



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
Erin V. Joyce, Member

Braintree Planning Board – September 13, 2016 – Cahill Auditorium

Present:

Mr. Robert Harnais, Chair

Mr. Joseph Reynolds, Vice Chair

Mr. James Eng, Clerk

Mr. Darryl Mikami, absent

Ms. Erin Joyce

Christine Stickney, Director

Melissa SantucciRozzi, Principal Planner

Jeremy Rosenberger, Zoning Administrator

Chair Harnais called roll call at 7:06 PM. Member Mikami is absent from this meeting.

Zoning Board of Appeal Petitions – September 13, 2016

OLD BUSINESS:

Petition #16-11: 220 Forbes Road (Bart Steele c/o Viewpoint Sign & Awning): This was for a ground sign, and the Planning Board previously recommended unfavorable. This petition was continued until October Zoning Board of Appeal Meeting.

NEW PETITIONS:

Petition #16-33 96 Blanchard Boulevard

Meredith and Richard Brooks, 96 Blanchard Boulevard, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 403, 407 and 701 to demolish existing detached garage and construct 52 ft. x 19.5 ft. attached in-law addition with 884.5 sq. ft. of living space, which does not meet the required side and rear yard setbacks. The lot does not meet some of the dimensional and density standards under Section 135-701 for the Residence B Zoning District. Variances pursuant to Section 135-407 will be required, as the proposed in-law addition will encroach into the front and rear yard setback areas.

The Zoning Administrator, Jeremy Rosenberger, highlights the package provided. The proposal exceeds the setback of both the side and rear yard. The rear yard setback has a setback of about 29.5 feet; it is about 6 inches short of meeting the rear yard setback. On the side yard setback, they are at 6.2 feet, where a 10 foot setback is required. The in-law is pretty significant in size. Their original proposal was much larger. They have removed a rear deck to reduce the encroachment into the rear yard. They have reduced the size of the front porch. The existing building coverage (including deck) of the single family dwelling is approximately 1,174.5 sq. ft. The existing detached garage coverage is 200 sq. ft. The total existing building coverage is +/- 18.5%. The new proposed building coverage of the single family dwelling w/in-law is approximately 2,156.5 sq. ft. (28.6%). The total proposed lot coverage will be approximately 35% lot coverage (w/o front walkway). Nonetheless, the Zoning Administrator recommends denial. He feels they can squeeze out not needing relief for the rear yard, and they could probably meet the side yard setback, too. If you look at the floor plan, there are some inefficiencies of the layout. Ultimately, he comes to this reasoning because there is a lack of hardship due to soil, shape or topography.

Member Joyce thought the Zoning Administrator presented a great summary.

Member Eng confirms the Zoning Administrator's recommendation is denial without prejudice. The Zoning Administrator states they can come back with a reduced plan; he feels they can meet the setbacks. Member Eng agrees definitely on the side setback; they can reduce it by 4 feet to meet the setback. Member Eng agrees with Zoning Administrator's recommendation.

Member Reynolds asked about revised calculations for the updated plan. Member Reynolds discussed the setback requirements and the recommendation of denial without prejudice based upon lack of hardship. Member Reynolds feels there is a significant trend that he sees of variances being granted by Zoning Board of Appeal, and he feels we have to raise the bar because of the denseness they are seeing in some of these neighborhoods. The Town should be compelled to take that into heavier consideration.

Member Eng points out two minor corrections in the Zoning Administrator's write-up related to side yard and rear yard setback.

Member Eng **MOTION** for an unfavorable recommendation; seconded by Member Reynolds; unanimously 4:0:0.

Petition #16-34 120 Newton Avenue

Elizabeth Barbosa and Saulo Barbosa Neto, 120 Newton Avenue, Braintree, MA 02184 seek relief from Bylaw requirements under Chapter 135, Sections 403 and 701 to construct or legalize an existing 16' x 18' rear deck to replace a 6' x 6' rear deck. The deck has already been constructed without a permit, and they received a "stop work order" from the Building Department. It is a finding, as it is not increasing the existing non-conformity. Formerly, the existing dwelling was 5.4 feet from rear. This is a rare yard on a corner lot with a very small existing setback. With the proposed deck, it would be setback about 5.6 feet.

The Zoning Administrator notes that the recommendation included a request for updated plans for a landscaping plan. There were photos in the conditions. They provided a new landscaping plan in the updated plot plan dated September 2, 2016 that the Zoning Administrator provides to the Planning Board. In the accompanying conditions, there were photos of site work going on. The Zoning Administrator highlighted the work proposed in the landscaping plan. They will not be exceeding the coverage requirements of both building and lot. The Zoning Administrator notes there is a table on the top left regarding building coverage and lot coverage. Building coverage will increase to about 22.5% (still under 35% required); on lot coverage, they have an existing 32.5% going up to 56.5%, which is quite a large increase; the Zoning Administrator did a quick analysis, as he thinks that is too high, and he got about 42.4%. He is going to ask the surveyor to verify this. This increase is with regard to the proposed paver area and rear deck. They are still under the lot coverage maximum of 70%.

Member Joyce clarified is the deck included in building coverage or lot coverage. Zoning Administrator stated his analysis thought the building coverage should be around 22.4% rather than 17%. The Zoning Administrator's recommendation was approval with condition that they

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provide some evidence of abutter support, which they provided. Also the rear deck is to remain unenclosed; if they want to make that a habitable space, they have to come back. Principal Planner, Melissa SantucciRozzi recommended a condition of no parking on the patio area.

Member Eng states we are covering this lot with quite a bit of structure. It is a small lot. If we are going to try to make this town consistent with what we are viewing, we should try to make petitioners come in with less coverage. Member Reynolds feels Member Eng and the Zoning Administrator covered this quite admirably. He agrees with conditions, as stated; in addition, the recommendation of no parking on patio should be added.

Member Reynolds **MOTION** to recommend approval based on staff's recommendation of conditions and adding a fourth condition of no parking on patio; seconded Member Eng; unanimously voted 4:0:0.

Petition #16-35 52 Lawnview Drive

Joseph Duca, 179 Trenton Street, East Boston, MA 02184 (Owner, Yi Li Chiu) for relief from Bylaw requirements under Chapter 135, Sections 403 and 701 to construct additional living space on the existing third level attic area; raise roof height to +/- 28' 6" and construct 31' wide rear shed dormer and two 7' 6" wide front dormers. The applicant seeks authorization to alter a non-conforming single-family dwelling located on a non-conforming lot under Sections 135-402 and 135-403. The existing lot and dwelling do not meet some of the dimensional and density standards under Section 135-701 for the Residence B Zoning District and are non-conforming. As a result, a finding pursuant to Section 135-403 is required. The Zoning Administrator provided recommendation of approval with one condition that any future conversion to habitable space must conform to all building codes for light, ventilation and design (habitable space meaning bedroom).

Member Joyce has a general question on calculation of height. A lot of these types of houses look so high, especially where the topography drops off in the rear. How is the height calculated? The Zoning Administrator states typically it is the median grade all around. Member Joyce asks, if we have a survey with zero elevations, how do we calculate and assess height?

Director Stickney clarified the height calculation, from the definition, as the vertical distance above the mean finish grade 10 feet out from each face of the building to the highest point of the roof, beams, and tresses. They should be giving us elevations so that we can determine if they are meeting the height. The Zoning Administrator states this is probably a fairly flat site, if you look at the topography, and they have provided us elevations; their elevation being 28.5 feet to the peak.

Member Joyce feels the way they have it dimensioned, it does not look like it is to the peak. She feels, although it might not apply to this application given the heights they are seeing on some additions and new buildings, we should be looking for a height calculation and be more stringent on this. When applicants state their hardship is because the lot is sloped and they don't provide us elevation or height calculation, it is hard to tell. The height is on the proposed front elevation, but the garage is lower than the front side of the house, but it is hard to gauge this without calculating it and at looking it. The Zoning Administration will make sure Applicant updates this.

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Member Eng states looking at the pictures of the homes in this area, will this addition look out of place. The Zoning Administrator states it will definitely be a little bit higher. This will probably be a couple of feet taller than other things in the area; they do not have a basement, so he understands their justification. It will not exceed 30 feet. Member Eng asks if we have any leverage on making them conform to the building codes. Director Stickney states the design shows that the third floor is an office area/storage; there is a bathroom on the third floor, as well. If there were bedrooms, the code kicks in a different building code regulation. That is why we want to make sure it is conditioned to meet the building code in the future. Member Eng feels that it looks like two additional bedrooms if you put a wall and a door in the study and the storage area. The Zoning Administrator feels he would be circumspect if they had a basement; he can see why they would need additional storage space. Member Eng asks if they turn that into two additional bedrooms, do they need to come before us for any approval? Director Stickney states they would need to pull a Building Permit; however, we have seen situations where it has been storage/study areas that are converted to bedrooms later without building permits. Member Eng points out that there is no closet space in either the study or storage area.

Member Reynolds is suspect because who has a bathroom with a bathtub in their attic. He feels it is a future layout for bedrooms. He feels we need to do a better job of enforcement when applications are made. He feels it is an excellent time to bring back Zoning Compliance Forms. This is something we should talk to the Administration about. We offer opportunities for gaps for future illegal uses when these types of additions are built. He is concerned that either we are understaffed in co-compliance or we are not doing a good enough job of going to the extent that we should from a review perspective. He would hope that Zoning Board of Appeal would take a similar attitude and be a bit more vigilant and circumspect for these petitions. He feels the condition that the Zoning Administrator has added is a good one.

Member Eng clarified if they decide to make these bedrooms, do they have to come before us again. The Zoning Administrator believes it would require Building Permit. The Principal Planner states Water & Sewer fees also; she clarifies that they might not be showing this as bedrooms because you pay for a bedroom on your Water & Sewer fee.

Member Reynolds asks if they have the authority to make a recommendation to strike the bathtub. Chair Harnais does not think they do. Director Stickney states the Assessors, every three years are supposed to be going into these structures; that is another check and balance. Member Reynolds does not think that is consistent. Chair Harnais feels it is obvious that this will ultimately be bedrooms. He is hard-pressed to believe this is going to be a study or storage.

Member Eng **MOTION** to table this until the Zoning Administrator has a chance to discuss the intention of these two rooms with the Applicant; seconded by Member Reynolds; voted 4:0:0.

Petition #16-36 970 Washington Street

Lefteris and Anastasia Zotos, Trustees & Braintree House of Pizza LLC, 958 Washington Street Washington Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.1 and 904.6 to install one primary wall sign (25' x 2') and two secondary wall signs (9' x 2' and 68" x 2'). The property is located 970 Washington Street, Braintree, MA.

The Zoning Administrator explains that the proposed signage does not meet the signage zoning bylaws pursuant to Section 135-904.1 and 904.6. The Braintree Zoning Bylaw states “No wall sign shall be more than four feet overall in height and a wall sign shall not exceed the lesser of 150 square feet or one square foot in area for each linear foot of frontage for each business.” The proposed front elevation wall sign on Washington Street is 50 sq. ft. The linear frontage of the building/business is approximately 41 feet. As a result, the proposed front elevation wall sign exceeds the 41 feet allowed. Therefore, pursuant to Section 135-407, variances are required.

Further, The Braintree Zoning Bylaw states “Not more than one exterior wall sign for each store or business shall be permitted, except if a store or business has a direct entrance into the store or business on a wall other than the store front, there may be a secondary wall sign affixed to such wall; however, no store or business shall have more than two such secondary wall signs in any event, provided that the total aggregate area of all such secondary wall signs shall not exceed 50% of the maximum permissible area allowed above.” Two proposed wall signs are requested on the right and left elevations. There is an existing secondary door on the left elevation (Hall Street). However, this entrance is to the kitchen and not the customer/patron area. The total square footage of the secondary wall signs is approximately 29.3 sq. ft. or 71% of the permissible wall sign area.

The Zoning Administrator provides a recommendation of approval with conditions: (1) only one secondary wall sign located above the main entrance doorway; (2) No sign illumination from 1am-6am, pursuant to Section 135-905.

Member Joyce clarified the Zoning Administrator’s recommendation. They would keep the primary wall sign, and one secondary sign, located above the angled portion of the building fronting Hall Avenue/Washington Street. The Zoning Administrator feels two secondary wall signs would be a bit of a precedent setting for the business. He feels one additional sign is prudent, and that location is visible to the Square. Member Joyce feels you might want the secondary sign to be on side of building. Also she wonders if BHOP is a familiar acronym for them. Member Joyce likes the “Braintree House of Pizza” on the front. The Principal Planner interjects about different options for signage that she discussed with Applicant. She states the corner section has a metal piece sticking out, and the Applicant is trying to make the corner not look awkward. Chair Harnais feels it is more to cover something up rather than advertise. Member Joyce asks why not just fix the brick surface? The Principal Planner states it is very difficult to match the brick that is there.

The Zoning Administrator states as far as BHOP for “Braintree House of Pizza”, it has become an abbreviation that Petitioner has come to like. We can all attest to sign facing parking lot is pushing it. The wrap-around fits and is consistent. The Zoning Administrator feels it is going to be nice signage.

Member Eng says he doesn’t have a problem with the big sign but he does with smaller signs. He also does not want to call it BHOP.

Member Reynolds agrees that small sign on Hall Avenue to obstruct the view from the metal fixture. Member Reynolds asks for clarification on the “Braintree House of Pizza” spelled out

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sign that faces Washington Street at the front of the building confirming that sign is 2 feet high. The Zoning Administrator states that is the maximum height under the Village Overlay Protection. They have exceeded the 41 square foot maximum, based on 41 linear feet, with their proposal of a sign of 2' X 25' or 50 square feet, which includes the silver backing and not just the letters. When adding the 9' X 2' sign, we are up to 68 square feet. Member Reynolds doesn't see an argument for a larger sign because he is concerned with precedent. Is there an opportunity to make the front sign smaller? Member Reynolds states 2 feet high is not a problem, but maybe the width could be reduced.

Chair Harnais has always thought signs are too restrictive. He has no problem with a large sign that conforms. He does not like awning signs. He feels size is important but materials are more important. He would rather have a larger classy sign than smaller and not conforming. He does not agree with an awning.

Member Eng **MOTION** that petitioner conforms to square footage allowed by bylaws and that they do not exceed the allowable 41 square feet. If they need to cover areas on the building that don't look good, fix the building rather than hide it with a sign.

The Principal Planner clarifies if he makes it smaller can there be two signs? Member Joyce doesn't mind the size of the sign; she would prefer to see the single bigger sign and not the secondary sign.

Member Eng amends his **MOTION** to allow for a single 50 square foot sign and no other sign; seconded by Member Joyce; unanimously voted 4:0:0.

Petition #16-37 535 John Mahar Highway

Grand Slam Restaurant Concepts Braintree, LLC d/b/a Jake n JOES, 195 School Street, Waltham, MA 02451 (Property Owner, Mahar Highway LLC) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.2 and 908 to install an illuminated wall sign (150 sq. ft.) and one tenant panel (10' x 2') on an existing directory ground sign.

In looking at the Zoning Administrator's analysis, you can see that the wall sign they are proposing on the building exceeds four (4) feet in overall height; they are proposing a sign which is 6' 2.25" high. Secondly, zoning ordinance states "No wall sign shall be visible to the major highway, if a ground sign has been permitted." The Petitioner is seeking to add signage on the existing directory ground sign. In this case, both the ground sign facing John Mahar Highway and the proposed wall sign would be visible to John Mahar Highway (the "major highway"). Third, zoning ordinance states "a permitted wall sign visible to the major highway shall contain the name and address of the user of the property and contain no other advertising material or commercial message unless specifically authorized by the Zoning Board of Appeals." The proposed wall sign contains the messaging "Sports Grille". Fourth, zoning ordinance states "Sign area is further limited to one square foot of signage per linear foot of frontage. Said frontage shall be the linear feet of the building which faces the access roadway." The linear frontage of the front elevation wall sign facing John Mahar Highway is 95' 1.25". As a result, the proposed wall sign square footage of 150 square feet exceeds the 95' 1.25" allowed.

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There have been a couple of cases (Bugaboo Creek being one) where their signage was larger (150 SF). Their ground sign was allowed back in 1996.

The Zoning Administrator states based on topography, based on distance from road to the site, they do have a hardship. If they were to meet 95 square feet, it would be a pretty small sign compared to their business and scale. The Zoning Administrator provides recommendation of approval with condition of: No sign illumination from 1am-6am, pursuant to Section 135-905.

Member Joyce confirmed that the only sign on the building is the sign above the front entrance, and there isn't any signage on the other sides.

Member Eng likes that this sign is smaller than the old one.

Member Reynolds asked where ground sign is proposed. The Zoning Administrator states it is an existing ground sign, and the Petitioner will be installing a panel. He does like primary sign on building in that it is smaller than the previous sign. The Zoning Administrator clarified that height was about the same as the Bugaboo Creek sign. Member Reynolds is concerned for the residents across the street. Zoning Administrator states you cannot see Jake and Joe's from Jonathan's Landing because of elevation. Member Reynolds does not have a problem with the ground sign. He confirms it is a tough location, and he has no objections would go along with the staff's recommendation.

Member Reynolds **MOTION** for approval based on staff recommendation; seconded by Member Eng; unanimously voted 4:0:0.

CONTINUED PUBLIC HEARING

Special Permit(s)/Site Plan Review – 28/30 River Street

Daniel and Jean O'Leary, Applicants (PB File #16-07)

8:00 PM Member Eng has recused himself from this hearing going forward, as he is an abutter; Member Mikami is absent from this meeting.

The Principal Planner explained, due to Member Mikami's absence and the fact that Member Eng cannot participate as he is a noticed abutter, it was necessary to continue this hearing.

Member Reynolds **MOTION** to continue the Public Hearing until October 18, 2016 at 8:00 PM; seconded by Member Eng; unanimously voted 4:0:0.

Discussion/Action – Landscape Buffer

618 Granite Street, Sunrise Assisted Living Facility (PB File 05-05)

Elaine O'Gara, 12 Anderson Road, addresses the Planning Board with regard to the landscape buffer issue. She states that Andersen Road is a dead-end off Granite Street in between Bertucci's and Burlington Coat Factory. In 1998 when she purchased her home at 12 Andersen, she made sure all the abutting properties were zoned as residential, which they were. However, sometime in 2006 or so, the land was rezoned from residential to commercial. (Note: it was not rezoned; the use is allowed by Special Permit). In 2007, Sunrise Senior Living was built. Sunrise was built directly behind Ms. O'Gara's backyard. In 2007, trees and shrubs were planted all around the facility including 5 trees along the rear of her property line.

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Unfortunately, these trees never thrived. In 2014, she brought this tree issue/lack of privacy issue to the attention of the Principal Planner and Conservation Planner, and in October 2014, five new white pines were planted.

This afternoon she measured each of the 10 trees as follows: 1 at 7.5'; 3 at 9'; 1 at 12'; 2 at 13'; 3 at 14'. Of the original trees planted in 2007, the 10-12 foot trees are now 12', the 12-14 foot trees are now 14'. Of the secondary trees planted in 2014, the 7.5 foot trees are either 7.5' or 9'; and the 10-13's are now 13' with the exception of one tree that is completely brown and dead. Sunrise landscapers care meticulously for all the landscaping in the front of the facility, however, have neglected to care for the trees that run along the back of the houses along the top half of Andersen Road. My understanding of the Conditions of Approval required Sunrise to properly care and maintain the trees to include weeding, cutting back invasive weeds and watering to ensure their growth and health.

Ms. O'Gara has fertilized, watered, pruned and cut invasive vines off all of her trees, and fortunately she has seen them grow; however, she feels it's not enough to buffer out a 3 story, 79-unit building. Sunrise is 42' built on an approximate 10-foot higher elevation than the homes on Andersen Road. For this reason, the building sits over 50' and has 36 large windows that face Ms. O'Gara's backyard. Ms. O'Gara has been patiently waiting almost a decade to have a "green fence" or buffer to allow some privacy. Ms. O'Gara states that Sunrise Braintree is a beautiful facility. However, nobody really wants a large commercial building built in their backyard. Ms. O'Gara recognizes that Sunrise is there, and all she can do is request that the Planning Board consider the estimate from Village Green Landscaping to deliver and plant two Norway Spruce trees that are 24 feet and transplant some of the existing pines so they can grow as they should.

Based on Ms. O'Gara's research, the growth rate for an eastern white pine tree is 4 feet per year. She states that is not happening and believes the trees are suffering due to their attempted growth under other larger trees as well as a lack of proper maintenance - especially a lack of water. Ms. O'Gara has not once seen them get watered by Sunrise staff or Sunrise landscapers in the past 9 plus years up through the recent Phase 4 water restriction. The tallest tree at 14 feet does not even cover ½ of a window on the first story of the three-story Sunrise building. Ms. O'Gara states Village Green Landscape Contractors propose to transplant some of the existing trees from Sunrise property onto her property. She further confirms that she will care for any trees that get moved/transplanted onto her property. Ms. O'Gara concludes that for almost a decade now Sunrise has not provided the buffer with the landscaping maintenance and care that should have been provided. She is requesting Village Green's estimate be approved to provide abutters on Andersen Road the privacy they have all been waiting for.

Eileen Mahoney, Executive Director at Sunrise Assisted Living, addresses the Planning Board. She states this was brought to her attention in 2014 when Ms. O'Gara brought it to the attention of the Principal Planner; they were certainly amenable to doing what they needed to fix the problem. They replaced one dead tree at the time and added three additional trees. She agrees that they are not growing as quickly as they would like. Ms. Mahoney confirms there is one dead tree that they plan to replace within the next two weeks. Ms. Mahoney states it is being watered; the Maintenance Coordinator and Assistant water it daily. Sunrise is considering installing some

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type of irrigation. Ms. Mahoney states the last thing they want to do is to alienate their neighbors. Currently, the landscaper is on notice to rectify the situation, as Ms. Mahoney would agree that there was a short period where it wasn't being kept up. It is now being looked at weekly and attention is being paid to it, if necessary, based upon what they see. Ms. Mahoney states they took the recommendation of the type of tree to plant. She feels the mild winter last year contributed to the lack of growth.

Chair Harnais points out the picture, which shows there is no buffer being provided. He states the purpose of a buffer is to make sure there is privacy. Chair Harnais feels the buffer incident has been going on for quite some time. The Planning Board has no alternative but to jump in and rectify this. The bottom line is there should have been a buffer there; abutters need that privacy.

Member Joyce asks about original 2007 plan and the types of trees and buffer that were proposed. It looks like there are other areas where these trees were proposed. Were there other areas on the property where these types of plantings have successfully grown and are in better condition? Ms. Mahoney states they do not have any of the same trees on their property aside from the buffer area. The Principal Planner states this particular section has a lot of undergrowth that needs a lot of maintenance. This undergrowth is consuming the base of the trees. Ms. Mahoney states that it is difficult to add additional trees, as they do not have a lot of space. Member Joyce asks, for the types of trees proposed in 2007, what was the expected growth. The Principal Planner highlights the photo to show which trees are doing well vs. those not growing. Member Joyce would be curious if anyone has evaluated the trees that are there. If other trees are planted would there be a similar issue with the height not growing. Ms. O'Gara had a horticulturist from Village Green Contractors, and he said the lack of growth is due to a couple of things. Some of the trees have a canopy suppression. They are unable to thrive because of shade from trees on her property. Secondly, there are tremendous invasive weeds that wrap around and choke out all the trees. He did also mention a lack of water to the trees.

Member Joyce asks if there is anything that speaks to minimum heights after certain years. The Principal Planner clarifies that we don't speak to specific heights but we do require that the buffer is maintained, weeded, kept healthy and watered. There are situations, from time to time, where we see someone plant ten trees and one doesn't take for some reason. The reason the Principal Planner has brought this to the Planning Board is because for the replanted trees, the first year is the most important. She has included the Conservation Planner in this field review, and they see it as a lack of maintenance in this particular area. There was a long discussion two years ago about the requirement of maintenance.

Member Joyce asks if we are looking to review the homeowner's proposal. Chair Harnais states if the visual buffer is not working, then the Applicant must make sure it works. It is difficult to maintain a tree that has been stunted and does not grow. Member Joyce clarified whether the abutter wants the new trees to be planted on the abutter's property. Ms. O'Gara would prefer they plant the trees on her property, as she would maintain them. She also requests moving and transplanting some existing trees to provide them better soil, sun and more space. Ms. O'Gara clarified that the original trees were Douglas Firs expected to grow 2 feet per year.

Eileen Mahoney states Sunrise would be open to transplanting trees to homeowner's property, as they have had two unsuccessful plantings. Sunrise feels as though they have honored the request regarding the number of trees. However, there are budget constraints involved that need to be taken into consideration, but we want to keep everyone happy. Chair Harnais feels

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they have not lived up to original obligation by just planting trees, as they have not provided a visual buffer.

Member Eng asks if Sunrise is agreeable to doing what the abutter wants. Ms. Mahoney feels that her corporate office would be very open to that. Member Eng adds one condition, if you relocate and replant the trees, Sunrise needs to give them one growing season to make sure they will survive; if they don't survive, you need to replace them. Ms. Mahoney states that is what she will present to Sunrise Corporate office, Facilities Director. Ms. Mahoney states that she would want to speak to landscaping company to make sure these trees are guaranteed. She feels this would be something that Sunrise Corporate would agree to.

Member Reynolds' assessment is that this was a Residence A zoning location where Sunrise facility was built; this required a Special Permit from Planning Board. When Planning Board grants a Special Permit, it requires a super majority vote; it is done with good faith. Sunrise was compelled to be a good neighbor, but, in this particular case, Sunrise has not lived up to that. This should be taken seriously by Sunrise Corporate. Braintree allowed them to be there; the abutters were there first. Member Reynolds feels the facility is run well, but he feels they have not complied with the neighborhood requirements.

Chair Harnais feels if Sunrise Corporate objects, Ms. Mahoney should not be put in the middle as the Administrator and the district person should come in. Ms. Mahoney feels that this is part of her job so she will report back.

The Principal Planner clarified that there are nine existing trees one is dead; Ms. O'Gara feels that four or five should be transplanted to her yard; she feels the ones that are 14 feet may continue to grow. The Principal Planner would like to work with Sunrise, the neighbor, and the Conservation Planner, as well as the landscaper to document and implement this plan.

Member Eng **MOTION** that Sunrise follow recommendation of the landscaper, remove brush, plant two new trees and transplant 4-5 existing trees after review by staff; seconded by Member Joyce; unanimously voted 4:0:0.

CONTINUED PUBLIC HEARING

**Special Permit(s) and Site Plan Review – 32/34 River Street –
Daniel and Jean O'Leary, Applicants (PB File #16-08)**

8:15 PM Member Eng has recused himself from this hearing going forward, as he is an abutter. Member Mikami is absent from this meeting.

The Principal Planner brings up a question for the Planning Board with regard to the properties at 28/30 and 32/24 River Street. She explained that the two petitions have been continued for both the August and September Planning Board Meetings. She provided a Staff Report last month, and, recognizing there have been no abutters present for either meeting, she would like to work with the Applicants to wrap this up so that Draft Conditions could be presented for the next meeting. She requests that the Planning Board get her any questions or comments related to this and she will work with the Applicants. Planning Board members agree.

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Member Reynolds **MOTION** to continue the Public Hearing until October 18, 2016 at 8:15 PM; seconded by Member Eng; unanimously voted 4:0:0.

PUBLIC HEARING

**Major Modification – 1681 Washington Street –
Highland Medical Realty Trust, Applicant (PB File #95-14)**

Chair Harnais reads the Public Notice into record.

The Principal Planner explained that, due to Member Mikami's absence, it was necessary to continue this hearing.

Member Joyce **MOTION** to continue the Public Hearing until October 18, 2016 at 8:30 PM; seconded by Member Reynolds; unanimously voted 4:0:0.

Project Status Update:

29-39 Hayward Street (PB File 05-09), McGourty Company, Applicant

Brian McGourty provides an update on the site line from his Engineer showing the wall that was constructed back when the project was started is acceptable. The other items which haven't been done yet are the plantings in the rear of the property and As-Built, which will probably be another month or so. Plantings have not gone in due to the weather, and we haven't had As-Built where the last foundations just went in. The Engineer is working on As-Built now.

Member Joyce asks about parking in the Fire Lane, which was discussed at the last meeting; the Principal Planner inquired with the Fire Department about that, and Deputy Chief Sawtelle indicated that the Notice of Violations that the Fire Department can issue are served in hand and cannot be placed on the vehicles windshield. He wondered if it was possible for the Police Department to ticket the vehicles. The Principal Planner will check further into this.

The Principal Planner points out she did get Site Line Memo, and she has included that. There was some follow-up from the Engineer, which he provided in an email. He didn't calculate 85 percentile speeds, but he did confirm that the site distances are acceptable for up to 55 miles per hour. They have secured the services of a good engineering firm; they are working on locating the dumpsters and the aisle widths. The Principal Planner thinks Mr. McGourty wanted to talk about changing some of the trees.

Mr. McGourty recognizes that the original plan called for raising the grade in the back of the property and planting 39 four-foot arborvitae. He believes there was agreement to not build the berm up, but just to plant the arborvitae. He recommends a different tree (Leland Cyprus) that would grow larger and provide better privacy for both neighbors and townhouse residents. There would be the same cost for sixteen Leland Cyprus, but it would provide for better coverage, as they grow to 25-30 feet.

Member Joyce asks if there is any issue with reducing the number of trees. The Principal Planner would ask two questions or make two points: (1) what is the planting size of the Leland Cyprus that Mr. McGourty is proposing; (2) these are not for in between units – they have to go along the rear and side property line. If he wants to screen in between the units, that is

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something in addition that he can do. These were really for the back corner. Mr. McGourty states he wouldn't be able to fit sixteen trees in the back corner, as they grow too wide; he is proposing to spread out sixteen trees across the back and side property line.

Member Joyce asks if the arborvitaes were proposed in a linear fashion to screen and would these new trees be proposed in a linear fashion to screen. Mr. McGourty clarifies that the original proposal was going to be done on a mound to address the issues of previous neighbor who wanted screening from the condos in her backyard. She is no longer there, and the temple is now there. Now it's a parking lot, and there is still a tree line there. It's a matter of moving landscaping around. Mr. McGourty states the newly proposed trees would be in the back and side of the property, as a buffer to neighbors as well as condo owners. The homes there now will have a green grass area backyard. Member Joyce's opinion would be fine with replacing type of tree, but they should be planted in the areas originally shown. Mr. McGourty states he can stick with the original 39 arborvitaes, but they will not provide privacy. He feels the sixteen Leland Cyprus would be a better solution for everybody.

Member Eng asked about loading area for retail use, which was never constructed. When is this scheduled for completion? Mr. McGourty states that, when looking at the front of Dunkin Donuts, they have always used the right-hand side. At certain times in the morning, they will use the rear door. We are trying to designate just the right side door of the property, but he needs the Engineer to draw it up to ensure that it is using proper setbacks and proper use. The building has been there for 35 or 40 years. The Principal Planner states that this is an update of what was required a couple of months ago. She needs to see on paper what this is going to be; it needs to meet the requirements of a loading area and leave sufficient aisle space. When we get that on paper, it is for the Board to review. Mr. McGourty states he is hoping to have this update within the next few weeks.

The Principal Planner clarified that we need to determine the direction on the trees.

Chair Harnais asked about plans for dumpster. Mr. McGourty confirms that he is just waiting for the Engineer to put it on the plan. Chair Harnais would like to set a timeframe for this, and he recommends it be put on for the next meeting.

Member Eng **MOTION** to have Mr. McGourty attend the October 2016 with revised plans, which will include the visual buffer, location of trees and number of trees; seconded by Member Reynolds; unanimously voted 4:0:0.

Project Status Update:

7, 7R and 11 Independence Avenue (PB File 14-06), Thomas Fitzgerald, Applicant

Member Joyce recused herself from the discussions of the Project Status Update.

Chair Harnais addresses the issue with this site and states there is a huge hole that makes the site look horrible. Chair Harnais states he would like to get the abutter here that agreed with moving forward and then sued the applicant. Part of the dilemma is because the abutter told the Planning Board that he would be in favor of this project and then turned around and sued. Something needs to happen.

Member Eng asks the Applicant for his the game plan.

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John E. Garland, Attorney for the Applicant, reminds the Planning Board that approval for this project was granted 18 months ago. The build-out on that project was 18 months. Today should have been the time when the tax revenues should have begun flowing to the Town of Braintree. They haven't because, as the Chairman noted, that individual who is the litigant in the matter testified before the Board that if Mr. Fitzgerald removed the penthouse, he would be fine with the project. No sooner did the Planning Board approve it, did the litigant file an appeal in land court, which kicked off substantial, additional legal fees that Mr. Fitzgerald has had to incur. Tom Moriarty has handled the appeal case for Mr. Fitzgerald and the negotiations with the abutter and his attorney. Those have been ongoing—off and on—more off than on for the last 18 months.

Attorney Garland's sense is that every time there seems to be an agreement in a conference room or over the phone, it seems to blow up. Mr. Fitzgerald has conceded a considerable amount to make the litigant happy. If Mr. Fitzgerald could get out of land court and that suit would be dismissed, he could complete all pre-activity work that needs to be done. The financing is approved, but cannot be received until the case is concluded.

Director Stickney cautions the Board about discussing the litigation. She states one problem that staff has brought to the Planning Board's attention is that the site is a public safety issue. The construction fence has fallen into the site, and there is some erosion control that needs to be addressed. Chair Harnais states the extent that we can speak is to what brought us here regarding the litigation. As to the outcome, we cannot. Chair Harnais feels we relied on a person to the Town's detriment. Attorney Garland advises the Planning Board that there is another meeting between the parties next week. Chair Harnais feels the issue is a safety hazard and an erosion control situation. What can be done to address these issues?

Mr. Fitzgerald states, as far as the fence and trying to satisfy the Planning Board, he will have tests done within a week. As far as contamination and the borings, that all has been provided to the Planning Board. He doesn't believe there are any issues. As far as water table goes, he knows they don't come near the water table on any of the seven perc tests they did. As far as fence goes, he can button it up better. Mr. Fitzgerald feels there is no access through that fence. As far as land falling in, they haven't had a problem with this. There has been no deterioration of the land throughout the site. Mr. Fitzgerald states they were putting footings in last December 2015 and were ready to go forward. He has the opportunity to do this again to put the footings in, the foundation in, tear the garage down and do all the underground, while the suit is going, under a "Permit at Risk". What he needs is the Planning Board to tell him to do it. The Principal Planner states, that with all due respect, there are several commitments made to the Planning Board that have not been completed; she refers to the "pre-work" conditions that need to be done prior to putting in the building. She states that these "pre-work" conditions should have been done over the past 18 months. The Principal Planner has many pictures with erosion and showing the fence is down. There is a deep cut at the back of the sidewalk with no shoring to hold that in place. Mr. Fitzgerald states that he did submit a plan to Russ Forsberg in Building Department, which states that at the time they go in to do the foundation, they will shore that up. Because no one is working in there, he states he is not required to do that right now.

Director Stickney states, with all due respect, this is a public safety issue. If someone falls from that sidewalk or that street into Mr. Fitzgerald's site, the Planning Board is as much responsible for that as the Applicant. She further states that all we are asking is secure the site so that nobody gets hurt. That shouldn't be a hard or expensive thing to be done.

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Member Eng suggests the Building Department visit the site and assure the Planning Board that there are no safety hazards there. Director Stickney states the Building Department has been asked.

Chair Harnais is aware of the situation that Mr. Fitzgerald has been put in. However, it is a safety issue and he wants to make sure these safety issues are addressed. There is nobody there 24 hours per day; if it were a working site, somebody would see issues with the fence. The Councilor for Ward 4 in Quincy, Brian Palmucci, has been getting a lot of calls. The Planning Department gets a lot of calls. There needs to be much more vigilance with regard to safety standards. Chair Harnais agrees with Planning Staff that this is a serious safety issue, and he refers to the water issue the Principal Planner had.

The Principal Planner states the hole that was dug was holding standing water. That is not something the Planning Board condones; she suggests filling the hole in and loam and seed it. The Principal Planner refers Mr. Fitzgerald to the conditions that are necessary "prior to the start of authorized activity". Mr. Fitzgerald believes he has done 99% of the items on the list. The Principal Planner did not agree.

Member Reynolds states he drives by twice a day. He is not only concerned about the Applicant's liability but also the Town of Braintree's liability. Mr. Fitzgerald states he will try to get matters done before the Planning Board's next meeting. He would like to be on the agenda for the next meeting so that he can get released from the Planning Board and proceed with pulling a Foundation Permit "At Risk" and get started building the foundation.

Chair Harnais clarified the jobs that staff has to do. Staff has to deal with phone calls, and they get all of the anger of abutters. He reiterated his disappointment that the litigator made a promise and went back on his work. He further asks Mr. Fitzgerald to address all the safety issues. Mr. Fitzgerald has the list and will work on it.

Director Stickney provides Mr. Fitzgerald with three pages of pre-construction conditions. The Principal Planner clarifies that any modification of conditions must go before the Planning Board; if the Applicant requests that conditions be modified, he may be opening up the possibility of appeal.

Chair Harnais left the meeting at the conclusion of this discussion at 9:10 PM.

Member Joyce returns to the meeting at the conclusion of this discussion.

Request for As-Built Approval/Release of Surety

575 Quincy Avenue (Dry Docks) (PB File #04-06) - March Fourth LLC, Applicant

The Principal Planner refers to her Staff Report from a couple months ago, which she recently updated; she was waiting for a few things from Jim Burke, the Engineer of Record; he apologizes that he cannot be here this evening. She draws the Planning Board's attention to the updated staff report. The materials in question have been submitted, and the staff is recommending As-Built Approval with the surviving conditions: 1, 14, 33, 34, 35, 40, 43, 52, 53, 69, 70 and 71.

Member Eng **MOTION** to approve the As-Built with surviving conditions, as indicated by Staff; seconded by Member Joyce; voted 3:0:0.

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Requests for As-Built Approval/Release of Surety

39 Quincy Avenue (PB File 14-07) – Boston Gas d/b/a National Grid, Applicant

Director Stickney advises that this approval will be tabled until the October 18, 2016 Planning Board meeting. Work is not yet complete.

CONTINUED PUBLIC HEARING

Special Permit(s) and Site Plan Review –

**Town of Braintree c/o Mayor Sullivan and BSC Partners LLC, Applicants
128 Town Street (Braintree High School Property) – (PB File #15-19)**

9:00 PM three PB members participated; Member Mikami is absent; Member Harnais had to leave the meeting.

Director Stickney explains that this 9:00PM Public Hearing was to be continued. The Applicant has requested that this matter be continued without Testimony due to the fact that not all Planning Board Members are present for this meeting. Director Stickney states the Conservation Commission has voted to go to a Peer Review on the drainage, and she would like the Planning Board to join that on the Peer Review. Director Stickney has told the Applicant and Mayor Sullivan. This requires the consensus of the Planning Board.

Member Joyce is pleased that the Conservation Commission had voted to do this, and she is very much in favor.

Member Eng agrees that we should do this and cover all the bases with this project. His concern is how long this will take. Director Stickney states it is prepared and ready to go out to three firms tomorrow, and we will get a response within the week.

Vice Chair Reynolds agrees with that action.

Member Eng **MOTION** to continue the public hearing to October 18, 2016 at 8:45 PM; seconded by Member Joyce; voted 3:0:0.

Request for As-Built Approval/Release of Surety

2 Elm Street (PB File 14-08) – Crown Pizza & Grill, Inc., Applicant

Director Stickney provides the report regarding 2 Elm Street and states we are ready to issue As-Built Certificate and recommend As-Built Approval with Surviving Conditions: 1, 13, 15, 18, 22, 23, 24, 25, 26, 27, and 31. The majority of those conditions are all operational from signage, to keeping the dumpster clean, to not having outdoor seating without approval from the Licensing Board. We are looking for a recommendation of As-Built Approval with those surviving conditions.

Member Reynolds mentions that there is a crate sitting to the left of the back door, and he wonders what it is. It is significant in size, and looks like a generator. Director Stickney can find out what it is. Director Stickney states the other item is the Release of As-Built Guarantee (Surety) that had been posted by the Applicant.

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Member Eng **MOTION** to grant As-Built Approval and Release of As-Built Guarantee (Surety) with surviving the conditions as stated by Staff; seconded by Member Joyce; voted 3:0:0.

Request for Lot Release

**459 West Street, Del's Way Definitive Subdivision (PB File 15-01)
Requested by: Rich Whittington of Whitman Homes**

Principal Planner Melissa SantucciRozzi explains this will be continued.

Approval Not Required Subdivision Plan

62 Johnson Lane and 66 Rocsam Park Road/T.J. Development Rocsam Properties

Director Stickney states that this ANR Endorsement is being postponed until the October Meeting with the mutual agreement of the Applicant. We are working with the Town Solicitor on some issues, and the Applicant has asked for a continuance until the October 18 Meeting. She states if the Board is agreeable, we would like to extend that ANR Endorsement Deadline until October 21 so that the Board can hear it on October 18.

Member Eng **MOTION** to extend the ANR Endorsement Deadline to October 21; seconded by Member Joyce; voted 3:0:0.

Recommendation for Street Acceptance

Herbert Road T.C.O. 16-036/Mayor Sullivan, Petitioner

Director Stickney explains this was before the Town Council; the Planning Board was asked for a recommendation at the last meeting. We had it on the Agenda for our September Meeting, but the Town Council went ahead and accepted the road at their August 16, 2016 Meeting. Vice Chair Reynolds confirms, as a formality, we need to provide our recommendation.

Member Eng **MOTION** to recommend Street Acceptance for Herbert Road; seconded by Member Joyce; voted 3:0:0.

Member Eng **MOTION** to approve the minutes from the August 9, 2016 meeting; seconded by Member Joyce; voted 3:0:0.

Member Eng **MOTION** to adjourn the meeting; seconded by Member Joyce; voted 3:0:0.

The Meeting adjourned at 9:25 PM.

Respectfully submitted,

Louise Quinlan
Planning/Community Development