



Joseph. C. Sullivan  
Mayor

## Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive  
Braintree, MA  
www.braintreema.gov

### Zoning Board of Appeals (ZBA) Meeting Notes March 22, 2016

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

**ALSO PRESENT:** Carolyn Murray, Interim Town Solicitor  
Jeremy Rosenberger, Zoning Administrator

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

#### **OLD BUSINESS:**

- 1) Petition Number: 14-33  
Petitioner: Bonnie Tan  
RE: 639 Washington Street**

Bonnie Tan, 16 Chesterfield Street #2, Readville, MA 02136, for relief from Bylaw requirements under Chapter 135, Sections 403, 407, 701 and 705 to remove existing single family building to erect a six (6) unit Townhouse with lower level garage. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 639 Washington Street, Braintree, MA 02184 and is within a Residential C District Zone, as shown on Assessors Map 2031, Plot 8, and contains a land area of +/-15,846 sq. ft.

#### **Notice**

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to M.G.L. Chapter 40A, mailed to all parties in interest, a hearing by the Zoning Board of Appeals was scheduled for November 25, 2014 at Town Hall, One JFK Memorial Drive, Braintree, MA. The hearing was continued by mutual agreement to February 3, 2015, continued by mutual agreement to March 24, 2015, continued by mutual agreement to April 28, 2015, continued by mutual agreement to May 26, 2015, continued by

mutual agreement to June 23, 2015, continued by mutual agreement to September 28, 2015, continued by mutual agreement to October 27, 2015, continued by mutual agreement to November 24, 2015, continued by mutual agreement to December 22, 2015, continued by mutual agreement to January 26, 2016, continued by mutual agreement to February 23, 2016, and continued by mutual agreement to March 22, 2016. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Richard McDonough, Members; and Michael Ford, Alternate.

### **Evidence**

At the opening of the public hearing on April 28, 2015, Attorney William Phelan, representing the petitioner, explained the petitioner is seeking to demolish an existing single family dwelling and construct a seven-unit, approximately 13,293 gross sq. ft. townhouse-style building at 639 Washington Street. The proposed project would provide 16 off-street parking spaces. Attorney Phelan discussed the proposal was reduced from an initial eight units after discussions with the Planning Board. The Planning Board also requested the project seek to conform more closely to the required setbacks, provide guest parking and ultimately reduce the number of requested variances. Mr. Phelan said in response to the Planning Board's comments, the updated plans reflected increased side yard setbacks and provide two guest parking spaces. Attorney Phelan also noted that the existing property meets the definition of a split lot, as portions of the lot reside in Residence B and Residence C zoning district. After discussions with Town staff, it was determined the lot met the split lot provision pursuant to Section 135-306 and was therefore subject to the least restrictive Residence C zoning district, which allows Multi-Family dwellings through a Special Permit issued by the Planning Board.

After discussion, Chairman Karll requested the applicant agree to continue the hearing to May 26, 2015 due to density concerns of the proposed project. Mr. Phelan agreed to look into reducing the number of units for the next hearing date.

At the continued public hearing on June 23, 2015, Attorney Phelan presented updated plans depicting six (6) units totaling 11,405 gross sq. ft. with eighteen (18) off-street parking spaces. The updated plans provided three (3), three bedroom units and three (3), two bedroom units, containing 8,269 sq. ft. of living space.

After discussion, Chairman Karll requested the applicant agree to continue the hearing to September 28, 2015 for further review of the modifications to the proposed project. Mr. Phelan agreed to continue to the next hearing date.

At the continued public hearing on November 24, 2015, Bonnie Tan presented updated plans depicting six (6) units totaling 11,405 gross sq. ft. with twelve (12) off-street parking spaces. The updated plans provided two (3), three bedroom units and four (3), two bedroom units, containing 8,269 sq. ft. of living space. The updated plans also depicted the proposed project meeting the underlying minimum open space requirements of Residence C zoning district pursuant to Section 135-701.

After discussion, Chairman Karll requested the applicant agree to continue the hearing to December 22, 2015 to explore the feasibility of further reducing the number of proposed units. Ms. Tan agreed to look into reducing the number of units for the next hearing date.

At the continued public hearing on March 22, 2016, Attorney Phelan presented updated plans depicting six (6) units totaling 11,405 gross sq. ft. with twelve (12) off-street parking spaces.

The updated plans provided six (6), two bedroom units, containing 8,269 sq. ft. of living space. Mr. Phelan advised the ZBA a further reduction in the number of units would make the project economically infeasible. He also reiterated the applicant had reduced the total of number of units twice based on requests from both the Planning Board and ZBA. In addition, Attorney Phelan affirmed the project meets both the off-street parking requirements and underlying open space requirements.

Based on the plans reviewed at the March 22, 2016 public hearing, the petitioner's existing lot is nonconforming pursuant to the Residence C dimensional and density requirements of Section 135-701, as it contains only 15,846 sq. ft., where 43,560 sq. ft. is required, provides only 113.02 feet of lot width, where 200 feet is required, and provides only 153.7 feet of lot depth, where 200 feet is required. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

The applicant is requesting variances for relief from Section 135-701. A variance is required for relief from the front yard setback requirements due to encroachment of the building into the front yard area. The Zoning Bylaw requires a front yard setback of 50 feet, but the proposed building will be 20 feet from the front yard lot line. Furthermore, a variance is required for relief from the side yard setback requirements due to encroachment of the building into the side yard area. The Zoning Bylaw requires a side yard setback of 30 feet, but the proposed building will be 20.2 feet from the side yard lot line.

The applicant is also requesting variances for relief from Section 135-705, as the proposed lot does not meet the minimum lot size for a multifamily dwelling. Pursuant to Section 135-705, the Zoning Bylaw requires a minimum lot size of 43,560 sq. ft. However, the proposed project would only provide a lot size of 15,846 sq. ft.

In addition, the proposed provided open space does not meeting the minimum open space per dwelling unit requirements. Pursuant to Section 135-705, the Zoning Bylaw requires a minimum open space of 2,000 per dwelling unit, resulting in a need of 12,000 sq. ft. However, the proposed project would only provide 5,606 sq. ft. of open space.

Furthermore, the proposed project exceeds the number of dwelling units allowed on the subject site. The proposed project would provide six (6), two-bedroom dwelling units. Pursuant to Section 135-705, the Zoning Bylaw would allow a total of 2.64 two-bedroom dwelling units on the subject site. The Zoning Bylaw requires 6,000 sq. ft. of lot area per two-bedroom dwelling unit. Thus, the proposed project would need 36,000 sq. ft. of lot area to meet the zoning by-law requirement. However, the proposed project would only provide 15,846 sq. ft.

As grounds for the requested variances, the petitioner noted the irregular shape of the lot and a rear sloping topography of approximately 8% grade, limit the placement of the building to the proposed location. Secondly, the design of the proposed building will be in harmony with the existing neighborhood and will greatly improve the surrounding area and increase property values. Attorney Phelan mentioned there were also a number of multi-family buildings within close proximity. Discussing further, he noted that many of the existing lot's in the immediate area do not meet the strict dimensional requirements of the Residence C zoning district. In addition, the project could be qualified as Transit-Oriented Development (TOD), as it would be within a short walking distance to the MBTA Red Line. Lastly, Attorney Phelan highlighted the proposed project would help to meet the existing demand in the Town of Braintree for high-quality, multi-family housing that is TOD in nature.

The applicant presented the plan entitled "Plot Plan, Proposed 7-Unit Option 2, 639 Washington Street, Land in Braintree, Massachusetts", dated February 28, 2015 and prepared by Claudio Sala, PLS of Quincy, MA. The applicant also presented site plans and architectural renderings entitled "Site Plan" labeled as A0.1, "Lower Level Floor Plan" labeled as 1/A1.1, "1<sup>st</sup> Floor Plan" labeled as 2/A1.1, "2<sup>nd</sup> Floor Plan" labeled as 1/A1.2, originally dated November 31, 2013 and revised on November 10, 2015, and prepared by Barnett Berliner, AIA of Brookline, MA.

The Planning Board submitted an unfavorable recommendation. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the existing lot is pre-existing nonconforming in terms of lot size, lot width and lot depth, as noted above. As such, the continued use of the non-conforming lot will not be more detrimental to the neighborhood. In addition, the Board found the irregular shape of the lot and sloping rear yard area presents a hardship with regard to the new proposed building, significantly limiting its placement. The Board also found the project would meet the existing demand in the Town of Braintree for high-quality multi-family housing that is Transit-Oriented Development. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws as the project provides an adequate balance of meeting the off-street parking requirements and underlying Residence C open space requirements.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and variances from front yard setback requirement, side yard setback requirement, lot size requirement for a multi-family dwelling, minimum open space per unit requirement for a multi-family dwelling, and minimum lot area requirement for a multi-family dwelling, pursuant to Bylaw Section 135-407.

- 2) Petition Number: 15-10**  
**Petitioner: Thayer Academy & Jay Hanflig**  
**RE: 60-80 Campanelli Drive**

Thayer Academy has requested an extension of the petition, case number 15-10.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on April 26, 2016.

- 3) Petition Number: 15-61**  
**Petitioner: Town of Braintree & BSC Partners LLC**  
**RE128 & 0 Town Street**

BSC Partners LLC has requested an extension of the petition, case number 15-61.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on April 26, 2016.

## **NEW BUSINESS:**

- 1) **Petition No. 16-03**  
**Petitioner: Ylli Kono and Enilda Sulce**  
**RE: 4 Alfred Road, Braintree, MA**

Present: Ylli Kono and Enilda Sulce, Petitioners

This is a petition filed by Ylli Kono and Enilda Sulce, 4 Alfred Road, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407 and 701 to construct a 16' x 32' in-ground pool within the front yard setback area. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located at 4 Alfred Road, Braintree, MA 02184 and is within a Residential B District Zone, as shown on Assessors Map 2087, Plot 25, and contains a land area of +/- 8,714 sq. ft.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on March 22, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

### **Evidence**

Enilda Sulce and Ylli Kono, the owners, explained they were before the board seeking relief for proposing a 16 foot by 32 foot swimming pool in the front yard area of Joseph Street, on their corner lot. The petitioner's lot is nonconforming, as it contains only 8,714 sq. ft. where 15,000 sq. ft. is required in the Residence B District. Furthermore, the property offers only 80 feet of lot depth, where 100 feet is required. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

In addition, a variance is required for relief from the front yard setback requirement. Pursuant to Section 135-707, both yards that front Alfred Road and Joseph Street are considered front yard areas. The Zoning Bylaw requires a front yard setback of 20 feet, but the proposed pool will be 12 feet from the front lot line on Joseph Street.

As grounds for the variance, the petitioner noted the siting of the existing dwelling on the corner lot presents a hardship with regard to the placement of a pool on the property. The applicants noted that their side yard is larger than their rear yard, due to the narrow depth of the lot. Secondly, a six foot white fence will be constructed to properly screen the pool from view.

The applicant presented the plan entitled "Plot of Land in Braintree, Massachusetts, 4 Alfred Road" dated January 4, 2016 and prepared by C.S. Kelley Land Surveyors of Pembroke, MA.

The Planning Board submitted a favorable recommendation with the condition the proposed fence provide adequate traffic visibility due to the corner lot.

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

## Findings

The Board found that the existing corner lot is non-conforming in terms of lot size and lot depth. In addition, the Board found the siting of the existing dwelling on the corner lot and the narrow depth of the lot presents a hardship with regard to the addition of the in-ground swimming pool, significantly limiting its placement. Furthermore, the Board found the proposed in-ground swimming pool will be properly screened by a perimeter fence. Lastly, the Board found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, and will not be more detrimental to the neighborhood.

## Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, and variance from the front yard setback requirement, pursuant to Bylaw Section 135-407.

- 2) Petition No. 16-05**  
**Petitioner: Dan O'Sullivan**  
**RE: 1317 Liberty Street, Braintree, MA**

Dan O'Sullivan has requested an extension of the petition, case number 16-05.

On a motion made and seconded, the Board unanimously voted to continue the petition at the Zoning Board of Appeal meeting on April 26, 2016.

- 3) Petition No. 16-06**  
**Petitioner: Susan Siegler**  
**RE: 40 McCue Drive, Braintree, MA**

Present: Susan Siegler, Petitioner

Susan Siegler, 40 McCue Drive, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403, 407, 609 and 701 to construct a bedroom (12'x18') over an existing garage. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 40 McCue Drive, Braintree, MA 02184 and is within a Watershed B District Zone, as shown on Assessors Map 1069, Plot 72, and contains a land area of +/- 15,528 sq. ft.

## Notice

Pursuant to notice duly published in newspaper in general circulation and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on March 22, 2016 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Calder and Michael Ford, Members; and Richard McDonough, Alternate.

## Evidence

The petitioner, Susan Siegler, explained that she is seeking permission to construct a bedroom, measuring 12 feet by 18 feet over an existing garage. The structure currently encroaches into

the side yard setback, as it is located 2.5 feet from the side yard setback. The proposed addition would be within the existing footprint. The petitioner's lot is nonconforming, as it contains only 15,528 sq. ft., where 43,560 sq. ft. is required, and offers only 2.5 feet of side yard setback, where 10 feet is required. Accordingly, a finding is required pursuant to M.G.L. Chapter 40A, Section 6.

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, neither previous ZBA decision was ever recorded at the Registry of Deeds. However a building permit was issued for the conversion in 1991. Lastly, the petitioner sought relief from the Board in 2013 for the currently proposed 12' x 18' addition over the existing garage. The Board granted the relief. However, the decision was not exercised within one year. Therefore, the petitioner seeks a finding for the addition to the existing non-conforming structure.

As grounds for the requested finding, 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. In addition, the petitioner highlighted the addition will be within the existing footprint and not create any new zoning nonconformities.

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.

The Planning Board submitted a favorable recommendation. No one else spoke in favor of or opposition to the petition.

### **Findings**

The Board found that the existing corner lot is pre-existing non-conforming in terms of lot size. The Board also found that the existing dwelling is pre-existing non-conforming in terms of the side yard setback. In addition, the Board 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 proposed addition would not be more detrimental to community than the existing structure.

### **Decision**

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested finding, pursuant to Bylaw Section 135-403, in accordance with the plans submitted.

### **APPROVAL OF MINUTES:**

On a motion made and seconded, the Board voted 3-0 to accept the meeting minutes of February 10 & 23, 2015.

The Board adjourned the meeting at 8:00 pm.