



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 Minutes March 25, 2019

**IN ATTENDANCE:** Stephen Karll, Chair  
Michael Ford, Member  
Richard McDonough, Member  
Stephen Sciascia, Associate  
Gary Walker, Associate

**ALSO PRESENT:** Jeremy Rosenberger, Zoning Administrator

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, Section 11, 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 25, 2019 at 7 p.m. Chairman Stephen Karll called the meeting to order at 7:00pm.

#### **OLD BUSINESS:**

- 1) Petition Number: 18-17  
Petitioner: Brian & Laura McGourty  
RE: 460R Pond Street**

The petitioner requested to Withdraw with Prejudice.

On a motion made and seconded, the Board voted 5-0 to allow the petitioner to Withdraw with Prejudice.

- 2) Petition Number: 18-38  
Petitioner: Offices at 285 Washington Street Braintree LLC  
RE: 285-287 Washington Street**

The petitioner requested a continuance to April 22, 2019.

On a motion made and seconded, the Board voted 5-0 to continue the public hearing to

April 22, 2019.

**NEW BUSINESS:**

- 1) Petition Number: 19-03  
Petitioner: Kevin and Lauren Sweeney  
RE: 242 Hayward Street & Vacant Land**

The Chairman read into record the legal advertisement: Kevin and Lauren Sweeney, 15 Grove Circle, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-306, 403, 407, 701 and 705 for 242 Hayward Street (Plot 145B) and adjacent vacant land (Plot 145C), which are combined for zoning purposes due to common ownership and can be separate lots with zoning relief. Plot 145B (#242 Hayward Street) would be 12,937 sq. ft. and maintain an existing three-family dwelling. Plot 145C (Vacant Land) would be 10,502 sq. ft. and provide a new two-family dwelling with attached two car garage (+/- 2,783 sq. ft. building footprint). The existing and proposed lots are deficient with regard to lot size, frontage, width and depth. The existing and proposed structures are deficient with regard to front and side yard setbacks, number of units allowed and open space per dwelling unit. The applicant seeks a permit, variance and/or finding that the proposed project is not substantially more detrimental to the neighborhood. The properties are located at 242 Hayward Street and Plot 145C, Braintree, MA 02184 and are within a Residence B/Residence C Zoning District, as shown on Assessors Map 3050, Plot 145B & 145C, and contains a combined land area of +/- 23,439 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Steven Sciascia, Alternate.

Attorney Michael Modestino, on behalf of the petitioners Kevin and Laura Sweeney, discussed the petitioners purchased both 242 Hayward Street ("Lot B") and the adjacent vacant land/lot ("Lot C") in 2018. The petitioners have rehabilitated the existing three-family dwelling at 242 Hayward Street, which has been an improvement to the neighborhood. Attorney Modestino stated the petitioners would like to build an attractive two-family dwelling on the vacant lot (Lot C). The petitioners intend to keep ownership of the property once constructed, and use the rental income to support the property, and to provide their family additional income.

Attorney Modestino discussed a 1923 Plan on file with the Registry of Deeds depicts a proposed subdivision establishing Lot B and Lot C. The subdivision of the subject lots was approved on June 7, 1927 according to Registry of Deeds records. Construction of a single or multi-family prior to the enactment of the zoning bylaw in 1940 was allowed on the subject properties. A three-family, which still exists today, was constructed on Lot B in 1916. Mr. Modestino further stated, it is apparent from the deed history of Lot C, that it was always intended to be a separate buildable lot from Lot B and suitable for a single family or two (2) family in a Residence C Zoning District. Nothing had ever been constructed on Lot C, and has always been undeveloped; not even a shed or garage was ever constructed. Furthermore, the construction of the shed on Lot B, perpendicular to the lot line of Lot C, demonstrates that nothing was intended to be built over the lot line of Lot C, so it could be developed or built upon at some point. Lastly, Attorney Modestino described that the immediate neighborhood has a number of multi-family properties, ranging anywhere from two (2) to six (6) family structures. In addition, there is a real need for this type of rental property in this area.

With regard to zoning relief, Mr. Modestino stated both subject lots B & C have a long history of being under common ownership by a variety of owners. The properties may have enjoyed grandfathering status prior to being zoned Residence C, however the common ownership by both the former owners and now petitioners, surrendered any potential grandfathering provisions. As such, the properties are considered merged for zoning purposes to reduce zoning nonconformities, as both lots B & C by themselves do not meet density and dimensional regulations pursuant to Braintree Zoning Bylaw Section 135-701. However, Mr. Modestino noted the properties are “split-lots”, namely the properties are bisected by both a Residence B and Residence C Zoning District. Both properties existed prior to the enactment of zoning, and therefore can be either subject to Residence B or Residence C Zoning Districts. Mr. Modestino detailed the petitioners are seeking relief from the provisions for the Residence C Zoning District, which allows multi-family dwellings by right. As such, Mr. Modestino explained, the petitioners would need relief from several dimensional and density regulations in regards to the vacant lot. In regards to Lot B, the petitioners request relief from several dimensional and density zoning requirements for the pre-existing non-conforming three-family dwelling and nonconforming lot.

Mr. Ford explained the Board has continually denied the creation of undersized lots. However, Mr. Ford noted Attorney Modestino had dutifully portrayed that the subject properties have always been separate properties, taxed separately, and to be developed separately. Mr. McDonough concurred and also added that Attorney Modestino had demonstrated that a hardship exists with regard the shape of the lots, sloping topography and existence of ledge on the subject properties. Mr. Sciascia stated his concern with regard to the narrow width of Lot C, and that is was much narrower than any surrounding properties. Chairman Karll expressed that the proposed two-family dwelling is well designed and comparable in size relative to the existing dwellings along Hayward Street.

With regard to 242 Hayward Street, the following variances are required:

- **Minimum Lot Area (Section 135-701):** The existing lot area is 23,439 sq. ft. The proposed lot area of 12,937 sq. ft. would not meet the minimum lot area requirement of 43,560 sq. ft. for the underlying Residence C Zoning District.
- **Minimum Lot Width (Section 135-701):** The existing lot width is 120.8 ft. The proposed lot width of 67.5 ft. would not meet the minimum lot width requirement of 200 ft. for the underlying Residence C Zoning District.
- **Minimum Lot Frontage (Section 135-701):** The existing lot frontage is 134.2 ft. The proposed lot frontage of 81.15 ft. would not meet the minimum lot frontage requirement of 100 ft. for the underlying Residence C Zoning District.
- **Minimum Lot Depth (Section 135-701):** The existing lot depth is 186.75 ft. The proposed lot depth of 186.75 ft. would not meet the minimum lot width requirement of 200 ft. for the underlying Residence C Zoning District.
- **Minimum Side Yard Setback (Section 135-701):** The existing building side yard setbacks (L/R) are 18.6 ft. and 61.1 ft. The proposed side yard setbacks of 18.6 and 8.1 ft. would not meet the minimum side yard setback requirement of 30 ft. for the underlying Residence C Zoning District.
- **Minimum Lot Area (Section 135-705):** The proposed lot area of 12,937 sq. ft. would not meet the minimum lot area requirement of 43,560 sq. ft.
- **Minimum Lot Frontage (Section 135-705):** The proposed lot frontage of 81.15 ft. would not meet the minimum lot frontage requirement of 100 ft.

- **Number of Dwelling Units (Section 135-705):** The existing three (3) residential units do not meet the requirements for number of units allowed on the 12,937 sq. ft. lot.
- **Open Space (135-705):** The proposed 5,058.37 sq. ft. of open space would not meet the minimum requirement of 6,000 sq. ft. based on the three (3) residential units.

As a far as the need for variances on the Vacant Land, the following variances are required:

- **Minimum Lot Area:** The proposed lot area of 10,502 sq. ft. would not meet the minimum lot area requirement of 43,560 sq. ft. for the underlying Residence C Zoning District.
- **Minimum Lot Width:** The proposed lot width of 53 ft. would not meet the minimum lot width requirement of 200 ft. for the underlying Residence C Zoning District.
- **Minimum Lot Frontage:** The proposed lot frontage of 53.06 ft. would not meet the minimum lot frontage requirement of 100 ft. for the underlying Residence C Zoning District.
- **Minimum Lot Depth:** The proposed lot depth of 195.19 ft. would not meet the minimum lot width requirement of 200 ft. for the underlying Residence C Zoning District.
- **Minimum Side Yard Setback:** The proposed side yard setbacks of 10 ft. and 10 ft. would not meet the minimum side yard setback requirement of 30 ft. for the underlying Residence C Zoning District.

As grounds for the variances, Attorney Modestino highlighted the existing vacant lot is more narrow and deep than surrounding properties. In addition, the property slopes upwards right to left. The petitioner also found, after digging, evidence of ledge at the surface level on the subject properties. Also, Mr. Modestino stated that no properties in the area meet the minimum requirements of the Residence C Zoning District. In addition, Attorney Modestino pointed out the approval of a subdivision in 1927 creating the current subject lots, prior to the enactment of zoning, signifies the vacant lot was intended to be developed. Furthermore, the proposed project will be not negatively impact the neighborhood as the development proposed is similar to in both size and use as surrounding neighborhood properties. Lastly, the new two-family dwelling will provide new housing opportunities and tax revenue.

The petitioners presented a plot plan entitled "Site Plan at 242 & 244 Hayward Street in Braintree, Mass.", dated February 6, 2019 and prepared by Neponset Valley Survey Assoc., Inc. of Quincy, MA. The petitioners also presented architectural elevations and floor plans entitled "Exterior Elevations", Drawing No. A-2 and "Proposed Floor Plans", Drawing No. A-1, dated December 13, 2018 and prepared by AP Design Build, of Bridgewater, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of continuance. DeGarry Simmons, of 246 Hayward Street, discussed his support of the proposed project. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found the petitioner had presented a unique hardship with respect to the sloping topography and ledge located at both subject lots. As a result, the unique topography and soil conditions have created a significant hardship with regard to developing the lot for a two

family dwelling. The Board further found the petitioner had demonstrated the proposed new two-family dwelling would not be more detrimental to the neighborhood as the proposed dwelling would be comparable in design and size relative to the immediate neighborhood. Furthermore, the Board found Lot C was intended to be a developable lot based on the 1927 subdivision. Lastly, the Board found there was no opposition to the proposed relief requested. Therefore, 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.

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested findings, pursuant to Bylaw Section 135-403, variances for 242 Hayward Street (Lot B) and the Vacant Land (Lot C) previously discussed, pursuant to Bylaw Section 135-407, in accordance with the plans submitted, and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Submission of a certified foundation plan to the Planning & Community Development Department prior to vertical construction; and
- 3.) Submission of an as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

**2) Petition Number: 19-04  
Petitioner: Robert McCarthy  
RE: 22 Amherst Road**

The Chairman read into record the legal advertisement: Robert G. McCarthy, 57 Susan Road, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to demolish existing two (2) story, single family dwelling (+/- 1,264 sq. ft. building footprint) at 22 Amherst Road and construct a new, two (2) story single family dwelling (+/- 1,968 sq. ft. building footprint); property is pre-existing nonconforming with regard to lot area and width. The applicant seeks a permit, variance and/or finding that the proposed project is not substantially more detrimental to the neighborhood. The property is located at 22 Amherst Road, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 1098, Plot 33, and contains a land area of +/- 8,103 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Gary Walker, Alternate.

The initial public hearing was held and continued to April 22, 2019 to allow for more time for the petitioner to revise plans due to the Board's concern with the size of the proposed new dwelling.

On a motion made and seconded, the Board voted 3-0 to continue the public hearing to April 22, 2019.

**3) Petition Number: 19-05  
Petitioner: Liberty Realty Development, Inc. (Robert Gabriel)  
RE: 62 Nicholas Road**

The Chairman read into record the legal advertisement: Liberty Realty Development, Inc. (Robert Gabriel), 20 Christina Drive, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to construct a new, two (2) story single family dwelling (+/- 1,468 sq. ft. building footprint) at 62 Nicholas Road; property is pre-existing

nonconforming with regard to lot area and width. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at 62 Nicholas Road, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2087, Plot 54, and contains a land area of +/- 8,400

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Stephen Sciascia; and Gary Walker, Alternate.

The petitioner, Bob Gabriel of Liberty Realty Development, Inc., discussed he is seeking construct a new two story, colonial style, single family dwelling. Mr. Gabriel explained the subject property's dwelling (former) was extensively damaged by a fire in 2018. As a result, the insurance company raised the damaged dwelling and removed the structure's slab foundation. Therefore, the property is vacant land. Mr. Gabriel explained the new dwelling would be two-stories in height with an attached single car garage and a 12 ft. x 12 ft. rear deck. The proposed +/- 1,468 sq. ft. building footprint is similar in size as compared to the former dwelling. Furthermore, the proposed new dwelling would be similar in size as compared to the immediate neighborhood. Lastly, Mr. Gabriel stated he would be willing to reduce the roof pitch from an 8 to 6 roof pitch to reduce the height of the dwelling.

Mr. Ford stated the proposed dwelling was scaled appropriately for the lot and neighborhood. Mr. Sciascia added he felt the new dwelling was scaled appropriately and is consistent with prior Board approvals.

The petitioner's existing lot is nonconforming, as it provides 8,407 sq. ft., where 15,000 sq. ft. is required and provides 80 ft. of lot width where 100 ft. is required. The proposed new dwelling will comply with the setback, height and coverage requirements, but intensify the nonconforming lot area and width, due to the larger dwelling. Accordingly, a finding is required pursuant to G.L. Chapter 40A, Section 6.

The petitioner presented a plot plan entitled "Certified Plot Plan, 62 Nicholas Road, Assessor's Map 2087 Lot 54, Braintree, Massachusetts", dated February 8, 2019 and prepared by Merrill Engineers and Land Surveyors of Plymouth, MA. The petitioner also presented floor plans and elevations entitled, "New House Construction, 62 Nicholas Road, Braintree, MA", Sheet No. A-0, A-1, A-2, S-1, S-2 and S-3, dated March 7, 2019, prepared by Walter A. McKinnon Associates, Inc. of Weymouth, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of a continuance. Linda Forsyth of 89 Joseph Road, stated she wanted to make sure the proposed dwelling would be scaled appropriately to the lot. After reviewing the project plans, Ms. Forsyth expressed her support for the project. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the existing lot is pre-existing nonconforming in terms of lot area and width. The Board found that the proposed new dwelling would not create any new zoning nonconformity, but in fact conform to the setbacks, height and coverages. The Board also found that the proposed new dwelling will be appropriately designed and similar in size as compared to the immediate neighborhood. Furthermore, the Board found there was no opposition to the proposed project. Lastly, the Board found the proposed project will not be substantially more detrimental to the neighborhood than the existing nonconforming structure.

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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Roof pitch to be reduced to 6%;
- 3.) Submission of a certified foundation plan to the Planning & Community Development Department prior to vertical construction; and
- 4.) Submission of an as-built plan to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

**4) Petition Number: 19-06  
Petitioner: Jay Blazo  
RE: 115 Messina Drive**

The Chairman read into record the legal advertisement: Boston Air Systems c/o Jay Blazo, 115 Messina Drive, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-407, 609 and 701 to modify ZBA Decision No. 18-41 to allow for an increase in building coverage from 32.6% to 33.2% due to an increase in size of the rear warehouse addition. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at 115 Messina Drive, Braintree, MA 02184 and is within a Watershed Commercial Zoning District, as shown on Assessors Map 1059, Plot 5L, and contains a land area of +/- 53,760 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Richard McDonough and Gary Walker, Members; and Michael Ford, Alternate.

Michael Joyce of Joyce Consulting Group, on behalf of the petitioner, discussed that the petitioner received Board approval on October 22, 2018 for zoning relief to construct a second story office addition and a rear, one-story warehouse building addition. The approval granted variances for intensification of the pre-existing nonconforming 29.8 ft. front yard setback (35 ft. required) and an increase in building coverage from 29.5% to 32.6% (25% maximum allowed). The Board also granted a finding for the pre-existing 9.9 ft. left side yard lot line deficiency (20 ft. required) and a decrease in lot coverage from 91% to 86.8% (60% maximum allowed). Mr. Joyce noted the original offset warehouse addition was proposed to be 1,380 sq. ft. Due to the Zoning Administrators recommendation to align the proposed warehouse with the existing building, the warehouse was reconfigured and increased in size to 1,843 sq. ft. However, the revisions were made on the day of the October 22, 2018 and the building coverage was not updated to reflect the increased size of the warehouse addition. The approved plans presented and approved by the Board stated 32.6% building coverage as part of the relocation/increased size of the rear addition. The building coverage should have been updated to state 33.9% due to the increase in size of the rear addition. Lastly, Mr. Joyce noted that due to changes by the Planning Board to increase the amount of landscaping, the lot coverage has actually improved from 86.8% to 84.6% as compared to the approved plans.

A finding is required, as the petitioner is seeking to modify Decision No. 18-43, which granted a finding to reduce lot coverage to 86.8%. As the petitioner has been working with the Planning Board, the plans have been updated to provide more landscaped areas. As such, the lot coverage has been reduced further to 84.6%, where the maximum lot coverage requirement is 60% in a Watershed C Zoning District. Therefore, a finding is required pursuant to G.L. Chapter 40A, Section 6.

A variance is required, as the petitioner is seeking to modify Decision No. 18-43, which granted a variance to increase building coverage to 32.6%. The actual building coverage should have been 33.9% as the rear addition increased from 1,380 sq. ft. to 1,843 sq. ft. The building coverage requirement is 25% in a Watershed C Zoning District, and therefore a variance is required to increase the building coverage pursuant to Braintree Zoning Bylaw Section 135-407.

As grounds for the modification/relief, Mr. Joyce stated that the property is unique in nature due to the irregular shape; the lot is trapezoidal in shape. In addition, Mr. Joyce stated the deficiencies are pre-existing nonconforming and to make it conforming would be a substantial financial hardship. Furthermore, he stated the proposed site improvements will improve the pre-existing nonconforming lot coverage. Lastly, the petitioner has noted the site improvements will allow the business to grow.

The petitioner presented a proposed site plans entitled "Proposed Site Plan", "Proposed Detail Sheet", and "Proposed Landscape Sheet", revised date January 15, 2019, and prepared by Joyce Consulting Group of Braintree, MA. The petitioner also presented elevation plans, entitled "Second Floor Addition", sheets 1 thru 4, dated June 9, 2018, and prepared by Craven Architectural Design of Braintree, MA. Lastly, the petitioner submitted elevation plans entitled "New Structure", sheet H1, dated September 13, 2018 and prepared by Boston Air Systems of Braintree, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found the building is pre-existing nonconforming with regard to the front yard setback, left side yard setback, building coverage and lot coverage. The Board found the petitioner had presented a hardship with respect to the irregularly-shaped lot. The Board found that by granting the requested modification of Decision No. 18-43 and requested zoning relief, the proposed site improvements will significantly enhance the property and prospectively be a catalyst toward improvements to other properties in the area. The Board also found that the additional increase in building coverage due to the new warehouse addition will be an improvement as compared to the existing temporary structures at the rear of the building. In addition, due to the proposed landscape improvements, the Board found the lot coverage will be further improved. Furthermore, the Board acknowledged the growth of a small business in the Town of Braintree and by granting the requested zoning relief, will ensure the company will continue to operate in the Town. 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 be appropriately designed.

On a motion duly made by and seconded, the Board unanimously (3-0) voted to grant the requested modification of ZBA Decision No. 18-43 and grant the requested finding pursuant to Bylaw Section 135-403 and variance from Bylaw Section 135-701 for building coverage, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

**5) Petition Number: 19-07  
Petitioner: Brian Tanguy  
RE: 9-11 Pond Street**

The Chairman read into record the legal advertisement: Brian Tanguy, 15 Summer Street, Weymouth, MA 02188 (Property owner: Hau Nguyen) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 601, 609 and 701 for rear addition (additional 192 sq. ft. building footprint) to a pre-existing nonconforming two-family dwelling; lot is pre-existing nonconforming with regard to lot area, width and front/left side yard setbacks. The applicant seeks variances and/or findings that the proposed project will not be more detrimental to the neighborhood. The property is located 9-11 Pond Street, Braintree, MA 02184 and is within Watershed Residence B/Residence B Zoning Districts, as shown on Assessors Map 1010, Plot 14, and contains a land area of +/- 10,829 sq. ft.

Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough; and Stephen Sciascia, Alternate.

The petitioner Brian Tanguy, on behalf of the property owner Hau Nguyen, explained they are seeking to construct a rear addition to replace an existing rear, two-story enclosed porches. The proposed addition would provide an additional 192 sq. ft. of building footprint. The existing enclosed rear porches are 13 ft. x 8 ft. The proposed addition would be 18.5 ft. x 16 ft. The proposed project would provide additional living space, which is part of a total renovation of the property.

Mr. Ford asked the petitioner about the rear door portrayed in the plans at the attic level. Mr. Tanguy responded the door is existing and serves only as a means to utilize the rear roof deck. The attic level is unfinished and will not be used for living space. In addition, the attic area does not meet building code requirements for living space. Mr. Tanguy described that the door and deck were added by prior owners as a way to watch events on Sunset Lake. Mr. Sciascia asked the petitioner if he would entertain adding more detail to the rear addition as it is visible on Sunset Lake. Mr. Tanguy added the existing detached garage in the rear of the property will screen some of addition due to the sloping rear topography.

The petitioner's existing use of the building as a two-family dwelling is a pre-existing nonconforming use (Two-Family Dwelling in a Residence B Zoning District is Forbidden). The petitioner's existing lot is nonconforming, as it contains only 10,829 sq. ft., where 15,000 sq. ft. is required and provides 52.4 ft. of lot width, where 100 ft. is required. The petitioner's existing two-family dwelling is nonconforming as to the front yard setback; the dwelling is located 18.15 ft. from the front yard lot line, while the Zoning Bylaw requires a front yard setback of 20 ft. Also, the petitioner's existing two-family dwelling is nonconforming as to the side yard setback; the structure (deck) is located 9.5 ft. from the side yard lot line, while the Zoning Bylaw requires a side yard setback of 10 ft. Furthermore, as part of the proposed project, the existing deck would be reduced in size to conform to the left side yard setback of 10 ft. Of note, the front yard area of the property is within the Watershed B Overlay Zoning District. The proposed addition will not create any new zoning nonconformity. Therefore, the expansion/addition of a nonconforming use, pursuant to Braintree Zoning Bylaw Section 135-403(a), and intensification of the pre-existing nonconformities, pursuant to M.G.L. Chapter 40A, Section 6, requires a finding by the Board.

As grounds for the finding, the Mr. Tanguy noted the addition will not generate any new zoning nonconformity. In fact, the proposed improvements will conform to the left side yard setback, which is currently nonconforming. Furthermore, the petitioners noted the addition will be similar to the existing neighborhood characteristics and not be more detrimental to the neighborhood.

The applicant presented the plan entitled "Plan Showing Proposed Addition, 9-11 Pond Street, Braintree, MA 02184", dated March 12, 2019, and prepared by the Bayview Survey of Abington, MA. The applicant also presented floor plans and architectural renderings labeled Sheets 1-4, dated January 14, 2019 and prepared by Design by Sami of Walpole, MA.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval with conditions: 1.) Any changes to the approved plans will require ZBA approval; 2.) Update plot plan: a) Label encroachment as "Encroachment to be removed; b) Depict rear deck as conforming to side yard setback per submitted architectural plans; c) Depict off-street parking spaces pursuant to Braintree Bylaw Section 135-809; and d) Depict existing and proposed zoning analysis on the zoning table, including side yard to building height and FAR. 3.) Certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and 4.) Prior to issuance of a Certificate of Occupancy: a.) As-built plan submitted to the Planning & Community Development Department; b.) Encroachment onto adjacent Furlong Park removed/loamed/seeded per plans; and c.) Stripe/delineate off-street parking spaces per plans. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

The Board found that the use of the building as a two-family dwelling was a pre-existing use based on the evidence of past building permits/records presented by staff. In addition, the Board found that the existing lot is pre-existing nonconforming in terms of lot area and width. The Board found that the existing dwelling is pre-existing nonconforming in terms of the front and left side setbacks. The Board also found that the proposed rear addition will not create any new zoning non-conformity. The Board further found that the proposed addition will be designed appropriately and be comparable in size relative to the existing housing stock. Lastly, the Board found there was no opposition to the proposed project. As such, the Board found the proposed project will not be substantially more detrimental to the neighborhood than the existing nonconforming use.

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 and the following conditions:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and
- 3.) Prior to issuance of a Certificate of Occupancy:
  - a.) As-built plan submitted to the Planning & Community Development Department;
  - b.) Encroachment onto adjacent Furlong Park removed/loamed/seeded per plans; and
  - c.) Stripe/delineate off-street parking spaces at rear of building.

#### **APPROVAL OF MINUTES:**

On a motion made and seconded, the Board voted 5-0 to accept the February 25, 2019 meeting minutes.

The Board adjourned the meeting at 9:30 pm.