



Department of Planning and Community Development

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Joseph C. Sullivan
Mayor

APPROVED

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Melissa B. McDonald, Member

Braintree Planning Board
May 8, 2012
Town Hall – Johnson Chambers

Present:

Mr. Joseph Reynolds, Vice Chair
Mr. James Eng, Clerk
Ms. Michelle Lauria, Member

Christine Stickney, Director
Melissa Santucci Rozzi, Principal Planner

Note: Mr. Reynolds Acting Chair for this evening's meeting.

Note: Christine Stickney not present when meeting called to order.

The Acting Chair called the meeting to order at 7:06 P.M. and called the roll: Mr. Reynolds, Mr. Eng and Ms. Lauria all present. It was noted that Mr. Harnais and Mr. Mikami were not present at this evening's meeting.

New Business/Old Business

Approval of Minutes from March 13, 2012 and April 10, 2012

Mr. Reynolds inquired if the approval of the minutes from the Planning Board meetings of Tuesday, March 13, 2012 and Tuesday, April 10, 2012 should be continued to the meeting scheduled for Tuesday, June 12, 2012 when Mr. Harnais and Mr. Mikami would be present to participate in the vote. Ms. Santucci Rozzi addressed the Planning Board and stated that Staff is requesting that approval of the minutes be voted on at tonight's meeting to get caught up on approving the minutes in order to get the minutes posted on the Planning Department website. She noted for the Board that the minutes from both of the above mentioned meetings have been approved by Mr. Harnais before they are sent to the full Board for review.

Motion by Mr. Eng, second by Ms. Lauria to approve the minutes from the Planning Board meetings dated Tuesday, March 13, 2012 and Tuesday, April 10, 2012.

Vote: 3/0

Zoning Board of Appeals – May

The Planning Staff requested that the Agenda be taken out of order and that the next item on the Agenda be addressed at this time noting that the Applicant is present at the meeting.

Request for As-Built Approval/79 Canavan Drive [#10-09]
Requested by Steven and Kristen Zechello

The Applicants, Steven and Kristin Zechello, of 79 Canavan Drive, Braintree, MA 02184 were present at the meeting.

Ms. Santucci Rozzi explained to the Planning Board that the Applicant has completed the grading project that included the installation of stone walls and an in ground pool. Planning Staff has conducted site visits and has no issues. The two (2) disc copies of the As-Built Plan (Condition #16) and the Stormwater Management and Operations and Maintenance Plan for the drainage were received in the department today so there are no outstanding items. The Applicant has posted \$4,000.00 surety to ensure that no damage to the public sidewalk took place during construction. At this time Staff is recommending two (2) votes by the Planning Board. The first is to release the \$4,000.00 surety being held by the Town and the second is to grant As-Built Approval with the surviving conditions.

Mr. Eng inquired if the Stormwater and Operations and Maintenance Plan had been reviewed. Ms. Santucci Rozzi stated that it had and noted that the Engineer on the project had done a great job. She continued that there is an inlet connected to a pipe that discharges through a drywell located at the back of the property. This removes stormwater that is generating around the dwelling and pipes it out to the back of the property so that it is not interfering with the pool and patio area. There has also been construction of a pool shed. Mr. Eng stated that he just wanted to be sure that it is draining properly. He then asked if the As-Built Plans have been received. Ms. Santucci Rozzi confirmed this. Mr. Eng had no further questions at this time.

Motion by Ms. Lauria, second by Mr. Eng to release the \$4,000.00 Sidewalk Surety currently held by the Town.

Vote: 3/0

Motion by Mr. Eng, second by Ms. Lauria to grant As-Built Approval with surviving Conditions #1, 12, 18, 27, 29, 30, 33 and 34.

Vote: 3/0

Request for Reduction/Release of Surety – Elmlawn Rd. Ext. Definitive Subdivision [#10-03]
Requested by Al Endriunas of Elmlawn, LLC

Note: The Applicant has requested that this matter be continued to the Planning Board meeting scheduled for Tuesday, June 12, 2012.

No testimony was heard at this time.

Construction Update/20-60 Forbes Road [#10-07]
Karma Nominee Trust

Attorney Frank A. Marinelli, 439 Washington Street, Braintree, MA 02184 was present to represent Karma Nominee Trust the owner/developer of the project, and addressed the Planning Board. Atty. Marinelli had a visual presentation and provided the Board with an update on the status of the project.

Atty. Marinelli stated that they had taken the old ballrooms from the Sheraton Tara Hotel and gone forward with the demolition. He explained that through the permitting process resulting in the decision recorded in February of 2011 it had been presented to the Planning Board that they would be removing all of the old ballrooms and part of the old hotel infrastructure. The highest part of the hotel, the six story building, remains and the size of the old Tara Hotel has been reduced by approximately 45%. The number of guest rooms has been reduced from 374 rooms to 204 rooms. Atty. Marinelli noted that renovation to the hotel, including the guest rooms and meeting rooms downstairs, is complete and the scheduled opening is May 15, 2012. The hotel will fly a Hyatt Place limited service hotel flag. He stated that the redevelopment of the site is great for the Town and the number of guest rooms is appropriate in the current competitive market.

Atty. Marinelli explained that the request tonight is pursuant to Condition #16 of the Decision and explained that on April 25, 2012 the Applicant posted a \$10,000.00 bond to the Town of Braintree in order to receive a Temporary Certificate of Occupancy from the Building Department prior to being granted As-Built Approval. The Temporary Certificate of Occupancy will allow the Applicant to go forward with the scheduled opening of the hotel on May 15th. Atty. Marinelli continued that the site work for the retail complex is done, pointing out on a board how it will look at the Jared's Jewelers and Friday's level. The retail pavilion is currently under construction and by mid-July the owner will turn over the retail pads to the retail tenants. Approximately 75% is preleased at this time and those tenants that have signed their leases will get their pad and begin their fit up of their interior space around the mid-July time frame. Atty. Marinelli concluded that Jared's is already dealing with the Building Department regarding their 6,000 Sq. Ft. pad and will begin their construction very soon. The tenants starting their fit up in July will be looking to open in September. Ms. Lauria had no questions at this time.

Mr. Eng asked if the bond was posted because this is to be a partial opening of the facility. Ms. Santucci Rozzi explained that the Applicant is seeking a Temporary Certificate of Occupancy but they have not yet filed the As-Built Plan noting that the bond is actually an As-Built assurance. Atty. Marinelli continued that they would not be back before the Planning Board within the required 90 days after issuance of the Certificate. He anticipates that they will be back before the Board sometime after September and are requesting relief of the 90 day requirement. Mr. Eng asked what had determined the bond amount of \$10,000.00. It was explained that the conditions had been prepared by Christine Stickney (*not yet present at tonight's meeting*). Atty. Marinelli assured him that the As-Built Plan will be submitted once construction of the retail pavilion is completed. Mr. Eng then asked if the Building Inspector has been in the hotel section and is satisfied that it is ready to be open for business. Atty. Marinelli replied that the Building Inspector had been working with

Brian Wolfe of Tishman Construction, the contractor for the project and a meeting is scheduled for 11:00 A.M. on Wednesday, May 9, 2012. At this time any outstanding issues will be reviewed. He continued that a Fire Code issue has come up involving the water pump being connected to a new generator for use during a power outage. It will be determined at the May 9th meeting if this new generator is required. It was confirmed that this issue needs to be resolved prior to issuance of the Certificate. Atty. Marinelli stated that if the Planning Board grants approval the Applicant must then go to the Building Department who will determine if they are ready for occupancy. He stated that he believes the request for the generator is the only issue at this time.

Mr. Eng asked for an explanation of the situation with the generator. Atty. Marinelli explained that in the event of a complete electrical outage this generator will pump the water for the sprinkler system. Mr. Eng wanted to know if there is a power outage and there is no generator how will the water be pumped. Atty. Marinelli stated that the real issue is whether or not the hotel is subject to this code requirement and noted that the Fire Code compliance representative for the developer as well as Fire Department representatives will be present at the meeting. It is unclear if the hotel without the ballrooms is considered a place of assembly. He continued that both he and the Applicant respect safety decisions. Mr. Eng stressed that the safety issue must be straightened out. Atty. Marinelli informed the Board that all parties with expertise in this area will be present at the meeting. It was confirmed for Mr. Eng that this will be resolved prior to the scheduled May 15th opening. Atty. Marinelli explained that there currently is a generator which handles emergency lighting and what needs to be determined is if a separate generator is needed to pump the water. Mr. Eng again stated that this is a life safety issue and continued that if no power source for pumping the water exists, that is a concern.

Atty. Marinelli explained that fire fighting apparatus has clear access on all four sides of the building and that if there was electricity the existing generator would be the primary source for pumping the water inside the hotel. The issue to be determined is in the case of a complete power outage does Massachusetts State Building Code require the electric pump for the hotel to be connected to an emergency generator. The code specialists for the developer do not feel that the hotel falls under the characteristics for this requirement. It was again confirmed that the Braintree Fire Department would be represented at the meeting. Ms. Santucci Rozzi asked if the system in the hotel is a wet or dry system. Atty. Marinelli could not answer that at this time. Ms. Santucci Rozzi stated that since this is a hotel it is probably a dry system. With a dry system the water must be pumped. She explained that in a wet system the pipes are full of water which would cause extensive damage to the hotel should there be a false alarm.

Atty. Marinelli referred to the portion of Condition #16 regarding posting \$10,000.00 cash surety which states:

Should the Applicant wish to request a Temporary Certificate of Occupancy from the Building Division prior to As-Built Approval, the Applicant shall post with the Department a cash bond in the sum of \$10,000.00 and within 90 days of the issuance of the Certificate submit a request for As-Built Approval as described above. If a request for As-Built Approval is not submitted within 90 days of the issuance of the Certificate, the cash bond shall be forfeited to the Town and the Site Plan Review/Special Permit may be

rescinded after a public hearing. The time allowed for the submission of the request for As-Built Approval may be extended by a vote of the PB/SPGA.

Ms. Santucci Rozzi stated that the Applicant may request a time extension at the next meeting of the Planning Board.

Mr. Eng said that when a dry system is used the Fire Department likes to test the system by loading it to make sure that it functions correctly and has no leaks. After they are sure that it is functioning they release the pressure and drain the system. He continued that the Fire Department will not let a safety issue go through. Atty. Marinelli stated it is undetermined if this situation requires the additional generator and continued that the Applicant will not argue with what is determined at the upcoming meeting. Mr. Eng said that he would be interested in the outcome of the meeting and what the law says is necessary in this situation. Ms. Santucci Rozzi said that an update would be provided.

Note: Christine Stickney now present.

Ms. Stickney commented that the Applicant is doing a great job with the redevelopment of the site. Mr. Reynolds asked Atty. Marinelli how the neighbors were responding to the project. Atty. Marinelli replied that they were satisfied and it was confirmed that there had been no complaints. He added that some of the residents from the Garden Park neighborhood have been invited to the opening as well. Mr. Reynolds thanked Atty. Marinelli for the update on the project.

Zoning Board of Appeals – May

#12-22

29 Cotton Avenue

Note: The Applicant and/or their representative not present at the meeting and no testimony was provided.

Ms. Santucci Rozzi addressed the Planning Board and informed them that she has reviewed the ZBA Application and has conducted a site visit to the property noting that with the information provided it is difficult to understand exactly what is going. She explained that there currently exists a garage around which is the start of a foundation for the new garage. The new foundation is very roughly connected to the old garage. There is also a wall that extends out from what is labeled on the Plot Plan as the existing foundation to the foundation at the back of the house. Ms. Santucci Rozzi continued that the applicant mentions topographical and slope issues noting that the yard has already been leveled to the height of the wall previously mentioned. She believes this wall is about three (3) feet high. In addition, there is a large drop off toward the front of the lot and in the northeast corner there is a four (4) Ft. face cut. This cut appears to be eroding. She stated that in the Staff Report she raises the issue of grading and if a Grading Permit is required. As this grading work has alleviated the topography and drainage issues the correlation with the request to build the new garage and the subsequent encroachment into the rear yard setback is unclear.

Mr. Eng asked if the Applicant knows that they can not move further back. Ms. Santucci Rozzi said she does not think so, noting that there have been several zoning issues at the site. She confirmed for Ms. Lauria that the work on the property had already been started. Mr. Eng stated that the Applicant had gone forward without approval. Ms. Santucci Rozzi described the existing wall which is approximately three (3) Ft. high, with no stairs, from the elevation of the driveway to the leveled yard. Mr. Eng inquired if fill had been brought in to the site. Ms. Santucci Rozzi confirmed this. She continued that the problem with the topography and drainage has been fixed and it is unclear what the construction of the new garage has to do with this. She informed the Board that the numerous issues on the property have been discussed with the Building Inspector.

Mr. Reynolds asked if the dwelling is a legal two-family structure. Ms. Santucci Rozzi confirmed this and noted that the basement third unit is now gone. Ms. Lauria wanted to know if Staff knew why the Applicant is not present at the meeting. Ms. Santucci Rozzi said that she had been to the site and had spoken with the tenant but had not had any contact with the Applicant.

Mr. Eng said that he is of the opinion that no action should be taken on this Application until the Applicant appears before the Board and explains the project. Ms. Lauria said that she is not in favor of taking no action and feels that given the information provided the Board should make an unfavorable recommendation. Mr. Reynolds noted that the actual lot coverage was not known. Ms. Santucci Rozzi explained that there is a discrepancy between the information provided on the Plot Plan and what actually exists at the site. She described the cement walkway between the driveway and the house and the rounded precast cement stairs. She added that the area indicated on the Plot Plan as gravel is actually constructed of cement. She said there is a lot of hard surface and accurate calculations of the lot coverage should have been provided.

Ms. Lauria noted that the Applicant had not communicated with Staff that they would not be present at the meeting and again stated that she feels there should be an unfavorable recommendation. Mr. Eng stated that while he agrees with the issue regarding non-communication, if the Applicant was not present due to an emergency should they be given some leeway. Mr. Reynolds asked if there had been any initial contact by the Applicant. Ms. Santucci Rozzi explained to the Board that all ZBA Applicants receive a personalized letter from the Planning Staff informing them of the date and time of the Planning Board meeting, that the Board must make a recommendation on their application and that their attendance at the meeting is requested. It also states that should they have any questions to contact her. Ms. Stickney added that the ZBA directions include information regarding the Planning Board process as well. Mr. Eng said that he just wants to be sure if there was a good reason why the Applicant was not present before making an unfavorable recommendation. Mr. Reynolds stated that usually he would agree with extending good will to an Applicant, but in this case there are many issues and apparent violations. It was confirmed for Mr. Reynolds that if the Board were to take no action on the Application it still goes before the ZBA. Ms. Stickney stated that perhaps in the recommendation it should be pointed out that the Applicant had been given the opportunity to come to the meeting and address the numerous issues involved, but since they were not present to give an explanation the Planning Board could not respond to those items. She stressed that the Zoning Board needs to know that the Planning Board has reached out to the Applicant. Ms. Santucci Rozzi replied that there is a standard motion previously drafted by the Board that is used when no action is taken due to the Applicant not being present at the

meeting.

Ms. Lauria stated that she had served on the ZBA and was strongly against taking no action. She continued that the Board is here for a reason and that the Applicant owes them the courtesy of appearing at the meeting. They will have an opportunity at the ZBA meeting to explain why they were not present this evening. In this case there are so many issues that in her opinion it is a disservice to not act on this Application and she believes that a decision should be made.

Ms. Santucci Rozzi said that she had wished that the Applicant had contacted her to go over the numerous projects at the property and to review the information that Staff wants included on the plan. She wants to know what the Applicant's ultimate plan for the property is and again noted that there may be the need for a Grading Permit. Mr. Reynolds stated that by recommending denial of the Application the Board is putting the Town in the position to stop illegal actions. Ms. Santucci Rozzi noted that if identified violations exist on the property, technically relief can not be granted for other projects. The violations must be addressed first. She continued that there are discrepancies between what exists at the site and what is depicted on the plan. She concluded that Staff is of the opinion that the Applicant had not pulled a permit for the work that had been done.

Motion by Ms. Lauria, second by Mr. Eng to recommend unfavorable action.
Vote: 3/0

Mr. Eng asked if the Applicant is formally notified of the vote. Ms. Santucci Rozzi informed him that she provides the ZBA with the recommendation. She also stated that she is going to write to the Applicant separately explaining that the report had been prepared, their attendance had been requested at the meeting and they need to contact her to go over the issues. Mr. Eng asked if in cases such as this one is there communication with the ZBA. Ms. Santucci Rozzi informed him that the ZBA receives the full write up with any changes resulting from the meeting and the recommendation.

Mr. Reynolds then brought up the revised meeting schedule. Ms. Santucci Rozzi noted that this reflects the new date of the August meeting. She also informed the Board that the meeting scheduled for Tuesday, June 12, 2012 has a full agenda. Mr. Eng asked if all the Board members were expected to be present at the June 12th meeting. Ms. Santucci Rozzi replied that she was not anticipating any absences.

Motion by Mr. Eng, second by Ms. Lauria to adjourn at 7:52 P.M.
Vote: 3/0

Respectfully submitted,

Beth Herlihy