



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

February 25, 2014

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

**ALSO PRESENT:** Eric Erskine, Local Building Inspector  
Peter Morin, Town Solicitor

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

#### **OLD BUSINESS:**

- 1) Petition Number 13-53**  
**Thomas Fitzgerald**  
**RE: 7-11 Independence Avenue**

**Present:** Thomas Fitzgerald, petitioner; Attorney Jack Garland and architect, Arthur Chu

This is a petition filed by Thomas Fitzgerald of 15 Park Street Braintree, MA 02184. The owner of the property is Scott Palmer of 11 Independence Avenue, Braintree, MA 02184. The applicant is seeking relief from the Town of Braintree By-laws under Chapter 135, Sections 135-701, 705 and 809(E). The applicant seeks a permit, variance and/or finding that the proposed alteration will not be more detrimental to the neighborhood. The property is located at 7-11 Independence Avenue, Braintree, MA and is within a General Business District, pursuant to Town Council Order 12-09 as shown on Assessors Plan 2068, Plots 18, 21 and 22, and contains a land area of approximately 26,779 square feet. The structure is located entirely within Braintree. The applicant has permitted a parking area consisting of twenty-five (25) exterior parking spaces to be utilized for the residential use.

#### **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 December 17, 2013 before the Zoning Board of Appeals at 7:00 p.m., at Braintree Town Hall, One JFK Memorial Drive, Braintree, MA. Sitting on this petition was Chairman Steve Karll and members Michael Ford and Richard McDonough. A letter of mutual agreement between the Board and the Applicant was executed to extend the statutory time limits for the holding of a public hearing for sixty (60) days on January 8, 2014. After

appropriate notice was given in accordance with statute the hearing was re-opened on February 25, 2014, before the Zoning Board of Appeal at 7:00 p.m. at Braintree Town Hall One JFK Memorial Drive Braintree, MA.

### **Evidence**

The applicant Mr. Thomas Fitzgerald was present and was also represented by Attorney Jack Garland and architect Arthur Chu. The applicant is planning approximately 77,140 square feet of construction consisting of approximately 58,494 square feet of residential units and 18,646 square feet of internal garage. The building will have a footprint of 18,646 square feet on a 26,777 square foot lot. The applicant explained that the relief requested is from zoning laws dealing with dimensional (namely building height) and density (lot size for multifamily dwellings and lack of open space) regulations.

The applicant requested relief from the height restrictions based on the topography of the site. There is a steep slope on the site. The proposed structure has been reduced in size from its initial 44 units to 36. The residential area consists of three floors and a penthouse. The architect submitted that the garage parking and the single penthouse should not be considered as full stories and for measurement purposes, the building should be considered three stories. The measurement of the height of the building varies from three to five stories due to the topography of the lot and the point on the lot from which the building is being measured. The applicant's architect represented that 50 feet of height is allowed under the applicable zoning laws and the average height of the building is 47 feet. The highest part of the building is 55 feet. In its recommendation, the Planning Board voted 3-1-0 favorably on the relief requested relating to the maximum number of stories and building height.

The applicant further requested relief from Section 135-705, as the proposed lot does not meet the minimum lot size for a multifamily dwelling. The proposed 36 units are approximately eight times more than the permitted density. The applicant bases the necessity for relief from the density restrictions on topography, soil conditions and economic hardship. The site requires environmental remediation and there are substantial municipal tax liens incurred by the owner from Quincy and Braintree on the property. The number of units are necessary to generate revenue adequate to remediate the property and pay the municipalities the taxes they are owed. The Planning Board voted 3-1-0 in favor of granting relief on the minimum lot size for a multi-family development pursuant to 135-705.

The applicant further requested relief from Section 135-705 as it relates to the minimum amount of open space per dwelling unit and minimum land area per two-bedroom unit. The applicant cited the neighboring Independence Manor having a similar ratio of units per acre as (the proposed development has a ratio of 59 units per acre while Independence Manor has 51.44). The applicant restated the topography, soil conditions and economic hardship as the basis for relief, as units of sufficient size are required to generate revenue to remediate the property and pay off debts. The applicant noted that open space is preserved by the proposed construction of 47 underground parking spaces. The applicant also noted that additional parking and open space was under their ownership on land within the City of Quincy. The proposed parking was approved by the City of Quincy but an appeal is currently pending in Quincy. The applicant acknowledged that the land in Quincy cannot be considered by the Board in granting relief. Moreover, the applicant further acknowledged for the record that regardless of whether the Board provided all the relief he requests, his ability to go forward with the development is contingent on his prevailing on the appeal in Land Court of the Quincy approval of his parking plan. The Planning Board voted 3-1-0 against the requested relief relating to open space per dwelling and land area per two bedroom unit.

The final relief requested by the applicant related to the minimum distance between driveways pursuant to 135-809E. The bylaw requires a minimum of 75 feet between driveways while applicant proposes only 32 feet.

The applicant seeks relief from this requirement because of the low volume of traffic that will travel on the street onto which the driveways enter. The Planning Board voted 4-0-0 in favor of granting relief from this requirement.

During the public hearing, eight residents spoke in favor of the applicant's proposal. There were also three pieces of correspondence in favor of the project, two from individuals that also attended the hearing.

No one else spoke in opposition of the petition and the hearing was closed.

### **Findings**

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. The Board noted the topography of the site soil conditions and economic hardship as grounds upon which relief should be granted. The Board concluded that the relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning By-law. In reaching this conclusion, the Board that the lot in question had been in a longstanding condition of blight and that no reasonable person could consider the proposed development more detrimental than the lot's current state. The Board further noted that the applicant is fully aware that the proposed development cannot go forward unless the Quincy approval of his parking and open space plan is upheld by the Land Court.

### **Decision**

On motion made by Mr. Karll and seconded by Mr. McDonough, it was unanimously voted 3-0 to grant the requested relief.

### **NEW BUSINESS:**

**2) Petition Number 14-6**  
**Peter Karoul**  
**RE: 27 Marcia Road**

Present: Peter Karoul, petitioner

This is a petition filed by Peter Karoul of 27 Marcia Road, Braintree, MA 02184 regarding property he owns at 27 Marcia Road, Braintree, MA 02184, in which the applicant is seeking relief from the Town of Braintree By-laws under Chapter 135, Sections 135-402, 403, 701 to alter a pre-existing non-conforming ranch style dwelling located on a non-conforming lot. The applicant seeks a permit, variance and/or finding that the proposed alteration will not be detrimental to the neighborhood, will be fully contained within the existing non-conforming footprint, and will not create any new violations. The property is located within the 100 Year Floodplain NGVD 40 or NAVD 39 in a residential B District Zone as shown on the Assessors Map 2037, plot 30 and contains a land area of 8,130 square feet.

### **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 February 25, 2014 before the Zoning Board of Appeals at 7:00 pm at Braintree Town Hall, One J.F.K. Memorial Drive, Braintree, MA. Sitting on this petition was Chairman, Steve Karll, and members, Michael Ford and Richard McDonough.

### **Evidence**

Peter Karoul, the property owner presented an architectural plan/ elevation at the meeting for the Planning Board to review and determine the visual impact on the neighborhood and to understand the proposed roofline and style of the dwelling. The present undersized lot consists of 8,130 square feet of land. The petitioner is seeking to expand the size of the structure to 2,600 square feet. The addition will consist of a (25.9 ft. by 51.4 ft.) second floor addition that includes a 1.5 foot (18 inch) front overhang, over the existing ranch style dwelling. The proposed addition meets or exceeds all required setbacks (The Zoning By-law Section 135-701 (7) Notes allows 18 inches of overhang into the required front yard setback).

By a vote of 4-0-0, the Planning Board voted to recommend favorable action on the requested relief.

### **Findings**

The Board found that the proposed addition appears to be in common with other homes in the neighborhood and will not be substantially more detrimental to the neighborhood than the existing ranch dwelling. Although, the entire property is located within the 100 Year Floodplain, the filing of a special permit with the Planning Board is not required as there is no new construction on the ground, as goes the same for the Conservation Commission. Special precaution shall be taken during construction as to not store construction materials and debris with the lot on the ground that would displace flood storage. However, all regulations in the Building Code that pertains to Floodplain and "Substantial Improvement" shall be evaluated to determine applicability.

### **Decision**

On a motion made by Mr. Karll and duly seconded by Mr. McDonough, it was unanimously voted to provide the requested relief.

### **3) Petition Number 14-7**

**Rachael St. Germain, View Point Sign and Awning on behalf of Burlington Coat Factory**

**RE: 695-727 Granite Street**

Present: Attorney Frank Marinelli representing the petitioner

This is a petition filed by Rachael St. Germain, View Point Sign and Awning of 35 Lyman Street Northboro on behalf of Burlington Coat Factory. The owner of the property is Granite Plaza LLC, 400 Franklin Street, Braintree, MA 02184. The applicant is seeking relief from the Town of Braintree By-laws under Chapter 135, Sections 135--403, 407, 904.2(A)(5)(a)(b)(c) to replace an existing sign on the building with a similarly-sized new trademark sign. The applicant seeks a permit, variance and/or finding that the proposed alteration will not be more detrimental to the neighborhood. The property is located at 695-727 Granite Street, Braintree, MA and is within a Highway Business District Watershed Zone as shown on Assessors Map 2048, Plot 32, and contains a land area of approximately 571,943 square feet.

### **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 February 25, 2014 before the Zoning Board of Appeals at 7:00 p.m., at Braintree Town Hall, One JFK Memorial Drive, Braintree, MA. Sitting on this petition was Chairman Steve Karll and members Michael Ford and Richard McDonough.

### **Evidence**

The property owner, represented by Attorney Frank Marinelli, explained that the relief requested is consistent with relief granted by the Board to a neighboring business, Planet Fitness in Decision 13-49. The only change in the lettering of the sign is that the "B" in "Burlington" on the sign becomes heart shaped. The new sign is twenty-two square feet smaller than the current sign (from 266.4 square feet to 244 square feet). The request for relief from the Zoning Bylaws is based on the irregular shape of the plaza and a substantial outbuilding located at front northeasterly section of the site. The property is set back 480 feet from Granite Street.

In its recommendation, the Planning Board voted 4-0-0 unfavorably on the relief requested citing a ground sign clearly visible from the roadway, and their belief the size of the sign could be further reduced.

No one else spoke in favor or opposition of the petition and the hearing was closed.

### **Findings**

The Board found that the petitioner had demonstrated the need for relief from the Zoning By-law. Specifically, the Board noted the smaller size of the new sign, the setback of the building from the road, the irregular size of the lot and the outbuilding blocking the view of the Burlington Coat building. The Board concluded that the relief could be granted without detriment to the public good and without nullifying or substantially derogating from the intent of the Zoning By-law.

### **Decision**

On motion made by Mr. Karll and seconded by Mr. McDonough, it was unanimously voted 3-0 to grant the requested relief.

### **APPROVAL OF MINUTES:**

On a motion made by Mr. Karll and seconded by Mr. Ford, the Board voted unanimously to accept the meeting minutes of January 28, 2014.

The Board adjourned the meeting at 8:15pm.