area, which would allow 4.98 residential units. Therefore, a variance from this density ratio is required.
5. As this site is located within the Village Overlay Zoning District, the provisions of Section 135-613 of the Zoning By-laws also apply. Under this Zoning By-law, the Planning Board, as the special permit granting authority, may grant waivers from certain dimensional or density requirements, which may overlap with the authority of the Zoning Board of Appeals to grant variances. Nonetheless, no specific variances are sought from the Zoning Board of Appeals with respect to the Village Overlay Zoning District.
6. Since 18 residential unit plus retail/offices spaces are proposed, the redeveloped site is required to provide 47 parking spaces. The site offers a total of 34 parking spaces broken down as follows: 11 parking spaces on the 52-60 Pearl Street parcel and 23 spaces on the 30 Randall Avenue parcel. The applicant also has the ability to provide additional parking on the 84 Pearl Street parcel by a covenant or other acceptable agreement, pursuant to Section 135-805 of the Zoning By-laws. The 84 Pearl Street parcel could provide 15 additional parking spaces, but the applicant only proposes to reserve six of those spaces by covenant to serve this redeveloped site. The applicant indicated that he is in negotiations with an abutting property owner, Arnold Limon, to potentially reserve some of the parking spaces at 84 Pearl Street for Limon's residential tenants who currently lack adequate parking according to Mr. Limon. Including 6 parking spaces from the 84 Pearl Street site, the applicant can provide a total of 40 parking spaces. Therefore, a variance is required.

7. Section 135-812 (H) of the Zoning By-laws requires a minimum 5 foot wide buffer strip between the parking and buildings. The parking at 52-60 Pearl Street is only 3 feet from the rear of the existing building, at its closest point to the building. Therefore, a variance is required.
8. Section 135-812(I) of the Zoning By-laws imposes a minimum 5 foot wide landscaped strip between the parking area and any abutting property line. The parking at 52-60 Pearl Street is only 2 feet from its closest point with the property line at 40 Pearl Street. Therefore, a variance is required.

To support the necessary findings under G.L. Chapter 40A, Section 6, Attorney Marinelli explained that this is a significant redevelopment of an otherwise tired, existing business site. Aesthetically, the proposed renderings of the new structure, and its predominantly residential nature, will be an improvement over the existing appearance and use of the automotive repair facility. Open space and landscaping will be more than double what currently exists. The existing setbacks of the building will be maintained and no new dimensional nonconformities will be created by the building. The proposed mixed use is predominantly residential in nature, and with its close proximity to public transportation and local businesses, this site lends itself to the concept of “smart growth” as a walkable commuter development. Overall, this redevelopment should be viewed as a welcome improvement that is not more detrimental to the neighbors than the existing structure and uses.

As grounds for the variances, Attorney Marinelli explained that the site is unique. Two parcels comprise the building site while two parcels comprise the parking. The parcels are bisected by Randall Avenue, which is laid out in the shape of the letter “T”, separating 52-60 Pearl Street from 84 Pearl Street, and those two parcels are in turn separated from 30 Randall Avenue. The layout of the street presents a condition specific to the land that the property owner cannot alter to make these lots conform to current zoning standards. These parcels, as configured, are limited in terms of being able to support any use without requiring some form of zoning relief. The site configuration in relation to the road network and the building or structure itself are unique circumstances that constitute a hardship to redevelopment without zoning relief. Under Section 135- 613 of the Zoning Bylaws, the Planning Board may grant certain waivers of the dimensional requirements of Section 135- 701 (without limitation, lot size, lot width, setbacks). Based upon the justifications set forth by the applicant in its materials and presentation, and while noting some overlap between the Zoning Board of Appeals and the Planning Board, the applicant requested that the Zoning Board grant variances from Section 135- 701 as concerns minimum lot size, minimum lot width and yard setbacks. The applicant also requested that the Zoning Board grant variances from Section 135- 705 as concerns minimum lot size and minimum lot frontage, and also variance from the density restrictions (number of residential units permitted) and minimum open space per unit. In support of the Section 135-705 variances, the applicant noted that the Village Overlay section of the Zoning Bylaws does not contain a residential unit density standard. The applicant presented, with favorable report of the Planning Board report, that the redevelopment is consistent with smart growth and a location proximate to public transportation. The Planning Board report supports all of the variance relief requested by the applicant under Sections 135- 701 and 705 of the Zoning Bylaws, under Article 8 of the Zoning Bylaws, and the Planning Board report supports the General Laws Chapter 40A, Section 6 finding (Sections 135- 402 and 403) requested by the applicant. As concerns relief under Section 135- 705, the Planning Board found in its report and analysis that “the criteria of 135-705 when applied to the Village Overlay creates conflict...it is evident that the Overlay must contain Multi-Family/Mixed Use Regulations that supersede 135-705 as, as they are currently written there is conflict amongst these sections...”

In support of the variances from the parking requirements, the applicant submitted a Parking Assessment prepared by Ron Muller and Associates dated October 28, 2013 (the “Muller Report”), which concluded that in a residential development in close proximity to public transportation, amenities, and services, the parking ratios are reduced, as these developments are aimed at tenants who commute. Mr. Muller also noted that the peak parking demand for the residents are weekday nights, when the 11 spaces used by the hair salon would be available for use, if needed. Greg Anderson, a realtor, also reiterated that there is a growing trend for these types of apartment units aimed at commuters and people who may not own cars, which in turn reduces the

demand for traditional parking ratios. The applicant referred to a parking space standard of .8 parking spaces per unit, a ratio contained in Section 135- 615 of the Braintree Zoning Bylaw for the Landing Overlay District, as probative of a lower parking space per unit ratio where residential units are proximate to commuter rail or public transportation. Consistently, the Muller Report and testimony of Ronald Muller discussed ITE data and the average parking supply at apartment developments ranging from .9 to 1.0 parking spaces per bedroom. The applicant presented that 23 parking spaces serving 16 one-bedroom residential units and 2 studios should be sufficient, particularly where the 11 additional retail/office spaces will be available most nights and the applicant is adding six (6) more reserve spaces by covenant. Therefore, there are 23 parking spaces dedicated to serve 18 residential units, with the prospect of 40 parking spaces serving 18 residential units for overnight parking.

The Planning Board voted 5-0-0 to recommend favorable action on the relief as requested under Sections 135-402, 403, Article VIII, and 701, but voted 4-1-0 in favor of the relief requested under Section 135-705.

The petitioner submitted a plan entitled "Plan to Accompany ZBA Application, Bill Frazier, 60 Pearl Street, Braintree, Massachusetts dated October 17, 2013September 23, 2013, prepared by C.S. Kelley, Land Surveyor of Pembroke, MA. The petitioner also submitted proposed renderings of the façade, parking facilities and landscaping, as well as proposed floor plans.

Six abutters or neighbors to the site signed a petition in support of the requested relief. James Nigrelli, an abutter and owner of Braintree Auto Body, spoke in favor of the petition. Arnold Limon, an owner of abutting property on Randall Avenue, spoke in favor, although he noted the height of the structure appears overpowering. The applicant noted in its presentation that 3-story height is allowed in the underlying General Business zone. Mr. Limon indicated that parking in this area has been a problem for many years, and he is negotiating a potential agreement with Mr. Frazier to use some parking spaces on the 84 Pearl Street parcel to accommodate his tenants on Randall Avenue. Domenic Candelieri, an abutting property owner, expressed concern about the reduced parking, noting that this is an area of Town lacking in adequate parking spaces and that the property owner has control over enough land to comply with the parking requirements. Mr. Candelieri also questioned where snow would be stored on the site.

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

Findings

The Board found that the petitioner had substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the layout of Randall Avenue bisecting these lots was a condition unique to the site and beyond the control of the property owner. The Board also found that the parcels are pre-existing nonconforming with respect to size and other dimensional aspects that the owner cannot correct. The Board also found that the proposed redevelopment of the site, its predominant residential nature, improved open space and landscaping and aesthetic appearance would not be substantially more detrimental to the neighborhood than the existing structure and uses. 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. In making these Findings, the Board agrees with the applicant's justifications and evidence set forth above and as contained in the favorable report of the Planning Board.

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 showing 18 residential units and other allowed business uses, and subject to

the condition that the petitioner provide 40 parking spaces as follows: 11 parking spaces on shown on the plan for the parcel known as 52-60 Pearl Street; 23 parking spaces as shown on the plan on the parcel known as 30 Randall Avenue; and 6 spaces are to be reserved by a covenant on the parcel known as 84 Pearl Street.

9) Petition Number 13-48

Sean Martin

RE: 71 Arborway Drive

Mr. Karll advised the Board that the petitioner requested a 30 day extension of the petition.

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to grant the requested extension to be heard at the Zoning Board of Appeal meeting to be held on December 17, 2013.

10) Petition Number 13-49

Brian Kablik, Planet Fitness representing owner F.X. Messina Enterprises/Granite Plaza, LLC

RE: 747 Granite Street

Present: Ron Cibotti, representing FX Messina Enterprises.

Mr. Karll advised the Board that the petitioner requested a 30 day extension of the petition.

On a motion made by Mr. Calder and seconded by Mr. Ford, the Board voted unanimously to grant the requested extension to be heard at the Zoning Board of Appeal meeting to be held on December 17, 2013.

11) Petition Number 13-50

David St. Germain

RE: 36 Frederick Road

Present: David St. Germain, Builder; Ann Marie Redmond, property owner

This is a petition filed by David St. Germain, a contractor acting on behalf of Ann Marie Redmond, owner of the property located at 36 Frederick 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 16 foot by 18 foot three-season room on an existing deck, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 1009, Plot 5, which contains a land area of +/- 3,996 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 held on November 26, 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, members Michael Calder and Michael Ford, and alternate, Richard McDonough.

Evidence

The petitioner, David St. Germain, is a contractor hired by and appearing with the property owner, who would like to construct a 16 foot by 18 foot three-season room over an existing deck that was built with zoning relief

granted pursuant to Petition No. 01-69 and recorded in February 2002. A small open deck will be maintained between the house and the proposed three-season room. The petitioner confirmed that the three-season room will not be heated.

The lot and structures are nonconforming. The Zoning By-law requires a minimum lot size of 15,000 SF, whereas this lot contains only 3,996 SF. The Zoning By-law also requires a minimum lot width of 50 feet, but this lot is only 54.55 feet wide. The lot is also deficient in lot depth, as it is only 77.83 feet deep, while the Zoning By-law requires a minimum lot depth of 100 feet. The Zoning By-law requires a minimum rear yard setback of 30 feet, and the existing house is located 28.9 feet from the rear lot line. The existing deck further encroaches into the rear yard setback, as it is located 9.4 feet from the rear lot line, but this encroachment appears to have been permitted pursuant to the 2001 zoning relief. The proposed three-season room will maintain the deck's rear yard setback, as it will be located 9.4 feet from the rear lot line. Therefore, a finding is required pursuant to G.L. Chapter 40A, Section 6.

As grounds for the finding, the petitioner explained that the proposed three-season room will not create any new nonconformities than the existing deck, and the existing rear yard setback will be maintained. The petitioner submitted a letter signed by twelve abutters and neighbors, all of whom are in favor of the proposal.

The petitioner submitted a plan entitled "Proposed 3-Season Room, 36 Frederick Road, Braintree, MA.," dated October 28, 2013, prepared by CCR Associates of Quincy, MA, along with six sheets detailing the footings and elevations of the proposed three-season room. The petitioner also submitted a copy of the plan submitted to the Zoning Board in 2001 in support of the variance for the proposed deck, recorded at Book 16256, Page 451.

By a vote of 5-0, the Planning Board voted in favor of the requested relief, subject to a condition that the existing pea stone covering the rear and side of this property be maintained and not converted to any impervious surface.

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

Findings

The Board noted that a prior property owner had previously substantiated a hardship owing to the shape, soil and topography of the lot in order to obtain the 2001 variance to construct the deck that encroaches into the rear yard setback. The Board found that the proposed three-season room would maintain the existing rear yard setback and that the proposed alteration of this existing deck into a non-heated three-season room would not be substantially more detrimental to the neighborhood than the existing structure. 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. Ford and seconded by Mr. Calder, it was unanimously voted to grant the requested relief, subject to the plan presented, with the condition that the pea stone covering will remain and will not be replaced by any impervious surface.

12) Petition Number 13-51

Richard T. Gallagher, Jr. and Catherine Sloan-Gallagher
RE: 50 Hickory Road

Present: Richard and Catherine Gallagher, petitioners and property owners

This is a petition filed by Richard T. Gallagher and Catherine Sloan Gallagher, owners of the property located at 50 Hickory 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 12 foot by 17 foot deck, all in accordance with the plans of record. The property is located within a Residential B Zoning District as shown on Assessors' Map 1105, Plot 39, which contains a land area of +/- 7,500 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 held on November 26, 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, members Michael Calder and Richard McDonough, and alternate, Michael Ford.

Evidence

The petitioner, Richard Gallagher, representing himself, explained to the Board that he would like to construct a 12 foot deep by 17 foot wide deck to the rear of his existing house. At its closest point, the deck would be located 14.1 foot from the northerly side lot line and 16.3 feet from the rear lot line. No information was provided as to prior zoning relief for this rear yard encroachment. As the proposed deck will further encroach into the rear yard setback, a variance is required.

The petitioner's lot and existing house are nonconforming. The Zoning By-law requires a minimum lot size of 15,000 SF, whereas this lot contains only 7,500 SF. The Zoning By-law also requires a minimum lot depth of 100 feet, but this lot is only 75 feet deep. The Zoning By-law requires a minimum rear yard setback of 30 feet, and the existing house is located 19.5 feet from the rear lot line. In addition, the Zoning By-law requires a minimum side yard setback of 10 feet, and the existing house is located 6.4 feet from the northerly side lot line.

As grounds for the variance, the petitioner explained that this is a corner lot at the intersection of Holly and Hickory Roads. The house is set back and sits at an angle to Hickory Road. He explained that the lot is deficient as to lot depth, making it difficult to add a deck to the rear of the property without violating the rear yard setback.

The petitioner submitted a plan entitled "Plan Showing Proposed Addition in Braintree, MA.," dated October 25, 2013, prepared by Hoyt Land Surveying of Weymouth, MA.

By a vote of 5-0, the Planning Board voted in favor of the requested relief.

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

Findings

The Board found that the petitioner substantiated a hardship owing to the shape, soil and topography of the lot. Specifically, the Board found that the lot is significantly deficient in lot depth, and given the location of the existing dwelling on the lot, it is virtually impossible for the petitioner to construct a deck anywhere on the property without violating a setback. 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. McDonough, 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. Ford, the Board voted unanimously to accept the meeting minutes of October 22, 2013.

The Board adjourned the meeting at 10:45 pm.