



Department of Planning and Community Development

Melissa M. Santucci, Principal Planner
90 Pond Street – Braintree, Massachusetts 02184
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Michelle Lauria, Member

APPROVED

Braintree Planning Board
March 29, 2011
Town Hall

Present:

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami
Michelle Lauria

Melissa Santucci, Principal Planner

405 Franklin/326-330 West Streets/Messina Commercial Properties, LLC
Application: Request for Rezone
TCO #10-081

The Chair opened the continued public hearing at 7:10 P.M. and called the roll: Ms. Lauria, Mr. Mikami, Mr. Eng, Mr. Reynolds and Mr. Harnais all present.

Attorney Carl R. Johnson III, 536 Granite Street, Braintree, MA 02184, was present to represent the applicant.

Visual board used in presentation.

Attorney Johnson addressed the Planning Board and gave a description of the proposed project (the rezone of the property noted above from Residence B to General Business) along with changes that had been made since the Public Hearing on Tuesday, March 8, 2011. Since the last Public Hearing the applicant has reviewed the project, looking at the concerns over the rezone for the second building and house demolition. They have redesigned the project to be just one building. The petitioner has reduced the scope of the project.

Attorney Johnson explained the new plan which creates a rectangular lot. He stated that the branch bank with drive-thrus will require special permitting thus giving the Planning Board plenty of opportunity to scrutinize the project. Atty. Johnson described the rezone, parking, drive-thrus, public safety in relation to the state highway, the enclosure of existing curb cuts, landscaping and buffers. The benefits to

the community through the creation of jobs and the improved use of the property were pointed out. Atty. Johnson also informed those present that the TD Bank building will be a 'green' building with LEED certification.

The Chair opened the hearing up to the public for comment.

Mr. Carleton F. Kilmer, 102 Herbert Road, Braintree, MA 02184 addressed the Planning Board.

Mr. Kilmer stated that the traffic concerns him more than the proposed building itself. He said that the traffic has been worse in recent years due to the Day Care Center and Dunkin Donuts. According to Mr. Kilmer, it can take as many as 3 or 4 light cycles to get through 5 corners. He stated that the previous plan had 3 drive-thrus exiting on to West Street, and wondered if this still was the case.

The Chair informed him that if/when the plan goes through the details would be addressed at that point. The issue before the board tonight is the rezone only.

Mr. Kilmer requested that the Planning Board please focus on the traffic. He felt that the traffic usage for a bank would be during peak hours while the majority of traffic flow at a restaurant was off peak. The Chair again stated that is not what was being discussed this evening. It was the rezone.

Ms. Cathy Mosesso of 99 Colby Road, Braintree, MA 02184 addressed the Planning Board.

Ms. Mosesso wanted to know if the rezone is permitted, what happens if the bank changes it's mind? If the land is already rezoned then what? Ms. Mosesso stated that she did not like the wording of 'adequate buffers'. She is also concerned with the traffic in the 5 Corners area. Other points that Ms. Mosesso raised were regarding the hours of operation of the bank, the tax rate of the lot and the area owned by Messina Enterprises. She referred to an applicant that had come before the board at a previous meeting and was not voted on favorably even though the deck in question had already been built. She also questioned if there will be use of the other Messina owned property in the future?

Mr. Michael McGourty of 1 Meghan's Way, Braintree, MA 02184 addressed the Planning Board.

Visual board used in presentation.

Mr. McGourty began by stating that the residents have good reason to be concerned. He described various permits allowing garages, the 5,200 sq. ft. restaurant and subsequent additions that had been granted beginning in 1950. He discussed the permit for a house at 326 West Street and that Jimbo's (or Jimbo's South had occupied the property from 1984 going forward. Mr. McGourty questioned what hardships were presented by the applicant to request the rezone of the property. He informed those in attendance that general business zoning is the most liberal concerning structures, bituminous walks and parking etc.

For the size of the proposed property Mr. McGourty feels the buffer strip is inadequate. The requested increase in the size of the area (app. 19,000 sq. ft. to app 35,000 sq. ft.) is an 82% increase. An excessively larger building could then be put on the resulting larger lot, referring to the building on Granite Street. In his opinion anything over 30,000 sq. ft. should be considered a problem. Mr. McGourty discussed other banks in Braintree and the sizes of their lots. He stated that when the lot size is reduced to less than 30,000 you protect the residents.

Mr. McGourty thanked the Planning Board for their time, and as stewards of the community he urged them to consider what would better serve the residents.

Mr. Alan Flowers of 48 Fallon Circle, Braintree, MA 02184 addressed the Planning Board.

Mr. Flowers stated that the revised plan did not change the points that he presented at the previous meeting and wanted to know why they could not build with in the existing zoning.

Ms. Patricia Evers of 110 Herbert Road, Braintree, MA 02184 addressed the Planning Board.

Ms. Evers also expressed her concerns regarding the traffic flow and she wanted to know where the traffic study was. Also, if the proposed building is 3,000 sq. ft. why do they need a 36,000 sq. ft. lot? Why do they need 3 drive-thrus when other banks in town have 1 or 2?

Ms. Evers feels that there should be a reduction in lot size. She thinks that the concerns of the residents need to be taken in to consideration. Ms. Evers has lived in Braintree since 1985 and it is not the same town that she moved to 20 years ago.

Ms. Evers questioned the Planning Board Department staff report wondering why Ms. Santucci would write the report if she is familiar with the project. Shouldn't someone impartial and a resident of the town write the recommendation? She believes that a new building would be nice but wonders why they can not work within the existing zoning. Ms. Evers referenced that 100 acres of commercially zoned land had been 'saved' to residential, however this 'residential' property includes Lenox Farms, Jonathan's Landing and the development at Ridge. In her opinion this is not the sort of residential property the residents want. She does not want to see every square foot of Braintree developed. Enough is enough. It is time to take the town back.

Ms. Evers wanted to know why this residentially zoned land has been used commercially for 50 years when it is not zoned that way and could she then use her residential property as commercial? She referred to the number of already vacant properties around town and again questioned the need for 3 drive-thrus.

Ms. Evers ended by saying that she is not against redevelopment but she is against rezoning of residential to general business. She also spoke of the need for clarification if TD Bank has signed a lease.

The Chair responded to Ms. Evers comments regarding the Planning Department recommendation. He explained that Ms. Santucci works with everyone in the town equally and is an integral part of the process.

Ms. Kimberly K. Kroha of 42 Herbert Road, Braintree, MA 02184 addressed the Planning Board.

Ms. Kroha's concern was that if the rezone is allowed and TD Bank leaves what would then be allowed? Ms. Santucci clarified that anything over 500 sq. ft. would require approval of the Planning Board.

Mr. Robert J. Parsons of 19 Fallon Circle, Braintree, MA 02184 addressed the Planning Board.

Mr. Parsons stated that he was encouraging the Planning Board not to recommend the rezone. He believes that they can make the project work within the current zoning.

Mr. Robert Leonard of 61 Colby Road, Braintree, MA 02184 addressed the Planning Board.

Mr. Leonard began by stating that he feels the changes to the proposed project are moving in the right direction, lessening the impact on the area. It is not his intention to interfere with Messina Enterprises, but feels that they should work within the current zoning. If the concerns of the residents weigh in on the decision than the rezone should not take place. He feels that granting the rezone would be an encroachment into the neighborhood. Mr. Leonard explained that he has been in the same position before Planning Boards. He also stated that changes from business to residential are not always good either, as they result in apartments etc., and put more people into a smaller space.

Mr. Leonard continued by saying that Messina Enterprises knew what they bought when they purchased the property. When you are in business you run that risk. He said that traffic is a fact of life in that area (he also has not seen a traffic study) comparing the morning traffic to an alarm clock. Mr. Leonard mentioned a New York Times article which named the Braintree Five Corners area as one of the worst in the country. He realizes that the traffic can not be made better but does not feel that it should be made worse. He stated that public transportation is not keeping up with the needs of commuters.

Mr. James A. Glynn of 147 Eleanor Drive, Braintree, MA 02184 addressed the Planning Board.

Mr. Glynn expressed that he was for the changes in the proposed project but that he was not for the rezone. He would like to see the project stay with in the confines of the existing lot. There has already been enough rezoning.

Ms. Katie Hannon of 305 West Street, Braintree, MA 02184 addressed the Planning Board.

Ms. Hannon wanted to draw attention to a letter she read at the previous Planning Board meeting held on March 8, 2011. This letter had been prepared by her father, Barry T. Hannon, and she had read it on behalf of him and her mother, Deborah K. Hannon. The Planning Board members had previously received copies of this letter. Ms. Hannon highlighted certain points of the letter. Mr. Hannon is in support of a modest bank with a maximum of 2 drive-thrus on the existing Jimbo's site, to prevent the unforeseeable potential of additional development. Mr. Hannon relies on the Planning Board to make the right decision for the residents of Braintree.

Ms. Edith E. Mariano of 83 Colby Road, Braintree, MA 02184 addressed the Planning Board.

Ms. Mariano said that while she is opposed to the rezoning she is in support of redevelopment of the property. As long as it is something that meets the needs of the community and residents. She read, then presented the Planning Board with a petition signed by residents in opposition to the rezone.

Mr. Maher M. Marharmo of 319 West Street, Braintree, MA 02184 addressed the Planning Board.

Mr. Marharmo is against the rezone request. He pointed out that there are after hour school activities and kids may run out in the street. Mr. Marharmo also wanted to know why TD Bank needs a drive-thru and the larger lot.

Christopher D. Barney of 30 Myrtle Street, Braintree MA 02184 addressed the Planning Board.

Mr. Barney stated that although he does not live in the immediate neighborhood, he still feels that to allow the rezone would be setting a bad precedent.

Ms. Christine R. McIntyre of 2 Spruce Street, Braintree, MA 02184 addressed the Planning Board.

Ms. McIntyre stated that she does not live in the immediate neighborhood either but is concerned over this issue. She feels that the zoning laws should protect the town.

Ms. Laura A. McGourty of 15 Colby Road, Braintree MA 02184 addressed the Planning Board.

Ms. McGourty informed the Planning Board that she was an abutter. She presented the Planning Board with a petition. She agrees with redevelopment but not with the rezone.

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Ms. Joyce O. St. Pierre of 52 Town Street, Braintree, MA 02184 addressed the Planning Board.

Ms. St. Pierre questioned if the Planning Board/Town recognizes a "2 year non-use" policy. Ms. Santucci explained the 2 year expiration on abandonment of pre-existing non-conforming use.

Ms. St. Pierre stated that she thought a solution for the problem would be for TD Bank to go in where Borders Books is currently located as that building will soon be vacant. She believes that this location would allow for the 3 proposed drive-thrus and have ample room for traffic flow.

She asked what the Jimbo's property is zoned as. The Chair informed her it was currently general business. Ms. St. Pierre then wanted to know if the parcel could all be zoned as residence B, then allowing for a developer to come in and put up single family homes in this location. The Chair replied that it is everybody's right to petition for what they want.

Mr. McGourty again addressed the Planning Board and explained that 15,000 sq. ft. of the parcel that is asphalted over is actually zoned residence B at this time so it is not all general business. Other items that he discussed were the non-conforming lot at 326 West Street and the fact that the plan does not indicate the frontage. Mr. McGourty referred to the Master Plan of the Town and how it's intent is to revitalize underutilized parcel's. He questioned how this parcel can be considered underutilized.

The Chair asked when the 15,000 sq. ft. of residence B zoned land was asphalted over. Mr. McGourty replied that he did not know. The Chair also wondered why the Town never acted on this.

There was then some discussion as to the granting of a permit for a house with out the proper frontage and why hasn't the applicant been questioned about this.

Gail R. Gates of 377 Franklin Street, Braintree, MA 02184 addressed the Planning Board.

Ms. Gates explained that she has lived at that location since 1961. She went on to inform the Planning Board that in 1963 someone asked to put up the fence and her father said yes.

Attorney Johnson addressed the Planning Board. He explained that the office building at 536 Granite Street is zoned highway business not general business. The parcel in question has lots in more than one district which occurred prior to zoning. Atty. Johnson said that the bank will not have the same peak hours as the previous tenant. He stated that they have investigated past permits granted by the town.

Ms. Lauria questioned Attorney Johnson what areas are tarred.

Attorney Johnson pointed out the line of existing asphalt on the visual board for the proposed project. He explained that they are not using any more land. They are not taking residential land to enhance the economic vitality of the site.

Ms. Lauria questioned if the land being given back is tarred. Atty. Johnson said it was. She then asked if what was being taken was not. Atty. Johnson again replied that it was.

Ms. Lauria inquired about the 3 proposed drive-thrus. Atty. Johnson explained that Td Bank has 3 as a standard for their buildings, however they can be relocated.

Ms. Lauria had no more questions at this time.

Mr. Mikami stated that he appreciated all the adjustments that the applicant had made to the proposed project, however he would have liked to have been shown something in order to visualize the actual building. He stated that he still wants to see a financial analysis. Mr. Mikami asked if any trees will be affected.

Attorney Johnson deferred this question to Mr. Robert W. St. John, the Director of Planning for F.X. Messina Enterprises, 400 Franklin Street, Braintree, MA 02184.

Mr. St. John told Mr. Mikami that there will probably be a few trees taken down or replaced.

Mr. Mikami said that he had a few questions. He asked if the hours of operation for the bank would be 7:00 A.M. to 7:00 P.M. Ms. Emily Clark, of TD Bank, 70 Gray Road, West Falmouth, ME 04105, responded. She informed Mr. Mikami that the hours of operation would actually be 8:00 A.M. to 8:00 P.M.

Mr. Mikami wanted to know if the foot print would be the same. Ms. Clark replied that it would. Mr. Mikami stated that he is very conscious of the 3 drive-thrus. Ms. Clark explained that they are part of the design due to TD Banks overall concept. They are known as America's most convenient bank. They do not like to have their customers have to wait in line. Mr. Mikami questioned the size of the bank. Ms. Clark told him this was the average size for New England.

Mr. Mikami stated that he was concerned about the traffic and inquired about trip numbers. Ms. Clark said that she could not speak to that issue.

Attorney Johnson explained that they had done an analysis of the traffic based on the previous plan with the larger size and the additional retail building. There will be a full traffic analysis done. This has to be provided to Mass Highway. He went on to say that this is still a difficult site to meet all the requirements.

In regard to the traffic, Mr. Mikami stated that the Planning Board looks forward to seeing the new analysis, and asked if bank trip numbers are typically less than restaurant trip numbers. Attorney Johnson replied that was the case. Mr. Mikami questioned what additional protections could be put in place against splitting of the

lot etc. He again noted that it would have been easier if both the Planning Board and the residents had more of a visual interpretation of the proposed project. Atty. Johnson did point out that the landscaping would increase substantially. Mr. Mikami asked if there was no way that the project could be accommodated without making the adjustment from residential to business. Atty. Johnson said that they have to use the parcel to meet the codes.

Mr. Mikami raised the question of the borders with the neighbors. Atty. Johnson replied that was something that the engineer would have to address.

Mr. Mikami finished by asking if no rezone occurs, what would happen to the paved area? Atty. Johnson told him it would still be used as is.

Mr. Eng asked Attorney Johnson if the area next to the Gates residence was part of Plot 11C. Atty. Johnson replied that it was. Mr. Eng then wanted to know (for clarification for the residents) if it the parcel could be subdivided into 2 house lots. Atty. Johnson told him it could not.

Mr. Eng inquired about the size of the newly completed TD Bank on route 3A in Hingham. Ms. Clark told him that it was 3,800 sq. ft. Mr. Eng asked how many drive-thrus there were at this location. Ms. Clark replied that there were 3. Mr. Eng questioned if the bank building being built at this location is smaller why are 3 drive-thrus needed here? He pointed out that most banks in Braintree have 1 maybe 2 drive-thrus. Atty. Johnson discussed permitting requirements for drive-thrus and said this is just the first step.

Mr. Eng asked Atty. Johnson if the traffic impact of the bank would be less (using the analysis that they had). Atty. Johnson replied that from what he had reviewed, yes it would be less intense. He said that a comparable restaurant would generate approximately 702 trips while the bank would generate about 430. He again stated that they will provide the revised analysis to the Planning Board as well as the state. Mr. Eng stressed the importance of the traffic stating that he has no problem with the development and that he really wants to see the analysis. Atty. Johnson noted that the traffic will be adjusted to Franklin Street. Mr. Eng wants him to speak with the state and the town engineer about a possible adjustment to the timing of the traffic lights at Five Corners. He urged him to explore this possibility.

Mr. Reynolds went over a description of the historic use of the property versus general business. There was also discussion regarding the paved area. He wanted to know the percentage of sq. ft. of residentially zoned land currently being used as business. There is approximately 15,000 sq. ft. being used now.

Mr. St. John explained the original proposal called for approximately 51,000 sq. ft. while the new proposal has been revised to approximately 36,000 sq. ft. Mr. Reynolds asked for clarification that the new proposal was actually giving land back to residential area. Mr. St. John replied that was the case.

Mr. St. John discussed the fence line. Ms. Santucci stated that people indentify with the fence line at the rear of the property. This will be coming closer to Franklin Street resulting in a better shaped lot. The Chair stated that nothing 'green' would be given up.

Ms. Evers again spoke to the Planning Board stating that the bottom line was that it would still be a rezone. She brought up an applicant from a previous meeting that was voted unfavorably upon because the terms of hardship were not met. The Chair explained the difference between a variance and a rezone and that it was not necessary to meet the hardship criteria for a rezone. Mr. Reynolds also explained this.

Mr. Reynolds asked for clarification that what will happen is that 1700 sq. ft. will change from residential to business and that 1700 sq. ft. will change from business to residential. Atty. Johnson confirmed and went on to explain that it is appropriate for bordering lots to be rezoned according to the law and the courts. He again went through the history of zoning in the town..

Mr. Reynolds second question to Atty. Johnson was with the proposed form of the lots, what is his conception of the setbacks and buffers. Atty. Johnson replied that they will meet and exceed those requirements.

Mr. Reynolds went on to say that he appreciated all the information that had been supplied when no actual application had yet been filed. Atty. Johnson stressed that the applicant had listened to the concerns expressed by the Planning Board and the residents and had adjusted their proposal.

The Chair expressed that he felt the previous proposal presented had shown insensitivity and that he had agreed with some of the residents concerns. He does not know why the town had allowed certain things in the past. He discussed the issues associated with the history of properties and would like the town to look at these issues. Again, he did not like the previous proposal and did not want the house taken down.

The Chair gave an explanation to Ms. St. Pierre that adverse possession does not apply to this case and does not pertain to a rezone.

Mr. Leonard stated to the board that there should be an element of trust and that he did not believe the traffic numbers. The Chair replied that those will be addressed.

Mr. Leonard questioned the backward process of the rezone being decided upon prior to seeing plans of the proposal. There was much discussion regarding the parking being detrimental as this is how the property had been used previously. The Chair assured him that the Planning Board scrutinizes things fully when making recommendations. Mr. Leonard went on to say that he was not trying to reclaim the property but rather to err on the side of caution. The Chair suggested that he approach the Town Council with his concerns but wanted to bring the subject back to the rezone.

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Ms. Marina Ristuccia McHugh of 31 Lincoln Street, Braintree, MA 02184 addressed the Planning Board.

Ms. McHugh stated that when property is being purchased a title search is done and the applicant must have known about the zoning. She also wanted to know what would happen if the rezone goes through and TD Banks ends up leaving.

Ms. Evers again stood before the Planning Board stating that the residents won't stand for the rezone and that enough is enough. This is not just a problem in the Five Corners area but all over Braintree

The Chair said that the new property use would not agree with the current zoning, but since the property had been used for 50 years as business how do you not rezone? They have to look at the overall picture.

Ms. Mosesso discussed the triangular piece of land and the traffic that TD Bank with its' longer hours would generate.

Mr. Kilmer agreed with the opinion expressed by Mr. Leonard regarding trust and went on to say that he believes that traffic figures to be bogus. There was again discussion regarding traffic. Mr. Kilmer stated that the applicant had not earned the residents' trust. He mentioned the trucks that come and go on Herbert Road as an example. The Chair pointed out that they had listened to the concerns expressed at the previous hearing and had come back with a revised proposal. He explained the process and the fact that the Planning Board is not an enforcing authority. He told Mr. Kilmer that he would like to see letters of complaint that had been submitted regarding the truck issue.

It was stated that there is fear and apprehension among the residents. There is an element of uncertainty and the unknown. The residents would be happy with a tenant such as TD Bank keeping the area up, but if the rezone is allowed to go through and TD Bank leaves what else could then come in?

Mr. Leonard wanted to know if some common ground could be reached in regards to the zoning and inquired if there was anything that the Planning Board could do?

Mr. Reynolds said that was an excellent question and explained that the existing bylaws are what the Planning Board is bound by. He went on to say that they have to act within those guidelines or they will be sued. The course of action that could be taken would be for the residents to go to the Town Council and petition for a change in the bylaws.

Mr. Mikami again pointed out that this is only one step in the process. The Chair stated that the Planning Board makes a recommendation to the Town Council and they vote on the rezone. If the Town Council votes favorably then the applicant must apply for the permits etc.

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Ms. Mosesso questioned why the lot could not be 30,000 sq. ft. or under. Ms. Evers added that would protect the town. She wanted a guarantee that there would only be one building.

Motion by Mr. Eng, second by Mr. Reynolds to accept the correspondence list.
Vote: 5/0

Motion by Mr. Reynolds, second by Ms. Lauria, based on the modified plan and that the buffer will not be decreased to recommend favorably to the Town Council.
Vote: 5/0

Motion by Mr. Reynolds, second by Mr. Mikami to close the Public Hearing at 10:05 P.M.
Vote: 5/0

Respectfully submitted,

Beth A. Herlihy