

1. 7:00 P.M. Committee On Ordinance & Rules

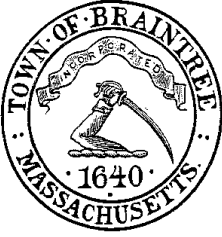
Documents:

[18 JULY 9 OR MEETING.PDF](#)

2. 7:00 P.M. Committee On Ordinance & Rules

Documents:

[18 JULY 9 ORDINANCE AND RULES AGENDA.PDF](#)



Braintree Town Council Committee on Ordinance & Rules

One JFK Memorial Drive
Braintree, Massachusetts 02184

MEMBERS

Sean Powers, Chairman
David Ringius, Vice-Chairman
Charles Kokoros, Member
Timothy Carey, Member

AGENDA

Monday, JULY 9, 2018

Starting Time – 7:00 p.m.

Johnson Chambers, Town Hall

Pledge of Allegiance

Moment of Silence

Roll Call

Approval of Minutes

- June 5, 2018

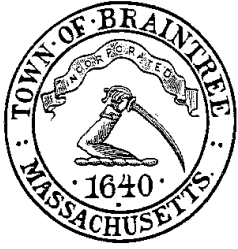
New Business

- 18 029 Mayor: Amendments to the Zoning Ordinances and the General Ordinances to Create a Planning Board Associate Member Position or take up any action relative thereto
(Public Hearing July 9)

Old Business

- None

Adjournment



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One JFK Memorial Drive
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David Ringius, Jr, Vice- Chairman
Charles Kokoros, Member
Timothy Carey, Member

June 5, 2018 MINUTES

A meeting of the Committee on Ordinance & Rules was held in the Johnson Chambers on Tuesday, June 5, 2018 beginning at 7:08pm.

Chairman Powers was in the Chair.

Clerk of the Council, Susan Cimino conducted the roll call.

Present: Sean Powers, Chairman
Charles Kokoros, Member
Timothy Carey, Member

Not Present: David Ringius, Jr, Vice- Chairman

Also Present: Joseph Reynolds, Chief of Staff
Carl Johnson, Attorney for Thayer Academy
Bill Stephenson, Business Manager Thayer Academy
Melissa Tierney, Board of Trustees President
Tom Kent, past President Board of Trustees/resident

There was a moment of silence for all those serving in our armed services, past and present, and the meeting was opened with the pledge of allegiance to the flag.

Approval of Minutes

• May 9, 2018

Motion: by Councilor Carey to approve minutes of May 9, 2018

Second: by Councilor Kokoros

Vote: For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

New Business

- **17 067 REZONE: Thayer Sports Center LLC or take up any action relative thereto (Public Hearing)**

MOTION:

That the Town Council vote, at the request of the property owner, Trustees of Thayer Academy, to amend the Zoning Map of the Town of Braintree, by rezoning from the Residential B District to the Highway Business District that portion of Assessors Parcel 1053 Lot 12H (including the discontinued Washington Street Right of Way) that is not already zoned as Highway Business, and the entirety of Assessors Parcel 1050 Lot 14. The parcels to be rezoned are shown on a plan entitled "Rezoning Petition Plan," prepared by Tetra Tech, dated March 21, 2018 and revised April 23, 2018, and on file with the Town Clerk, as Lot A in its entirety and the portions of Lot B and Lot C that are not indicated on said plan as currently within the Highway Business District. The acreage to be rezoned includes: all of Lot A, approximately 0.45 acres; within Lot B, approximately 0.7 acres of the total of 0.94 acres; and within Lot C, approximately 6.5 acres of the total of 11.98 acres. The affected parcels are currently, and will remain, within the Watershed Overlay Protection District. The rezoning request has been recommended favorably by the Planning Board, as detailed in its report to the Town Council, dated November 20, 2017.

Motion: by Councilor Kokoros to recommend favorable action to the full Council on Order 17 067

Second: by Councilor Carey

Vote: For (3 - Powers, Kokoros, Carey), Against (0), Absent (1 - Ringius), Abstain (0)

Old Business

- None

It was unanimously voted to adjourn the meeting at 7:11 p.m.

Respectfully submitted,
Susan M. Cimino
Clerk of the Council

Documents provided for Meeting

- 17 067 REZONE: Thayer Sports Center LLC or take up any action relative thereto



Department of Planning and Community Development

Melissa M. SantucciRozzi, Assistant Director
1 JFK Memorial Drive – Braintree, Massachusetts 02184
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Erin V. Joyce, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
James N. Downey, Member

To: Council President Charles B. Ryan and Councilors
From: Christine Stickney, Director of Planning and Community Development
Date: June 13, 2018
Re: Town Council Order #18-29
Associate Planning Board Member



The Braintree Planning Board held a public hearing on June 12, 2018. The proposed Council Order #18-029 was presented by the Planning and Community Development staff. No members of the general public provided any testimony at the hearing. The public hearing was then closed and the Planning Board voted to recommend **favorable action** to the Town Council on Order #18-29 as per the April 24, 2018 letter of Mayor Joseph C. Sullivan, sponsor.

The Planning Board voted as follows:

	<u>In Favor</u>	<u>Opposed</u>
Robert Harnais, Chair	X	
Erin V. Joyce, Vice-Chair	X	
Darryl Mikami, Member	X	
James N. Downey, Member	X	

Attachments
File: TCO #18-029



Office of the Mayor
One JFK Memorial Drive
Braintree, Massachusetts 02184

Joseph C. Sullivan
Mayor

781-794-8100

To: Charles B. Ryan, President of the Council
Town Council
Town Clerk
Clerk of the Council

From: Joseph C. Sullivan, Mayor

JCS

Date: April 24, 2018

RECEIVED TOWN CLERK
BRAintree, MA
2018 APR 24 PM 4:29

Re: Planning Board Associate Member: Proposed Amendments to the Town Zoning Ordinances and General Ordinances

The purpose of this memorandum is to request that the Town Council approve amendments to the Zoning Ordinances and the General Ordinances to create the position of Planning Board Associate Member, and to provide the form of the motions and articles for these amendments. The Zoning Ordinances amendment needs to be referred to the Planning Board for a public hearing and recommendation by that board.

A. Explanation for the proposed amendments

Currently, under Chapter 2.770 of the General Ordinances, the Planning Board consists of five members (appointed by the Mayor). There is no provision in either the General Ordinances or the Zoning Ordinances for an associate member. For the following reasons, it would be desirable to amend the General Ordinances and the Zoning Ordinances to create an associate-member position for the Braintree Planning Board.

The State Zoning Act, G.L. c. 40A, §9, provides that a municipality with a five-member Planning Board may establish an associate-member position. The associate member is permitted to serve in place of an absent regular member whenever the Planning Board is acting in its capacity as the special permit granting authority under the municipal zoning ordinance or bylaw. (The associate member is not eligible to participate in decisions on subdivision applications, since the state Subdivision Control Law does not provide for associate members.)

The Town's Zoning Ordinances designate the Planning Board as the special permit granting authority, and also give the Planning Board responsibility for site plan review and approval. (See Sections 135-501 and 135-711.) Under the State Zoning Act and the Zoning Ordinances, the approval of a special permit or a site plan requires a "supermajority" of four members of the five-member Planning Board to vote in favor, regardless of how many members are available to decide on a particular application. Therefore, if only four Planning Board members are available, all four must vote in favor, in order to approve the application. If only three Planning Board members are available and all three vote in favor, the application will nonetheless be deemed to have been denied, for lack of four affirmative votes. (For subdivision approval under the Subdivision Control Act, c. 41, §§81K *et seq.*, the rule is different: a simple majority, i.e., just three of the five Planning Board members, need to vote in favor to approve a subdivision plan.)

If the Planning Board were to have an associate member, it would be easier to satisfy the supermajority requirement whenever a regular Planning Board member is absent, or if a member recuses himself or herself due to a conflict of interest. Currently, whenever there is an application that requires a series of hearings over an extended period, it can be difficult to ensure that at least four of the five Planning Board members are present at each hearing. It sometimes becomes necessary to postpone hearings when one or more of the Planning Board members is unable to attend, simply to maintain the eligibility of at least four members. This situation delays action on applications, which is frustrating for both applicants and the Planning Board.

The procedure for creating the position of Planning Board associate member is set forth in G.L. c. 40A, §9, which provides, in part:

“Zoning ordinances or by-laws may provide for associate members of a planning board when a planning board has been designated as a special permit granting authority. One associate member may be authorized when the planning board consists of five members, and two associate members may be authorized when the planning board consists of more than five members. A city or town which establishes the position of associate member shall determine the procedure for filling such position. If provision for filling the position of associate member has been made, the chairman of the planning board may designate an associate member to sit on the board for the purposes of acting on a special permit application, in the case of absence, inability to act, or conflict of interest, on the part of any member of the planning board or in the event of a vacancy on the board.”

The quoted text states that the position of Planning Board associate member is to be provided for in a zoning ordinance. Therefore, an amendment to Section 135-501 of the Zoning Ordinances is proposed below. In addition, for the sake of completeness and clarity, an amendment is proposed to Chapter 2.770 of the General Ordinances, which addresses the membership and appointment of the Planning Board.

If the proposed amendments to the Zoning Ordinances and General Ordinances are approved, the Mayor will be authorized to appoint an associate member of the Planning Board, to serve as needed when the Planning Board is considering zoning applications. As stated below (in language derived from the provisions of G.L. c. 40A, §9), the associate member would serve as a voting member of the Planning Board in the event that one of the regular members is absent or unable to act, or has a conflict of interest, as well as if there is a vacancy on the Planning Board.

Pursuant to G.L. c. 40A, §5, the proposed amendment to the Zoning Ordinances requires a referral to the Planning Board for a hearing and recommendation, and also a hearing before the Town Council or a Council committee.

B. Proposed Town Council Motions for Amendments to the Zoning and General Ordinances

1. Amendment to the Zoning Ordinances

MOTION: That the Town Council vote to amend the Town’s Zoning Ordinances, Article V – Special Permits, Section 135-501, to read as follows, by adding the words shown in **bold**:

“§135-501. Special permit granting authority (SPGA)

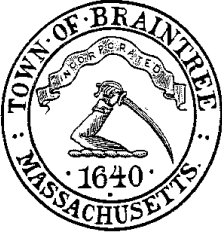
The special permit granting authority (SPGA) shall be the Braintree Planning Board. The Planning Board shall consist of five members and one associate member, appointed by the Mayor, as provided by Section 2.770.010 of the General Ordinances. The Planning Board Chair shall designate the associate member to sit on the Planning Board for the purpose of acting on a special permit application or site plan review, in the case of absence, inability to act, or conflict of interest on the part of a member of the Planning Board, or in the event of a vacancy on the Planning Board.”

2. Amendment to the General Ordinances

MOTION: That the Town Council vote to amend the Town’s General Ordinances, Chapter 2.770 “Planning Board”, Section 2.770.010, to read as follows, by adding the words shown in **bold**:

“2.770.010. Establishment

There shall be a Planning Board of the Town which shall consist of five members **and one associate member** appointed by the Mayor, pursuant to MGL c. 41, §81A **and c. 40A, §9**, who shall serve without pay. The Mayor shall designate one of the Board members to serve as Chair, and the members shall choose one of the members as Vice Chair, Clerk, and/or Secretary. **The associate member shall be eligible to participate solely on matters in which the Planning Board is acting as the special permit granting authority under the Town's Zoning Ordinances."**



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