



Department of Planning & Community Development Zoning Board of Appeals

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

Joseph. C. Sullivan
Mayor

Zoning Board of Appeal Petitions – March 13, 2017 Special Meeting – Cahill Auditorium

Present:

Attorney Stephen Karll, Chair

Mr. Michael Calder, Member

Mr. Michael Ford, Member

Mr. Richard McDonough, Alternate Member

Attorney Barbara St. Andre, KP Law

Christine Stickney, Director

Melissa SantucciRozzi, Assistant Director

Jeremy Rosenberger, Zoning Administrator

Chair, Stephen Karll, began the meeting at 7:01 PM. He explains that there are three Petitions for tonight's meeting and that we are going to take the last petition first, as it will be the briefest.

Chairman Karll introduces staff, Zoning Board Members and Attorney Barbara St. Andre.

Chairman Karll reviews the process for presentation and comment. He explains that we usually hear from Petitioners first and then opponents second.

OTHER BUSINESS

Petition #14-33 – Extension of Time to Exercise the Variance.

639 Washington Street

Bonnie Tan

Chairman Karll introduces Bonnie Tan, the Petitioner, who approaches the podium. Sitting on Ms. Tan's request will be the members that sat on the request previously: Member Calder, Attorney Karll and Member McDonough. Ms. Tan is looking for a six-month extension of time on the Variance she was previously granted. It has been the practice of the Zoning Board to grant them, but Chairman Karll opens the meeting up for comment. There are no comments.

Member Calder **MOTION** to approve the six (6) month extension; seconded by Member McDonough; unanimously voted 3:0:0. The extension is granted.

PUBLIC HEARINGS

Chairman Karll explains that the next two Petitions will be taken up together because they are so very closely related.

Zoning Board of Appeals

March 13, 2017

Cahill Auditorium

(40B) 2017-01

383 Washington Street – Parkside Apartments

383 Washington Street LLC

Chairman Karll reads the following notice into record:

Notice is given by the Braintree Zoning Board of Appeals under the provisions of MGL Chapter 40B, Sections 20-23, 760 CMR 56.00 and the Braintree Zoning Board of Appeals Comprehensive Permit Regulations that a Public Hearing will be conducted on **MONDAY, MARCH 13, 2017 at 7:00 P.M.** at the Braintree Town Hall in Cahill Auditorium. The Zoning Board of Appeals will consider a **Comprehensive Permit Application (Chapter 40B) that includes an Approval Not Required Subdivision Plan** from 383 Washington Street LLC. The Applicant is proposing to construct a 70-Unit Multi-Family Residential (Rental) “*Parkside Apartments*” building along with associated drainage, utility, parking, access, landscaping and lighting improvements on a proposed lot of 93,866 Square Feet. The properties at 383 Washington Street, Storrs Avenue and the way known as “Alves Avenue” are all Zoned General Business within the Village Overlay District and is identified on Assessor’s Plan 2028 as Plot 31 and 32-A.

(40B) 2017-02

383 Washington Street – Parkside Condominiums

383 Washington Street LLC

Chairman Karll reads the following notice into record:

Notice is given by the Braintree Zoning Board of Appeals under the provisions of MGL Chapter 40B, Sections 20-23, 760 CMR 56.00 and the Braintree Zoning Board of Appeals Comprehensive Permit Regulations that a Public Hearing will be conducted on **MONDAY, MARCH 13, 2017 at 7:00 P.M.** at the Braintree Town Hall in Cahill Auditorium. The Zoning Board of Appeals will consider a **Comprehensive Permit Application (Chapter 40B) that includes an Approval Not Required Subdivision Plan** from 383 Washington Street LLC. The Applicant is proposing to construct eight (8) Townhouse Style Residential Units (Ownership) “*Parkside Condominiums*” in two (2) buildings along with associated, drainage, utility, parking, access, landscaping and lighting improvements on a proposed lot of 20,327 Square Feet. The properties at 383 Washington Street, Storrs Avenue and the way known as “Alves Avenue” are all Zoned General Business within the Village Overlay District and is identified on Assessor’s Plan 2028 as Plot 31 and 32-A.

Chairman Karll explains that all plans and all information are public documents, and they are located in the Planning Division in Town Hall if anybody is interested in looking at them. Sitting on this Petition will be Chairman Karll, Member Calder and Member Ford. Member McDonough will be the alternate.

Zoning Board of Appeals

March 13, 2017

Cahill Auditorium

Melissa SantucciRozzi, Assistant Director of Planning, provides a presentation based on her Staff Report. She has prepared the Introduction portion of the report that documents and demonstrates that the Town of Braintree has met the **Statutory Minima** for the **General Land Area Percentage**. That is also referred to as the **1 ½ %**. Staff further explains that they have put together a short but detailed report that goes through the analysis and the steps taken to come up with both the Denominator and the Numerator. A lot of the work was aided by the help of the GIS Department here in Braintree, going through various different exercises in the GIS to determine the land areas to be excluded from the total land area of the Town. That is best summarized on page 11 of Staff Report in the table. If the numbers do not add up, as a running total, that is because a lot of the exercise included overlaying some of these layers to make sure we were not deducting eligible land areas more than once, as the regulations are very clear that all land areas are to be deducted once from the General Land Area. Staff explains that we arrived at a Denominator of 5,091 acres after we underwent this exercise of exclusions, which is mostly government owned land, the 100 year floodway, roadways, land not previously deducted within the open-space district, as well as certain lands governed by Department of Environmental Protection restrictions. That was the first part of the exercise.

The second part of the exercise, which is best described on page 12 of the report and the tables with the blue headings, was inventorying the Town's subsidized housing and putting together a detailed table that took all those numbers, percentages of affordability, and associated them with various land areas to come up with what is known as the Numerator. Those calculations have been performed. The staff is presenting a number of 1.9% and would seek the Board's Approval to move forward and take the next step in securing this land area percentage, which would be submitting this report to the Department of Housing and Community Development in support of Safe Harbor for the Town of Braintree.

Chairman Karll thanks staff and everyone that participated in working this out because he knows it took a lot of time and arduous work. Chairman Karll asks, based on this report, if there is a Motion.

Member Ford states that with regard to the Petition for **(40B) 2017-01, Parkside Apartments, 383 Washington Street LLC**, he would make the following five (5) **MOTIONS**:

Member Ford **MOTION** that the Board determine, under 760 CMR 56.03(8)(a), that the Board considers that a denial of the requested comprehensive permit under the Application by 383 Washington Street, LLC for a project known as Parkside Apartments or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board determine that Subsidized Housing Inventory eligible housing exists in the Town on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial, or industrial use, per General Laws chapter 40B, §20, 760 CMR 56.03(1)(a) and 760 CMR 56.03(3)(b), and therefore the "statutory minimum for

Zoning Board of Appeals

March 13, 2017

Cahill Auditorium

land area” has been satisfied by the Town; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board determine that, since the Town has met the statutory minimum for land area, pursuant to 760 CMR 56.03(1), the Board “may at its sole discretion elect to proceed with the full local hearing, and ultimately to approve a Comprehensive Permit, even though ... [the safe harbor has been achieved]”; and, under 760 CMR 56.03(8), the Board may deny the permit or elect to impose conditions upon the issuance of any such permit and no appeal from any such decision will lie, and the Board votes to elect to proceed with the full local hearing, with no waiver of its right to deny the comprehensive permit or its right to impose conditions upon the issuance of any such permit and with such denial or conditions to be deemed consistent with local needs as a matter of law; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board elect to proceed with the full local hearing, with the Board having the right to deny the Application or to grant the Application with conditions and with the Applicant having no right of appeal to the Housing Appeals Committee from the Board’s decision; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board provide written notice to the Applicant, with a copy to the Department of Housing and Community Development, to invoke the statutory minimum for land area and to authorize the Chair to approve, execute and send the written notice within 15 days of the opening of the March 13, 2017 Public Hearing on the Application; seconded by Member Calder; unanimously voted 3:0:0.

Further, Member Ford states that with regard to the Petition for **(40B) 2017-02, Parkside Condominiums, 383 Washington Street LLC**, he would make the following five (5) **MOTIONS**:

Member Ford **MOTION** that the Board determine, under 760 CMR 56.03(8)(a), that the Board considers that a denial of the requested comprehensive permit under the Application by 383 Washington Street, LLC for a project known as Parkside Condominiums or the imposition of conditions or requirements upon the requested comprehensive permit would be consistent with local needs as a matter of law; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board determine that Subsidized Housing Inventory eligible housing exists in the Town on sites comprising one and one-half percent or more of the total land area zoned for residential, commercial, or industrial use, per General Laws chapter 40B, §20, 760 CMR 56.03(1)(a) and 760 CMR 56.03(3)(b), and therefore the “statutory minimum for land area” has been satisfied by the Town; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board determine that, since the Town has met the statutory minimum for land area, pursuant to 760 CMR 56.03(1), the Board “may at its sole discretion elect to proceed with the full local hearing, and ultimately to approve a Comprehensive Permit, even though ... [the safe harbor has been achieved]”; and, under 760 CMR 56.03(8), the Board

Zoning Board of Appeals

March 13, 2017

Cahill Auditorium

may deny the permit or elect to impose conditions upon the issuance of any such permit and no appeal from any such decision will lie, and the Board votes to elect to proceed with the full local hearing, with no waiver of its right to deny the comprehensive permit or its right to impose conditions upon the issuance of any such permit and with such denial or conditions to be deemed consistent with local needs as a matter of law; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board elect to proceed with the full local hearing, with the Board having the right to deny the Application or to grant the Application with conditions and with the Applicant having no right of appeal to the Housing Appeals Committee from the Board's decision; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION** that the Board provide written notice to the Applicant, with a copy to the Department of Housing and Community Development, to invoke the statutory minimum for land area and to authorize the Chair to approve, execute and send the written notice within 15 days of the opening of the March 13, 2017 Public Hearing on the Application; seconded by Member Calder; unanimously voted 3:0:0.

Chairman Karll asks Attorney Barbara St. Andre to explain what just happened and what the process will be, in layman's terms, because this Statute and the CMR's that go along with it are very complex and Barbara St. Andre (of KP Law) is an expert in this 40(B) language.

Attorney St. Andre explains that what the Board has decided tonight is that Braintree has met one of the two Statutory Minima that are set forth in Generalized Chapter 40(B). Chapter 40B requires that every city and town in Massachusetts have a certain amount of low and moderate income housing. That low and moderate income housing has to be housing that is eligible to be included on the Department of Housing and Community Development's subsidized housing inventory (SHI as referenced in some of the motions). Those SHI eligible housing units have to be housing units that are subsidized in some way under a Federal, State or Local subsidy. Department of Housing and Community Development (DHCD) keep a list of all of the units in every city and town that are eligible to be counted as low or moderate income housing.

There are two ways that a town can reach its goal of providing sufficient affordable housing under General Laws Chapter 40(B). One of those is the 10% Rule, which is if at least 10% of the total number of year round housing units in the city or town are low or moderate income housing, then you have reached the goal of 10%, and under Chapter 40b the town can then deny any application for comprehensive permit that comes into the town, or grant it with whatever conditions it feels are appropriate, and those conditions, as a matter of law, will be upheld if they are appealed. So essentially, if you reach the minimum, then the Town has complete control over Chapter 40(B) Comprehensive Permit Applications.

The other way to achieve that safe harbor is if at least 1.5% of the land in the town that is zoned for residential, commercial or industrial use is dedicated to affordable housing. That is the criteria that the staff has been looking at over the past few weeks to determine whether or not the town meets the criteria.

Zoning Board of Appeals
March 13, 2017
Cahill Auditorium

Attorney St. Andre continues, as staff mentioned, there is quite a bit of calculations that go into determining that number. First, we have to determine how much land area there is in Braintree. We have to take out certain things such as water bodies and streets, which is not zoned land. We have to take out land that is owned by the government. Then we have to determine how much land in the Town of Braintree is dedicated to low and moderate income housing, based on the units that are eligible to be on the Subsidized Housing Inventory. That requires us to look at each of the SHI units, how much land there is, what percentage of the units are low and moderate income. In some cases you can count 100% of the land and in other cases you cannot. You do all of these calculations and come up with the number. At this point, based on the calculations we have done, we believe that, in fact, the town is over the 1.5% minimum requirement under Chapter 40(B) and that, therefore, the Town has reached the Safe Harbor. The Zoning Board, therefore, has the right, when it is looking at these two applications, to deny it or grant it with conditions that are not appealable because we have reached the Safe Harbor.

Attorney St. Andre continues, the last motions that you heard was the notification that the Town will be sending to the Applicant and to DHCD. Under the State Regulations, if the Town believes that it has reached the Safe Harbor of 1.5%, we are required within 15 days of the opening of the Hearing, which is tonight, we must send a written notice to the Applicant and to DHCD asserting that we have reached the Safe Harbor and the grounds on which we base that. It is then up to the Applicant to determine whether they want to appeal that determination. They can then file with DHCD a response that states they don't think the Town has reached the 1.5% and the reasons why. DHCD will then make a determination, based on those submissions, whether the Town has reached 1.5% minimum based on DHCD's opinion. If either the Applicant or the Zoning Board is not content with the decision that is issued by DHCD, that party then has the right to appeal that decision to the Housing Appeals Committee. The Housing Appeals Committee will then have an evidentiary hearing on the matter, and they will make a determination. There are certainly appeal rights here, and we will have to see whether those are asserted by the Applicant or not. As of tonight, the Town believes firmly that we are over the 1.5%. The Zoning Board has voted that we are going to send that notification to the Applicant and to DHCD. If the Applicant disagrees with that and files a rebuttal with DHCD, DHCD will make that determination. Once DHCD makes that determination, the parties can determine whether they want to appeal it further to the Housing Appeals Committee. While this process is going on, the 180 day period that we have to finish this hearing is going to be tolled, and if we get to the Housing Appeals Committee for an evidentiary hearing, then all proceedings of the Town will be stayed. In other words, we will not be having hearings here at the local level if we are up at the HAC having a hearing on whether or not the 1.5% minimum has been met. We won't know whether we will be doing that until we find out whether the applicant files something with DHCD.

Chairman Karll thanks Attorney St. Andre and explains that what is meant by being "tolled" or "stayed" is that everything is on hold and there will be no days counted until the final process with the Housing Appeals Committee, if it goes that far and it is or is not appealed.

Zoning Board of Appeals

March 13, 2017

Cahill Auditorium

Chairman Karll explains, that being said, the Board has authorized Chairman Karll to sign the letter to the Applicant and Department of Housing and Community Development.

Chairman Karll explains that we will be taking no testimony this evening. Chairman Karll asks if there are any questions regarding the legalities of what has taken place tonight. We will take no “pro” or “con” testimony regarding the value or lack of value of the proposal.

Jean O’Brien-Boback, resident at 153 Park Street, Braintree, refers to the fact that the Town says we have met the minimum of 1.5%. She asks what the actual number we came up with that the Town is at. Chairman Karll states it was 1.918%.

Katherine LeBlanc, resident at 19 Oak Street East, East Braintree, asks what in the Zoning Board’s experience, if the developer appeals the Zoning Board’s decision, does the Housing Appeals Committee typically favor 40(B) over the City. Chairman Karll states, quite honestly, that is why the Housing Appeals Committee is there – to approve 40(B) projects. He further explains that, as a lawyer, you don’t know what they are going to do, but there record has been in a majority in favor of petitioners. Once and a while, they vote in favor of the town if we can justify, wholeheartedly, our calculation. Chairman Karll has a lot of faith in staff in determining the calculations, but we will have to wait and see.

Ms. SantucciRozzi explains that they have done forecasting to see what the first round of submissions to DHCD would do for dates. Staff is recommending Monday, May 15, at 7:00 PM, for the Continued Hearing, if that is amenable with the Zoning Board.

Member Ford **MOTION** to continue both hearings to Monday, May 15, at 7:00 PM; seconded by Member Calder; unanimously voted 3:0:0.

Member Ford **MOTION to adjourn** the meeting; seconded by Member Calder; unanimously voted 3:0:0.

The Meeting adjourned at 7:45 PM.

Respectfully submitted,
Louise Quinlan, Planning/Community Development