



Charles C. Kokoros
Mayor

Department of Planning & Community Development Zoning Board of Appeals

1 JFK Memorial Drive
Braintree, MA
www.braintreema.gov

Zoning Board of Appeals (ZBA) Meeting Minutes January 8, 2020

APPROVED

IN ATTENDANCE:

Stephen Karll, Chair
Michael Ford, Member
Richard McDonough, Member
Gary Walker, Associate

ALSO PRESENT:

Christine Stickney, Director-Planning & Community Development
Melissa SantucciRozzi, Assistant Director P&CD
Connor Murphy, Staff Planner, P&CD
Carolyn Murray, Attorney (KP Law)

Zoning Board of Appeals Chairman Stephen Karll welcomed the public to the Zoning Board of Appeals meeting at 7PM and explained that the Board is going to continue this evening with the Waivers of the Parkside Apartments that were tabled from the other evening:

Assistant Director SantucciRozzi – We received calculation on the interior landscaping, there was a revised snow storage plans there was revised height calculations and other materials submitted we can hold off until we get into the actual discussion on the waivers. Not sure who is presenting for the applicant.

Chairman Karll – introduced the staff and Zoning Board members located around the table to the public.

Chairman Karll – Let's go to the table of waivers.

Paul Holland, Applicant, Holland Companies - provided an update since the last hearing – What we have submitted since Monday is a separate plan with revised building calculations, updated the plans of snow storm storage that was removed from the egress paths and performed an interior landscaping within the parking calculation and the estimate on the affordable unit's fees for both townhouses and apartments.

Chairman Karll - the first request on my notes for a waiver that was tabled under 135-812D interior landscaping – Assistant Director SantucciRozzi we are talking about the apartment building. The applicant's waiver for snow storage based on the revised plan is not needed. The second one tabled, 135-812D she describes the interior landscaping modification noting that they are required to have minimum 5% and they have proposed 3.3%.

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Chairman Karll called for a Motion on 135-812B the landscaping and the snow storage. However, Assistant Director SantucciRozzi responded that no motion is needed per the revised plans. We don't need a motion - Chairman commented that will go by the wayside.

Chairman Karll called for a **MOTION** 135-812D on the interior landscaping and asked if anyone has a concern for the design. Does anyone have an issue with that discrepancy of the design? - Member Ford commented that it is 35%, but I don't really see a reason why we wouldn't allow this. Mr. Ford **MOTION** to approve the waiver, seconded by Mr. McDonough – vote 3:0.

Assistant Director SantucciRozzi - the last item is the affordable unit fees; the applicant was asked to put together exactly what they are requesting. There is an item in your packet this evening, they itemized for apartments which will be the 18 affordable units – looking for a waiver of about \$90,000 plus or minus in fees, and for the record I have not verified these fees but it consists of Building permits, Certificate of Occupancy inspections, water & sewer fees and sump pump fees on the apartment side - I will hold off on the townhouse; it is about a \$90,000.00 waiver of fees they are seeking. Chairman Karll commented that he didn't recall ever waiving fees before – do you have any memory of that? Assistant Director SantucciRozzi commented, as she provided testimony at the last meeting, we recently did and this board did through some different projects that have been approved and have required 2-3 affordable units but were smaller projects. My understanding is that none of those fees were ever waived in those smaller projects – I cannot speak as to any prior 40B projects, as she was not here then. Chairman Karll commented that he was and he doesn't remember they ever waived any fees, but that was some years ago. Chairman Karll asks if there is any discussion on fees. Mr. Ford comments that he never recalls anyone asking to waive fees? Member Ford also asks what the justification is for waiving the fees. Assistant Director SantucciRozzi explains, and offers Attorney Murray to chime in as well - the reason they are asking is because these are only for the affordable units and those units are basically almost a wash in the development. Member Ford responds that they are not free they are charging rent? Assistant Director SantucciRozzi states yes that is correct; they are charging rent. Mr. Ford states he sees no reason to waive the fees, and Mr. Ford **MOTION** to deny the waiver, seconded by Mr. McDonough – vote 3:0. Chairman Karll asks Member Walker if he has anything to say – nothing. Chairman Karll summarizes the request for waiver of fees are not waived.

Chairman Karll - Ok I will ask the applicant if they intend to modify their proposal in any way so that the Board may reconsider any vote we just finished taking on waivers.

Attorney Alana Quirk – Mr. Chairman certainly with respect to the denial of waivers for the rear setback and side setbacks from the General Business District, we certainly do believe those waivers are important to the project, and the Board has also indicated even though we did not ask for a waiver of the Special Permit requirements for the Village Overlay District, you indicated that you believed that those requirements did apply and that they were denied. In terms of being waived, to allow the project to be constructed as shown on the plans with respect to the Special Permit issues, I would reiterate what I said the other evening, and I gave you a memo which we sent yesterday. You should have it before you, with respect to any Special Permit requirements it is simply not applicable to a 40B application and it would be very important for the Board to acknowledge that while we have asked for no waivers of any special permit requirements, it is very important for the Board to acknowledge where

those special permit requirements are and that they do not apply to this project. Chairman Karll responded that if they do not apply then they don't apply, and we do not have to acknowledge that.

Attorney Quirk responded well my point though is that the Board took votes the other evening indicating that you were denying the density of the project and that you believed the density requirement for multifamily housing under the zoning bylaw do apply. You treated it as a waiver application, and you denied it. So my point to the Board is that I would ask would that the Board reconsider that approach. I believe your Counsel gave you an indication as well that special permit requirements in multifamily housing is not allowed in any district in the Town as of right. It is prohibited in most districts and is allowed only by Special Permit.

Chairman Karll noted he remembered that one and that he abstained from that one – Attorney Quirk concurs that is right.

Attorney Quirk - So we would ask if there is anything to reconsider - any action taken up the other evening, and certainly those are the two things that we would ask you to reconsider very strongly to give an indication that you understand that Special Permit requirements and any multifamily housing requirements under the bylaw do not apply because they are special permit requirements. We would also ask you to reconsider the General Bylaw waiver issue for the rear and side setbacks. The rear setback that was asked for was asked for a waiver from 20'. On one end it tapers down to 17.2'/17.5' so it not a huge waiver. At one particular point it is 10.5' however; that it is a cantilever deck that is 10-12' feet above grade so that is not something that is interfering with traversing around the back of the building. We would strongly urge you to reconsider that.

Chairman Karll asks Attorney Quirk or Assistant Director SantucciRozzi could you refresh my memory as to the first one that Counsel mentioned about where I abstained.

Assistant Director SantucciRozzi – yes... and before we get into that the question you asked, actually the response led into something else. Chairman Karll added I think I asked are you modifying your plans. Assistant Director SantucciRozzi added exactly; then I think the Board is asking about the plans - there are some waivers they are not asking for. Which ones do you want to be reconsidered? There have been waivers that have been denied that you need, aside from the special permit requirements. Do you intend to modify your plan at all so that you no longer need those waivers. Attorney Alana Quirk responded "No".

Chairman Karll – No...well then I don't think we can. I wouldn't want to reconsider any of the waivers we denied the other night. Attorney Alana Quirk – replies "understood".

Chairman Karll - I understand your argument; I just don't think the question was are you going to modify your plans so those waivers that we denied may not be appropriate as to any modification.

Attorney Quirk – There is no intention at this point to change the plans if that is the question. I understood your question to be: "Did we have any argument with regards to modification of the action that was taken the other evening?" So if your question is: "is there any intention to modify the plan so as to change the requests for waivers that were denied?" –Chairman Karll confirms that is the question – Attorney Alana Quirk responded "No".

Chairman Karll - Well then I don't think we have any intention to reconsider any of the votes we took on Monday night; I stand corrected. Member Ford states, if anything, based on the law, I would reconsider the density question, but as far as setbacks and with the issue of public safety that has been brought up time and time again, there is no way I would reconsider changing my vote on the setback issue.

Chairman Karll – Do you want to discuss the density issue? Member Ford responded I don't think that is necessary.

Assistant Director SantucciRozzi summarizes; yeah I think there are sort of three separate things – There was do you want to change your plan to eliminate some of the waivers that were denied and clearly in the record the answer is no. Attorney Quirk for the applicant, had put forward a request to reconsider; it is clear the Board isn't interested. Then the third issue, I would default to Councilor Murray on the Special Permit issue that was discussed the other evening. There was a memo put in on behalf of the applicant, and again, I would default to Attorney Murray for her guidance to the Board.

Attorney Carolyn Murray – So if I may Mr. Chairman, as I said the other night in the Village Zoning Overlay District, if I got the Zoning Bylaw correct, multi-family use is not specifically addressed in the use table. In the General Business district which is the underlying zoning district, an apartment house, I believe that is how it is defined in the table of principal uses, is only allowed by Special Permit. The Chapter 40B regulations for waivers say that waivers are only necessary with respect to the “as of right” zoning requirements and specifically states that you do not need to request a waiver from any Special Permit requirements. So to the extent that other provision of the Zoning Bylaw that also talks about if we have a multi-family project that is being entertained, there is a certain minimal lot size. Then based on the lot size that dictates the requirement of how much square footage you need of lot size per unit proposed. If the underlying use of multifamily is only allowed in General Business District by a Special Permit, in my opinion then those density requirements that go with the calculations are attached to that Special Permit requirement, even though in other zoning districts a multi-family use may be allowed “as of right”, and that same provision of the bylaw with density requirement is applied even in those “as of right” districts. I think what is controlling is the table of uses and the fact that multifamily use would require a Special Permit. Ultimately, that is question of law. The applicant has articulated their position that they don't think a waiver is required. This Board felt differently Monday night; I certainly respect your vote on that. Ultimately, the Board could certainly reconsider a vote as to that waiver if you so felt inclined. If you don't feel so inclined, I suspect that is something that, if there is a further appeal of this decision, would be a legal issue that would have to be decided by another authority, as to that matter. As Member Ford has also point out, even putting aside the multifamily aspects of it, you still have setback requirements in the General Business district that would apply to this project, and those waivers would be necessary. So the Board can certainly do what they want with respect to reconsidering any of those waivers or not. The applicant has made it clear that they do not intend to modify the plan. The only other question that is then before the Board is to ask if the applicant is going to assert that a denial of the waivers renders the project uneconomic. The reason I bring that up, Mr. Chairman, is that as you know our deadline for closing the public hearing on these applications is tomorrow night. If there is going to be an argument made that a denial of a waiver renders this project uneconomic, there is an entire process for the ZBA to then request to look at the applicant's pro forma review and financial statements and to engage a peer review consultant to look at that. If that is the process we are going to embark upon, we would need a further extension of the public hearing to be able to pursue that, take in

that information and have a further discussion with the applicant about it. So, I just caution you to think about that before there is any motion to close the public hearing.

Chairman Karll – Ok, so I think we will leave open the density question I have regarding the rental units until we get through this agenda. Then we will bring up the density issue again and see how my colleagues feel about that.

Attorney Quirk questions are you going through the townhouses?

Chairman Karll responded no, not yet. There are a couple of more items to discuss, and the question is whether or not you feel the waivers that we denied render your project uneconomic?

Attorney Quirk states “Yes – certainly with the totality of the actions taken, it would be the applicant’s position that absolutely on its face without question would render the project uneconomic; however, the hearing has gone on for a long time. Extensions have already been given, and no new extensions will be given at this point”. Chairman Karll states so we will have to vote on what we have? Attorney Alana Quirk responded “yes” Chairman Karll states “Thank you”.

Chairman Karll asks the Board members or the staff if there is any further information that you think we may need from the applicant? The applicant has just told us that there is not going to be any further extensions.

Assistant Director SantucciRozzi – Mr. Chairman the items raised the other evening have been provided. I had a chance to review those prior to the meeting, and I did correspond back and forth with the engineer of record, Mr. Burke, who is not here with us this evening related to the open space issue. I had gone back and reviewed the earlier submissions, noting that the total open space shown on the site plan was 26.1%. They added about 2,000 SF +/- of pavers, and the open space calculation did not change. He responded to inform me that there were other areas of the site that they did not count as open space, primarily the area along the top of the retaining wall as that is loam and seed and is considered open space. It just so happens to be the same exact calculation; I have asked him to double check that calculation. Nonetheless, I do not believe it will fall below the 10%, which is the minimum requirement in this district. Even if it changes to 24% - or some figure - it will not require a waiver, which is what I wanted to make sure of.

Chairman Karll – Okay. Just following my agenda, it appears that the answers to D & E are that first they feel waivers we did not grant make their project uneconomic and that they don’t intend to modify any of the plans, and there is no other information to be provided. Should we close this portion of the public hearing? And then take up the condominium issue?

Attorney Carolyn Murray suggests that we go through the waivers of the condo first and then do them both together. The site is so intertwined that I recommend we close the public hearing on both at the same time.

Condominium Waivers: Chairman Karll - we will take up the waivers on the condominium project.

“Regulations Governing the Subdivision of Land” (SRR) Section III A, C, & D

The first waiver deals with Section 3A. I think we can take up the first three on the first page together. Section 3A, 3C & 3D, staff indicates that they are procedural in nature, Member Ford **MOTION** to approve Section 3A, 3C & 3D, seconded by Member McDonough – Unanimously voted.

Attorney Quirk requested Point of Order – In case it makes it easier for the Board, we certainly did provide a list. We took the waivers that staff put together and gave comments on them to try to make it easier as we go forward, so you can see where we agreed. I don't know if that was provided to the Board. Assistant Director SantucciRozzi answered; that hasn't been provided to them because the document you provided had your text over my text and it was not legible. I did not feel as though that document would be very helpful to the Board. Attorney Alana Quirk commented – well – understood; that is unfortunate. Chairman Karll – ok well we will go through these. I intend to go through the ones where it says “no comment - procedural in nature”, and that is the second page – take them up and I will read them and take them up as a group if that is okay with Board and Staff. Assistant Director SantucciRozzi- that is fine Mr. Chairman.

“Braintree Zoning Bylaw” (ZBL) Section 135-201A, 203, 204, 302, 401, 407, 502, 503, 601, 613C, & 613D

Chairman Karll – the following all are indicated by our staff that there is no comment and that all are “procedural in nature”, and I am assuming our colleagues have the same document; I have a report from our Planning Department; Section 135-201A, Section 135-203, Section 135-204, Section 135-302, Section 135-401, Section 135-407, Section 135-502, Section 135-503, Section 135-601, Section 135-613C and Section 135-613D are indicated as “procedural in nature”, and there is no comment. We will take these up as a group, unless I hear some objection from the applicant. Member Ford **MOTIONS approval** of waivers for Section 135-201A, Section 135-203, Section 135-204, Section 135-302, Section 135-401, Section 135-407, Section 135-502, Section 135-503, Section 135-601, Section 135-613C and Section 135-613D, seconded by Member McDonough – unanimously voted.

“Braintree Zoning Bylaw” (ZBL) Section 135-613F (2)

Chairman Karll – the next matter is Section 135-613F (2) Village Overlay District dimensional requirements. Melissa do you want to go through the staff analysis?

Assistant Director SantucciRozzi responds: Yes, I would be glad to Mr. Chairman This property is within the General Business Zoning District and also within the Village Overlay District. This section of the bylaw allows the Planning Board to waive strict compliance with The Dimensional and Density requirements for the General Business District in 135-701. The dimensional criteria in the overlay are flexible and designed to promote a village scale with smaller buildings along the main street elevation. Noting that these deviations allowed in the overlay would be granted by the Zoning Board of Appeals as Part of the Comprehensive Permit. Now this particular section and the applicant's most recent request for waivers dated 12/19 respectfully contained several errors of the setbacks; the maximum setback shown on the plan is 22', not 21' as noted in their memo; the applicant has requested a side setback waiver of 6.9'; this dimension is wrong. The minimum side yard setback shown on the plans is in fact 7.5'. The waiver request for rear yard setback of 6.7' and the front yard setback of 6.9' are correctly requested. So there was two, if you look at the site plan, it would be the westerly setback abutting the Archie's Field, the condominium building along Storrs Avenue. You can see the dimension right there - specked out at 22'. Their table says 21', and I don't know why. Again, I always go to the site plan and

double check those dimensions. The second item that was raised was the side setback waiver. I do not see a side setback here of 6.9', I see a side setback of 7.5' along the front condominium building abutting the access/utility easement driveway. So, for those two again I am pulling the dimensions off of the site plans. I am not sure the reasoning for the numbers that they provided.

Chairman Karll: Counsel?

Attorney Quirk responded – thank you Mr. Chairman. The engineer is not here this evening. It is my understanding that it was his position that the requests were correct but before we even speak of that I would note for the Board that these are still special permit requirements under the bylaw in the Village Overlay District. With Village Overlay District, the underlying General Business district dimensional requirements apply. In the event someone wants a waiver from strict compliance with those dimensional requirements, then the applicant can seek special permit relief, and the special permit relief can be given by way of a range as is shown on this table. But no special permit relief is sought by the applicant, nor is any needed. So, as I said on Monday evening, with regard to the apartment project, this particular provision of the Zoning Bylaw simply does not apply. Therefore, we have not asked for a waiver under this particular provision, and it is something certainly the Board should acknowledge is a Special Permit requirement, which does not apply.

Assistant Director SantucciRozzi – We have heard that several times from the applicant, and I think we are clear. But this is going to come up in the next section because we have also similar setbacks that need to be waived under the “by right” criteria in the General Business District. Again, we have the site plan right here in front of us, and if the applicant cannot demonstrate where these numbers are coming from, I respectfully request the Board use setbacks that are shown on the site plans, which are the 22' of the maximum setback on the side westerly elevation abutting Archie's field and again the 7.5' dimension, clearly shown here. Typically on the site plan the engineer will specify the minimum and maximum setbacks, and without seeing these numbers, I would say 7.5' is the correct figure along that side setback.

Chairman Karll – Well, personally I would have to go along with our staff report and recommendation that they must comply with the setbacks that are required. Yes, Mr. Holland?

Mr. Paul Holland, Applicant – Thank you. So, I guess I am looking at the table for lot 2, and I see here the front yard setback of 6.9' feet.

Assistant Director SantucciRozzi - I am not questioning the front, Mr. Holland, or the rear I am questioning the side.

Mr. Holland - oh just the one that is 21' and you are saying 22'. I agree with you; that is a typo, and it should be 22 feet.

Chairman Karll – it should be what - 23'? – Mr. Holland/Ms. SantucciRozzi state “no, 22 feet”.

Assistant Director SantucciRozzi - The second one is the minimum side yard, which is correctly noted in the table, but your most recent waiver request had mostly incorrect setbacks. So, we have conflicting information. We have a site plan. We have a table, and we have the waiver request, and they contain different figures.

Attorney Quirk – Mr. Chairman, may I speak to that? Yes certainly what we would ask is that the Board approve the plan as shown. Certainly, any confusion about typos with regard to the specifics (i.e. it should be 22' rather 21') the Board can approve with a condition that the final plan be very specific and confirm the setbacks so that the table reflects what is shown on the plan if there any inaccuracies.

Assistant Director SantucciRozzi – I just want to make sure the Board is aware of what the actual, real setbacks are. That's all.

Chairman Karll – Yes. So, now I am confused with three different numbers.

Attorney Quirk – Mr. Chairman, what I would ask is that the Board be guided by what is shown on plan, rather than what is shown on the table and that the Board grant the dimensions that are shown on the plan. Certainly, a condition would be appropriate when approving the project to require that the table accurately reflect, if it does not, what is shown on the plan.

Chairman Karll – How do we word that then?

Assistant Director SantucciRozzi – well, I think this particular section, and again we are going to touch on this in about four minutes in the next section under 701, and based on Attorney Quirk's testimony what is shown on the plan is 22' is a maximum setback and a minimum side 7.5'. I am comfortable with only those numbers; that is what is shown on the site plan.

Chairman Karll – So, we can word it that the waivers will be granted subject to the site plan.

Assistant Director SantucciRozzi – if they are going to be granted. Chairman Karll - If they are going to be granted.

Chairman Karll - We will open this up for discussion by the Board.

Attorney Alana Quirk – I would also note the information that was provided yesterday by Lynne Sweet; going over the material that staff had put together under the General Business District, there was an indication of what was requested - 6.9' front and 7.5' side and 6.7' for the rear – Melissa are you saying that is incorrect?

Assistant Director SantucciRozzi - What document are you referring to?

Attorney Quirk - The document that Lynne sent to you yesterday that has a redline version of your staff report.

Assistant Director SantucciRozzi - Like I said earlier, I didn't bring that document. What we printed was almost illegible, and I didn't feel it would be helpful to the Board.

Attorney Quirk – Because the version I have is perfectly legible, and I would just say is very useful. Do you disagree with those numbers 6.9', 7.5' and 6.7'?

Assistant Director SantucciRozzi - For which specific dimensions?

Attorney Quirk – Clarifies: front yard setback 10' – 6.9', side yard setback 10' to 7.5' and the rear yard setback 20' to 6.7.

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Assistant Director SantucciRozzi – No. Those are my numbers. No, I don't disagree with my numbers.

Attorney Quirk- Okay and that is what the material that was sent yesterday asked for, very specifically under the General Business district waiver. Certainly, not a lot of attention was paid to the Special Permit aspect because it does not apply, but the material that was sent yesterday to staff says for minimum front yard setback from 10' – 6.9', for the minimum side yard setback from 10' to 7.5' and the minimum rear setback from 20' to 6.7'. That is what we asked for, and that is what you have in writing before the Board. I realize you don't have it but we have certainly presented it.

Chairman Karll - Well, I would go with what is on our site plan.

Assistant Director SantucciRozzi - They just adopted the figures that I had originally; what she just read is exactly what is in my report.

Chairman Karll – Mike, what do you think?

Member Ford – I think we are making a mountain out of a mole hill here on this particular issue. As far as granting this waiver though, getting back to the meat of this - I know there is a question of law where these are two separate, really proposals in front of us, condos and apartment building. This board had real issue with fire safety and fire access with regards to the apartment building. These condos don't have that issue, so quite frankly in a 40B situation, I don't see that we have really anything to stand on with the exception of the setbacks being a question of law as far the Highway Business District and Village Overlay District. I will let the lawyers argue that at another time, but in respect to this waiver, I would make a **MOTION** to approve this waiver. Chairman Karll - subject to our plans – Member Ford responded – subject to the site plans – yes sir. Chairman Karll – our site plan. Member McDonough – asks so that I am just clear.... that is just as far as the plans and not the table that you were referring to ... correct? Chairman Karll - she was the site plans we have on file, Member McDonough – okay, then I will second. Chairman Karll – the motion has been made and seconded to approve the waivers subject to our site plan on file. – Unanimously voted.

Assistant Director SantucciRozzi – Would you like me to continue Mr. Chairman? – Chairman Karll – one moment please. I have one more on that page – administrative in nature.

“Braintree Zoning Bylaw” (ZBL) Section 135-613G

Zoning Bylaw Section 135- 613G – indicated it is “procedural in nature”. Member Ford – makes a **MOTION** to approve, seconded by Member McDonough - unanimously voted.

“Braintree Zoning Bylaw” (ZBL) Section 135-701 and 701 Notes

Assistant Director SantucciRozzi - If I may Mr. Chairman, this particular section is the underlying “by right” dimensional criteria. Staff has noted here in the staff report. We talked about the other setbacks. I don't think we need to talk about those any more. I think everyone is clear on the 7.5'. The front waiver is for 6.9' where 10' is required; the side is 7.5' where 10' is required; the rear 6.7' where 20' is required so we have front, rear and side waivers of all setbacks. The other thing that is not compliant here is the minimum width; so, the Zoning Bylaw says you need to provide the minimum width which is 100' in this district -- through the structures, at the front line of the structure, through the structure and 20' feet behind the structure.

If you look at the configuration of this lot, the front structure meets the minimum lot width and the rear one does not because of the significant jog in the property line. – So the minimum lot width requirement actually hasn't been provided yet? Attorney Quirk – I am sorry? – Assistant Director SantucciRozzi the minimum lot - is that noted? Did you put that on the redline report? Attorney Quirk - That is not on the revised report, but, certainly to the extent of the case, we would ask for a waiver for the structure. Assistant Director SantucciRozzi what is the dimension? Attorney Quirk – I do not know.

Assistant Director SantucciRozzi – so those are the items, sir. I don't have that dimension, as it is not specified on the plans. It was raised in this report – and it looks like, if the Board is inclined to grant that waiver again it is the front, side and rear and also would be minimum lot width. My recommendation would be, as shown on the site plan similar to the previous vote.

Chairman Karll – Alright. Assistant Director SantucciRozzi – I am guessing it is somewhere around 80. Maybe it is on the ANR Plan – page 2. Yes it is 79.05'. Chairman Karll - that was a good guess. Assistant Director SantucciRozzi - 80 was close. Chairman Karll - I will ask my colleagues for any comments on these waivers. Attorney Quirk confirms 79.05'. Chairman Karll – yes.

Member Ford: Again, being a 40B project, to just step back without having a public safety issue to speak to here, fire access or such, there is really no reason to deny this. I will make a **MOTION** to approve the waivers; second by Member McDonough – vote 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-705

Chairman Karll reads waiver request 135-705 – this is the multi-family dwelling exceeds the maximum allowable density. We are back to the density issue - Member Ford **MOTION** to approve the waiver; seconded by Member McDonough - vote 3:0. Member Ford: I know it is inconsistent with the last vote, but I have learned something since Monday. That is all I am saying. I have learned from Monday night, and I really had no leg to stand on denying the waiver from Monday night. Chairman Karll – we will revisit that. Member Ford – We can't. Chairman Karll – let me get through with this.

“Braintree Zoning Bylaw” (ZBL) Section 135-705

Chairman Karll reads the waiver request 135-705: multi family dwelling - minimum open space per unit. They are looking for a waiver on the minimum open space per unit for Multi-family dwellings. Melissa, do you want to comment on this? You don't have to.

Assistant Director SantucciRozzi – No. Again, in 705 our density requirements and our open space requirements, I was just looking at the plan very quickly to inform the Board that on this particular site, while that they are not meeting the open space per unit, it is 10% in the underlying zoning requirement minimum and they are providing 25% open space. Member Ford **MOTION** to approve the waiver; seconded by Member McDonough – vote 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-711B, C, D & E

Chairman Karll reads the waiver request ZBL section 135-711B, C & E with the comment “procedural in nature”. Member Ford **MOTION** to approve the waiver; seconded by Member McDonough – vote 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-808B

Chairman Karll reads the waiver ZBL section 135-808B parking – that requires all spaces are independent and does not allow tandem parking.

Assistant Director SantucciRozzi – Mr. Chairman, if I may. The applicant has submitted and actually also discussed with me, along with submitting something in writing, that this parking configuration does not constitute a parking facility. The definition of parking facility is five or more spaces. I explained to the applicant that I have been involved with several multi-family projects, as has this Board and most recently we approved a 12 unit town house development which has been constructed. We have never counted tandem parking spaces as meeting zoning requirements. There are several projects providing tandem parking spaces, but they still meet parking requirement without counting those spaces per zoning. I have explained this to the applicant. They are still of the position that these are private garages and deed spots, and they are ownership. Based on our practice as a Town, as the Planning Board and Zoning Board of Appeals, again we have never allowed tandem parking spaces aside from a one or two family to count in meeting the zoning requirements.

Chairman Karll – So, from what I can tell, they will have a garage under. Assistant Director SantucciRozzi – correct. Chairman Karll – So, a car will go into that and one behind that. Assistant Director SanrucciRozzi – that is what they are proposing.

Attorney Quirk – If I may Mr. Chairman? Chairman Karll – If you want to speak, you can.

Attorney Quirk – What I would say is that we certainly stand on the memo that we have provided to the Board. This is not a parking facility. Certainly, staff has indicated that you have interpreted this somehow differently in the past. While reserving our rights to continue to argue this is not a parking facility and that a waiver was not required, we would, with reservation, give you a request for a waiver to allow the exception from the no tandem parking requirement and to allow the parking as shown on the final approved plan.

Chairman Karll – Any discussion on this? Member Ford – I have a little discussion. I have two kids with cars they pullout on the street when somebody has to move out and they park on the street. My question would be not a question. My concern with this car leaving the garage, somebody runs out and pulls out on the street. We have ad nauseam discussed fire access, and I think, if anything, I would question cars pulling out on the street; they are parking on the street and letting other cars go. It could affect fire access. This is the only thing I would bring up on this. Based on that I would make a **MOTION** to deny. Chairman Karll – well my feeling is, if a car pulls out of the garage, usually the other car would pull into the driveway parking space. That is what happens most of the time I think.

Paul Holland, Applicant: Mr. Chairman, I would also like to point out the condominium complex also has five additional spots besides the two spots that would be deeded for each townhouse so there are five visitor spots specifically designated for the condominium unit, so there are 21 parking spaces in total. Chairman Karll – again this being a 40B project, I think to deny this we are looking to create an issue that really doesn’t exist. Member Ford commented that is fine, I will withdraw that and make a **MOTION** to approve; seconded by Member McDonough – voted 3:0. Attorney Quirk thanked the Chairman.

“Braintree Zoning Bylaw” (ZBL) Section 135-812 B

Chairman Karll read the next waiver, Section 135-812B regarding landscaping requirements and snow - Assistant Director SantucciRozzi no longer needed Mr. Chairman. They revised the plan, removed the snow storage from the walk way. The pile went from 1.5’ in height to 1.7’ in height. Chairman Karll - no longer needed - so we no longer take this up. Assistant Director SantucciRozzi - correct.

“Braintree Zoning Bylaw” (ZBL) Section 135-812 D

Chairman Karll read the next waiver, Section 135-812D landscape requirements. Assistant Director SantucciRozzi - Mr. Chairman, if I may, the applicant has submitted the calculations and has demonstrated they meet the minimum 5% of interior landscaping. This waiver is longer needed. Chairman Karll – No longer needed; we will move on.

“Braintree Zoning Bylaw” (ZBL) Section 135-1201 B

Chairman Karll read the next waiver, section 135-1201.02 - Grading “procedural in nature”. Member Ford **MOTION** to approve; seconded by Member McDonough – voted 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-1201G

Chairman Karll read the next waiver request, section 135-1201 G - grading regulations; no comment “procedural in nature”. Member Ford **MOTION** to approve; seconded by Member McDonough –voted 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-1201H 5B- Chairman Karll read the next waiver request, section 135-1201H grading regulations; no comment “procedural in nature”. Member Ford **MOTION** to approve; seconded by Member McDonough –voted 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-1201H 7C

Chairman Karll read the next waiver request, section 135-1208 grading regulations and grading standards. Assistant Director SantucciRozzi - this talks about the manner in which the ground is graded away from the buildings; they are grading them away from the building although not in strict compliance with this particular section. Member Ford asked - but they are appropriate? Assistant Director SantucciRozzi – correct. Member Ford **MOTION** to approve; seconded by Member McDonough – voted 3:0.

“Braintree Zoning Bylaw” (ZBL) Section 135-1201H (12) A-D

Chairman Karll read the next waiver, section 135- 1201H (12) A-D grading regulations/standards and setbacks - Assistant Director SantucciRozzi- Mr. Chairman, if I may, we covered this section last night as well. As the Board is aware, there is a retaining wall that runs along the Archbishop Williams elevation, and the Zoning Bylaw restricts cuts and fills within certain heights from property line unless you put in a retaining wall. Chairman Karll – clarifies, so they are using a retaining wall? Assistant Director SantucciRozzi – correct. Chairman Karll – so is the waiver needed? Assistant Director SantucciRozzi – Technically, yes. Member Ford **MOTION** to approve; seconded by Member McDonough – voted 3:0.

Fee Waivers:

Chairman Karll – what would the fee be on this that they are looking to waive. Assistant Director SantucciRozzi – also about \$13,000. Mr. Chairman, this one only has 2 affordable units out of the total of 8 units. Again, it is the Building Permit fees, Certificate of Occupancy fees, water and sewer connection and sump pump fees, and they have estimated it to be \$13,128.00. Assistant Director SantucciRozzi states, again, for the record I have not verified. Chairman Karll – commented, well I never. Member Ford interrupts, regardless, I **MOTION** to Deny; seconded by Member McDonough – voted 3:0.

Chairman Karll explains so the public is aware – when they mention affordable units, the affordable units are based on a calculation set by the state, and if I remember correctly it is 80% of the cost of a unit that makes it affordable, based on the calculations and criteria by the Commonwealth.

Paul Holland, Applicant: Yes, they would set the amount and set the sale price.

Chairman Karll states he would like to go back to that density issue from Monday night. I just don't remember where it was. Member Ford comments he is comfortable with the vote taken on Monday night, and we should let it stand. Chairman Karll – so we won't reconsider that – okay.

Chairman Karll asks the applicant's Counsel: I think most of the waivers you asked for, except for the fees, have been granted. Do you intend to modify the plan? Attorney Quirk responded – We do not.

Chairman Karll asks the applicant's Counsel: Since all but the fee waivers have been granted - Do you believe this project is uneconomical? - Attorney Quirk asks the townhouse project? Chairman Karll – Yes, the townhouse project. Attorney Quirk – Responds – no, we don't have an issue with the townhouse project.

Chairman Karll states there are, therefore, no tabled waivers, and you do not intend modify the plan because there is really nothing to modify to meet the waivers. Then, I guess we are going to schedule a meeting to take a vote.

Attorney Carolyn Murray commented – There being no further need for information or any further votes that are outstanding, other than the ultimate vote on these projects. I think it would be appropriate to close the public hearing on both of these applications, because that deadline is tomorrow, and you certainly are not going to be meeting again tomorrow. From this point forward, we then have 40 days to deliberate. Once you actually vote on these two applications to either approve, approve with conditions or deny, your decision has to be filed with the Town Clerk within in 14 days. So my recommendation would be to schedule a meeting for the Board to deliberate and possibly even vote on the two Comprehensive Permits. I believe some dates have been discussed at the end of January when that might be possible. Chairman Karll – okay.

Member Ford asked: Not to contradict, we did ask for some information regarding the un-economic claim to the apartments – Attorney Murray responds: correct. Member Ford clarified: we were told we would not get this. It is not that we are waiting for anything; we just are not getting it. Attorney Murray - Without an extension to the public hearing, no, you are not going to get that information.

Attorney Quirk mentions to the Chairman that Mr. Holland had one last item he would like to speak to.

APPROVED

Paul Holland, Applicant, states: I just want to correct what I said before regarding the sale price on the townhouses. The sale price is set so a person earning 80% of area median income would be able to afford this – it is 80% not the sale price.

Chairman Karll – Right, set by the Commonwealth.

Assistant Director SantucciRozzi – These are all 3 bedrooms, Mr. Holland, correct? Paul Holland – Yes.

Assistant Director SantucciRozzi – The sale price would be probably be between 250K and 275K.

Chairman Karll – asks for an affordable unit? Assistant Director SantucciRozzi – Correct.

Chairman Karll clarified he is now closing the public hearing. No further discussion will occur on both the rental and the townhouse units, and I would suggest, since we are meeting on January 27, that date as the meeting to make a final decision. We can do that and the other several items on the agenda for the evening. Does January 27th work for the applicant? Attorney Quirk – yes.

Member Ford made a **MOTION** to close public hearing Comprehensive Permit Application for a 70-unit multi-family rental application; seconded by Member McDonough – voted 3:0.

Member Ford made a **MOTION** to close the public hearing on the applicant's proposed application to construct eight (8) townhouse units; seconded by Member McDonough – voted 3:0.

Chairman Karll notes this matter will be further continued to January 27, 2020 when the Board will meet again to make a final determination on these applications. He thanked the public for coming. We hope to see you that night.

Member Ford **MOTION** to adjourn the meeting; seconded by Member McDonough; unanimously voted. The meeting adjourned at 8PM.

Respectfully submitted