

Department of Planning and Community Development

Melissa M. Santucci, Principal Planner
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Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
Linda Cusick Woodman, Clerk
James Eng, Member
Darryl Mikami, Member

Braintree Planning Board
June 15, 2009
Town Hall Auditorium

APPROVED

Present:

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
Linda Cusick Woodman, Clerk
James Eng
Darryl Mikami

Melissa Santucci, Principal Planner

The Chair called the meeting to order at 7:00 P.M.

Roll Call: Mr. Reynolds, Ms. Cusick Woodman, Mr. Eng, Mr. Mikami, Mr. Harnais all present

New Business/Old Business

For details please see Ms. Santucci's Staff Report dated 6/10/09.

Zoning Board of Appeal Petitions - June

150 Grossman Drive/Metro PCS Massachusetts

Attorney Ricardo Souza of the law firm Prince, Lobel, Glovsky and Tye, Sohail Osmani, engineer for MetroPCS and Mike Johnson, positioning agent for MetroPCS, were present to represent the applicant. Attorney Souza provided background information on the applicant who is attempting to provide seamless wireless coverage for its clients. The issue at hand is that the location [for installation of six roof-mounted wireless telecommunication antennae and an equipment cabinet on the rooftop] at 150 Grossman Drive is within 500' of the residences at the Bluestone condominiums.

Motion by Mr. Eng, second by Ms. Cusick Woodman to recommend the Zoning Board of Appeal grant the requested variance

Vote: 5/0

215 Middle Street/R. and K. Pollara

Mr. Pollara was present and explained his project to the Board. Ms. Santucci summarized her staff report and indicated she would recommend favorably on the construction of a farmer's porch which would encroach into the front yard setback, but would recommend that the applicant relocate his proposed addition to the other side of the house. In response to Ms. Santucci's suggested relocation of the addition, Mr. Pollara stated that he had installed a shed near the garage on the other side of the house. Therefore, there is not possible to construct the addition there.

Motion by Mr. Eng, second by Ms. Cusick Woodman to forward a favorable recommendation to the Zoning Board of Appeal.

Vote: 5/0

302-304 Quincy Avenue/H. Powers

Mr. Powers describe in fair detail how he came to be applying to the Zoning Board of Appeal for authorization to legalize a basement apartment which would result in a four-unit apartment building. He purchased the house in 1993 as temporary housing for his family and has been paying taxes on a 15-room dwelling while there are only twelve rooms total in the three units on the first and second floors. At the time of purchase there was a unit in the basement and he considers that paying taxes on a dwelling containing 15 rooms has "legitimized" the basement unit. He has met with the Principal Planner and there is an issue of providing two parking spaces for each of the units. He proposes to have a circular drive around the rear of the building and add two parallel spaces on the right side of this driveway.

Ms. Cusick Woodman had a number of questions: if there were two exits for each unit [yes], the size of the cellar windows [*response unclear*], if cars back onto Quincy Avenue [Yes, but he is proposing to add the semi-circular drive so cars can exit from the other side of the dwelling and not back into traffic], if the Fire Department had commented [no], if the smoke detectors were hard-wired [Yes, it is a requirement of the Fire Department.].

Mr. Eng asked if the applicant had submitted an updated plan to the Building Inspector so they were aware of the plan changes. Mr. Powers stated he would be submitting revised plans next week.

Mr. Harnais stated that the Planning Board's review is part of a larger process and the Board is constrained in their review because the proposal is lacking in detail. Both the plans and application are deficient and he suggests that Mr. Powers work with department staff to get a "better project" which would also address the issuing of past permits. Mr. Harnais would like to see a proper plan before the Board makes a recommendation to the ZBA.

Mr. Reynolds asked for clarification on the question of the number of rooms and the tax issue and added that the application does not meet the standard for submission. Ms. Cusick Woodman asked about the number of water meters [1] and electric meters [4] and if attic space was used [The two rooms in the attic are not used.]

Motion by Mr. Eng, second by Ms. Cusick Woodman to forward no recommendation to the Zoning Board of Appeal due to a lack of information.

Vote: 5/0

10 Plain Street/New Cingular Wireless [AT&T]

Adam Kurth of Andersen & Kreiger, present to represent the applicant, provided background information on his client's request to the Zoning Board of Appeal to install six roof-mounted wireless telecommunication antennae to replace the three existing ones. The three original antennae were mounted with only a Building Permit when, in fact, ZBA relief was required. There is no issue with the installation being within 500' of residences. Staff's comments reflected the need to ensure that the requested modification be analyzed correctly and the relief granted be comprehensive in regard to the non-conformities.

In response to questioning by Ms. Cusick Woodman regarding the need for installations to be more than 500' from residences, Mr. Kurth responded that he was not privy to the reasons for the inclusion of that requirement in the Zoning Bylaw. He assured the Board that AT&T is licensed by the FCC and their equipment is compliant with FCC emission levels.

Mr. Reynolds asked for verification that the height of the equipment room is within the required 12' limit. [It is 10' high.]

Motion by Mr. Eng, second by Mr. Reynolds to recommend favorably to the Zoning Board of Appeal.

Vote: 5/0

555 Washington Street/P. and M. Plante

Mr. and Mrs. Plante were in attendance and gave very detailed background information to the Board on their appeal of the Building Inspector's issuance of a Cease and Desist to the property owners for all non-permitted business activity at 555 Washington Street. They have owned the property for 37 years and were very surprised that someone recently complained about the activities. Although their property is not zoned for business uses, all properties along Washington Street from West Street to Robinson Avenue [and one across the street] on both sides of their property are used for businesses.

Mr. Eng asked staff about the comment in her report regarding the submission of insufficient proof to support the applicant's appeal. Ms. Santucci responded that the business conducted on site was unlike that previously allowed [a non-profit "bridge club"] when the applicants purchased the property and that they are afforded no protection under zoning. A business use is not allowed in a Residence C zoning district.

Mr. and Mrs. Plante added that the property is split-zoned [Residence B and C].

The Chair stated that he would not vote to overturn the decision of the Inspector of Buildings.

Motion by Ms. Cusick Woodman, second by Mr. Eng to affirm the decision of the Inspector of Buildings.

Vote: 5/0

The Board took a recess between public hearings.

The Chair left the meeting after the 39 Lantern Lane public hearing.

Approval Not Required Plan

41/53 Independence Avenue/St. Francis of Assisi Residences at Braintree III, Inc.

For details please see Ms. Santucci's staff report dated 6/10/09.

Ms. Santucci informed the Board that the plan is ready for endorsement.

Bob Mangiaratti of Murphy, Hesse, Toomey & Lehane, LLP explained to the Board that this ANR plan was submitted to comply with requirements of HUD and Mass Housing for the applicant to receive financing for its Chp. 40B project at these addresses. Each building must be located on a separate lot owned by a separate entity. After construction of the new building, there will be three buildings and the applicant is carving three lots from the two existing lots. The plan meets the requirements for endorsement.

Motion by Mr. Eng, second by Ms. Cusick Woodman to endorse the ANR plan.

Vote: 4/0 [Mr. Harnais had left the meeting.]

Page 5
Planning Board Minutes
June 15, 2009

Approval Not Required Plan

33 Garden Park Drive and Lot identified on Assessors' Plan 1086 as Plot 74
For details please see Ms. Santucci's staff report dated 6/10/09.

Ms. Santucci explained to the Board that the application was filed to combine two lots into one to support the development authorized at 33 Garden Park Drive by both the Zoning Board of Appeal and the Planning Board.

Motion by Mr. Eng, second by Ms. Cusick Woodman to endorse the ANR plan.
Vote: 4/0

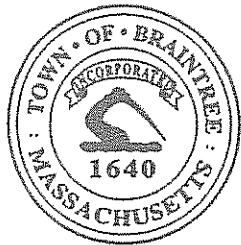
Acceptance of Planning Board Meeting Minutes [5/4/09, 5/12/09 and 5/19/09]

Motion by Ms. Cusick Woodman, second by Mr. Mikami to accept the minutes of the May 2009 meetings.
Vote: 4/0

Motion by Mr. Eng, second by Mr. Mikami to adjourn at 10:15 P.M.
Vote: 4/0

Respectfully submitted,

Linda Raiss



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517, 521 and 525 Grove Street/P. Pacheco
Site Plan Review

The Chair opened the continued public hearing. Mr. Pacheco and his engineer, Jong Yoon, were present. Mr. Yoon informed the Planning Board that the applicant had submitted the requested revisions changing the curbing from Cape Cod berm to granite and eliminating the detention basin in favor of a recharge system to preserve trees. They have also prepared an ANR plan to submit to the Board for endorsement.

Motion by Mr. Reynolds, second by Ms. Cusick Woodman to accept the summary of correspondence from 3/23/09 to 6/14/09.

Ms. Santucci stated that the applicant has addressed all the Planning Board concerns raised at the earlier hearing.

Motion by Ms. Cusick Woodman, second by Mr. Eng to close the public hearing.
Vote: 5/0

Motion by Ms. Cusick Woodman, second by Mr. Eng to reopen the public hearing.
Vote: 5/0

The Chair asked for public input and there was none.

Page 2
Planning Board Minutes
Public Hearing @ 7:30 P.M.
June 15, 2009

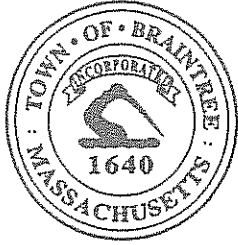
Motion by Ms. Cusick Woodman, second by Mr. Reynolds to close the public hearing.
Vote: 5/0

Mr. Reynolds stated that this exercise was a good example of an applicant working with staff and the Planning Board and wished to thank everyone involved. It has resulted in a win/win situation.

Motion by Mr. Eng, second by Ms. Cusick Woodman to approve the Site Plan Review with the Conditions as drafted.
Vote: 5/0

Respectfully submitted,

Linda Raiss



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39 Lantern Lane/R. and M. Dirrane
Application under Braintree Zoning Bylaw Section 135-711

The Chair opened the continued public hearing.

David Kelly, Kelly Engineering Group, and Martin and Rita Dirrane were present. Mr. Kelly addressed the Planning Board and noted that the property boundaries were staked and the Board conducted a site visit with the applicants and neighbors during which the applicant got many productive comments about screening the proposed development from the abutters.

The Chair invited comment from those in attendance who had not addressed the Planning Board.

Hank Joyce, Councilor from District 4, spoke in opposition to the project. He read a letter dated April 17, 2009 which he had submitted to the Board. He asked the zoning requirements for a roadway [This is a driveway.] and if it were not a road why it is on the street maps. Ms. Santucci responded that the Board has an opinion from Town Counsel relative to the legal status of Lantern Lane. The long strip [driveway] is part of the property and is not a public way.

Mr. Joyce then asked about layout requirements to which the Chair responded that the applicant has chosen to file the application under the Zoning Bylaw [not Subdivision Control Law] for more than one structure on a lot. The Chair referred to Town Solicitor's response to Board inquiries [dated April 21, 2009] and continued that the owners have rights to develop their property and he hopes the Board will reach a reasonable solution to this instance. He continued to say that this has been an exhaustive process of hearings and visits. Something will go on the

property and he asked the neighbors to work with the Board to help them “decide what can go there.”

Mr. Joyce responded by stating that the area is already overcrowded and he has a concern that the decision of the Board on this application might be precedent for other property owners to file similar applications [under Braintree Zoning Bylaw Section 135-710]. He ended by saying he does not want the Town to make the mistakes made in the past.

Attorney Ron Kaplan, representing a number of the abutters, addressed the Board and noted that on a previous agenda item the Chair earlier indicated he would defer to the decision of the Building Department [application to the ZBA]. The Chair responded that in that instance the Building Inspector’s decision was concrete and based on the law. The existing Zoning Bylaw allows this applicant to apply to the Planning Board for more than one dwelling on a lot. Attorney Kaplan continued by indicating that the abutters would be in support of one large, expensive house to be constructed on the property. He read the determination of the Inspector of Buildings resulting in that department considering the proposal to be a cluster. The Chair indicated the Board has received an opinion dated April 21, 2009 from Town Solicitor [in response to the Board’s inquiries] relative to locating more than one dwelling on a lot. She responds to three questions [Under what provisions in the Zoning By-law can an applicant seek approval for more than one dwelling on a lot? Under the provisions of the Town’s by-laws, particularly Section 102 [Definitions] and Section 610 (Cluster Development) does the petition ... meet the cluster definition in conjunction with the special permit requirements in Section 610? Is there anything in the Town’s Zoning By-laws that prohibits a property owner from establishing a condominium form of ownership on their property?] Attorney Kaplan stated that he is not in favor of the proposal to construct three homes on the property and is interested in alternatives.

Jack Carmody, 50 Hewmason Road, gave background on his purchase of their property and stated he feels the removal of the trees will result in flooding and damage to his property.

Alan Zwicker, of Quincy formerly residing at 98 Stetson Street, stated that the rights of the applicant are not absolute and the Planning Board should take the neighbors into consideration. He was concerned about safe access for the new owners [Mr. Harnais indicated there would be a 3’ walkway down the driveway.] and that the wetlands would be negatively affected [Mr. Harnais noted that there would be recharge of the water and Ms. Santucci said there was no Conservation Commission jurisdiction because nothing is being proposed within 100’ of the wetlands.]

Page 3
Planning Board Minutes
Public Hearing @ 8:30 P.M.
June 15, 2009

Bill Grove, former Planning Board member, proposed that the Planning Board review the project under the Subdivision Control Law, which he feels would be beneficial in bringing the sides together and resulting in roads, utilities and drainage meeting the Town's standards. He feels all parties would be ensured of a reasonable outcome. [Mr. Harnais responded that he had spoken with Abutter Johnson and lots and lots of the neighbors and "they are not helping."]

Susan Johnson, 32 Prescott Lane, asked if the Bylaw had changed since previous Boards got nowhere with earlier proposals. If the project is approved it will be extremely detrimental to her and her family and she asked if her taxes would be reduced. Mrs. Johnson added that the people had not come to the meeting for fun and continued by saying that only one person is for the project. She ended by emphasizing that the Bylaws are meant to protect the residents and they are not protecting them.

Jean York, 58 Bellevue Road, said she had come in solidarity with the Johnsons and Carmodys and asked the Planning Board members to put themselves in their places and picture themselves in their homes. [Mr. Harnais responded that nothing prohibits the Dirranes from expanding their driveway to the edge of their property. They have the absolute right to do so.]

Michael Heslam, 9 Prescott Lane, asked that the Board obtain "side elevations" so he could see how water would runoff from the property.

Mike Lang of the East Braintree Civic Association asked that the Board look at the topography, be mindful of the wetlands and drainage from the property [Faxon Park gets flooded all the time. He asked if a study had been done on the runoff and drainage [yes]

At this point the Chair repeated his plea that the residents come to the Department to talk to staff and review the plans. To date only a very few people have done so.

David Crispin, consultant for some of the abutters, assured the Chair that the neighbors have seen the plans. He read from a letter dated June 15, 2009 addressed to the Board in which he raised a number of points and questions: cluster development and buffering, variances, issuing of a building permit, the non-conforming status of the lot, need for a site plan review, the requirements of Section 135-710 of the Zoning Bylaw. He ended by asking that the Board deny the project and submitted a copy of a letter/petition to the Code Enforcement Officer and signed by about fifty neighbors. The letter asks for the opinion of the Code Enforcement Officer in response to eleven questions.

Ed Cassidy, 71 Bellevue Road, asked if the site visit was a public meeting [yes] and if there were minutes [No, it was not a public *hearing*.] He continued to say that it was a very disorganized meeting and some in attendance were not able to ask questions. [Mr. Harnais stated that once the public no longer wished to comment the Planning Board members would begin discussion with comments and questions to the applicant.] Mr. Cassidy stated that he had called the Code Enforcement Officer regarding an issue on the property at 62 Bellevue Road, but he has not received a satisfactory response.

Bill Johnson, 32 Prescott Lane, repeated many of the comments he has made at earlier hearings: This project is a detriment to the public good and will negatively impact the neighbors' quality of life. He will have trouble selling his house and read a quote from the Planning Board's web page relative to the role of the Planning Board, adding that the Planning Board is not supposed to make things worse to the benefit of one; that projects are not allowed to create blight – such as cutting down the trees to widen the driveway. He noted that he had requested that the Chair read the correspondence into the record during the hearing and that has not happened. Regarding a fence along the driveway which is proposed to be 18' wide, he asked what a privacy fence would do when a car breaches the fence and plows into their yards. He ended by saying that the project will damage their way of life and the neighbors will do whatever they have to [to see that the property is not developed as proposed].

Larry McCarthy, 46 Prescott Road, addressed the Board and noted that there was language change to Section 135-710 of the Zoning Bylaw in 1988. He cited much "case law" he feels affects this application, stated that this project will discriminate against single-family homes in the area and asked how many times Section 135-710 had been "used for more than one extra house."

Mr. Harnais reiterated earlier comments that the project is before the Board under the Bylaw and that the applicant is only exercising his rights under the Bylaw.

George Collins, 79 Bellevue Road, stated that those attending the site visit were not able to access the entire property. [*Mr. Harnais commented on the fact that those describing the project as "detrimental" to the neighborhood do not seem to have the same opposition if the applicant would exercise his right to develop from the Stetson Street side of the property [as opposed to the proposal to use the driveway (Lantern Lane) for access.]*] Mr. Collins stated that he had requested that the applicant's engineer stake out the location of the houses and it was not done. He also is looking for a "living fence" and a "No Disturb" zone behind the homes. He asked what the grading would look like and added that the project does not meet the zoning criteria.

Page 5
Planning Board Minutes
Public Hearing @ 8:30 P.M.
June 15, 2009

Then Mr. Collins expressed his strong feeling that the Chair is not appropriately fulfilling his role in these deliberations. He does not agree with the manner in which the Chair is conducting the hearing and said that he, an engineer who appears regularly before boards, has never had so pro-active a chair attempting to get a project through. The Chair is doing the job of the applicants' attorney.

Mr. Harnais took strongest offense to the comments and repeated earlier statements that he could not see three additional houses going on the property. He is not championing any proposal and informed the audience that when their comments were concluded the Planning Board would begin their deliberations.

Sara Zwicker, 98 Stetson Street, repeated concerns she had raised at earlier hearings about the severe drainage problems and the traffic. She asked for consideration by the Board to close the neighborhood to through traffic and to have storm drains installed in Stetson Street to relieve drainage problems.

Mr. Harnais repeated his earlier comment that he would not vote to add three houses to the property and urged the applicant to reconsider his proposal and to revise it to construct fewer homes.

Vice Chair Reynolds addressed those in attendance and stated that the Chair has been conducting the hearing for the benefit of the public and he has done a fine job listening to the neighbors. He has done so with integrity and openness regardless of the baseless opinions expressed relative to his character. Mr. Reynolds added that he himself has notebooks full of notes he has taken during this phase of the hearing and he will be posing questions to the applicant and making comments when the public comment phase has concluded.

Motion by Ms. Cusick Woodman, second by Mr. Eng to continue the hearing to July 20, 2009 at 8:30 P.M.

Respectfully submitted,

Linda Raiss