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PLANNING BOARD

Robert Harnais, Chair
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Darryl Mikami, Clerk
James N. Downey, Member
Phillip J. Baker, Member
Hector Erinna, Alternate

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Braintree Planning Board – January 15, 2019 – Cahill Auditorium

Present:

Mr. Robert Harnais, Chair

Ms. Erin Joyce, Vice Chair

Mr. Darryl Mikami, Clerk

Mr. James N. Downey

Mr. Phillip J. Baker

Mr. Hector Erinna, Alternate Member

Christine Stickney, Director

Melissa SantucciRozzi, Assistant Director

Connor Murphy, Staff Planner

Chair Harnais calls roll at 7:03 PM. Six (6) members are in attendance.

MOTION made to go into Executive Session voted by individual member roll call 6:0:0. The Board will discuss the matter of Aiello v. Braintree Planning Board, et al., Land Court Case No. 18 MISC 000425 regarding a special permit issued to Academy Express, LLC for 35 Rocsam Park Road and 531-533 Pond Street and possible resolution of same. The Chair announced to the public that they will return to the scheduled Planning Board Meeting after the Executive Session.

There is a **MOTION to adjourn** the Executive Session voted by role call 6:0:0.

The executive session ends at 7:24 PM, and the Planning Board returns to the regularly scheduled open session Planning Board Meeting at 7:30 PM with a roll call. Six (6) members are in attendance.

NEW BUSINESS/OLD BUSINESS

Announcement – Comprehensive Zoning Re-Write – Fourth Public Meeting

Wednesday, February 13, 2019 at 7:00 PM in Cahill Auditorium (Website: www.braintreezoning.com)

Chair Harnais reminds the Planning Board that we are going to have our fourth public meeting on the Comprehensive Zoning Re-Write; it will be held on Wednesday, February 13, 2019, at 7:00 PM in Cahill Auditorium.

PUBLIC HEARING

131/135 Lakeside Drive, 10 Silver Road, Portion of 250 Granite Street, Silver Rd. and Bonnieview Rd.

T.C.O 18-062-Application for a ReZone

Braintree Property Association, Applicant

7:30 PM – Five Planning Board Members participated.

Present for the Applicant:

Attorney Carl Johnson

Tim Fox, Manager of Development, Simon Properties Group

Rick Tonzi, General Manager, South Shore Plaza

Chair Harnais reads the Public Notice into record.

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Attorney Carl Johnson, representing Braintree Property Association who is the petitioner for Council Order TCO 18-062, a petition to rezone a small portion of the South Shore Plaza owned by Braintree Property Association that consists of 111.65 acres of land. Attorney Johnson will briefly go over the separate areas they are seeking to rezone and why it is sought. Mr. Fox can speak to the Planning Board on corporate management.

Attorney Johnson highlights the Overall Site Plan (OS1) with current plaza, reservoir and area of rezone; he further highlights a second plan that is color-coded with three separate areas subject to the rezone. The red highlighted is un-zoned private ways; this includes the Lakeside Drive private portion (Lot 201). This portion of land consists of 1.24 acres or 28% of the land requested to be rezoned. BPA has owned that property since 1960. The second parcel is show in yellow. This is zoned residence B, but it is land commonly owned by BPA and is "use protected" by a provision in the Braintree Zoning Bylaw (Section 135-701). Attorney Johnson discusses Note 9 under this Bylaw, which said, if something is separately owned, after 1993 it cannot be used in support of the total land area. The yellow land qualifies as Highway Business district land; it counts towards building coverage, lot coverage and open space. It is used for those purposes, but it is taxed and assessed as Highway Business Land and is part of the 111.654 acres. The yellow area comprises of 2.56 acres or 60% of the land subject to the proposed rezone. The third portion is the residential lots in blue, which consist of two house lots (131 and 135 Lakeside Drive) and a vacant lot at the end of Silver Road. This area comprises of .54 acres or 12.5% of the land area subject to the proposed rezone.

Attorney Johnson addresses the question "Why would Simon seek to rezone the property?" It is simply that they wish to have a uniformity of zoning, which would become an overall 113.425 acres, that is consistent with the zoning of the mall. The mall is used for as a Highway Business District that supports the only regional shopping center. The Applicant wants to use the land area for dimensional and density calculations. Since South Shore Plaza is one lot and it is an ANR lot, as land area is added to the mall property, the whole lot is benefited by the density and dimensional calculations. This area is no longer suitable for residential use; it is a dead end road; it has become an area for dumping. It is owned by South Shore Plaza. In the future, it will be a vegetated area. The plaza should be uniformly zoned consistent with its zoning use. The mall is allowed under Highway Business district to proceed with certain uses "by right" and others by Special Permit – there is one Special Permit for the entire mall that is renewed for any business or development at the mall. Simon is very transparent for any development at the mall. Attorney Johnson states every acre added (this would add 1.78 acres) would add to taxable income at a commercial rate, which is more than double the residential rate. This is important for the future economic vitality of both the Plaza and the Town of Braintree. The mall cannot remain stagnant; it has to adapt to other uses that attract tenants, attract families, provide more restaurant uses and provide more commercial uses. While it may seem like a small thing, there are always questions when South Shore Plaza does anything.

Tim Fox, Manager of Development, Simon Properties Group, states that Simon Properties Group owns roughly 114 acres, of which this property constitutes 4.34 acres (3.5 % of total property). The majority is treated as highway business. The area they are discussing makes up about 1.5% of the property they own. There is speculation out there that Mr. Fox would like to dispel. The first is that there is some pending project or residential project. That is not the case. If and when there are projects, they would be very transparent, as they have been since they've owned the property. They acquired the residences over the course of a couple of years and should have rezoned them at the time. Mr. Fox is happy to answer any questions.

Chair Harnais opens discussion to the public.

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Justine Huang, 25 Lakeside Drive, which is the last house before Flaherty School, feels the rezone will have major impact on her house. She asks how would traffic be controlled and how would neighborhood be protected with an elementary school in the neighborhood. Attorney Johnson clarifies on the highlighted plan that the opening into the mall from the Lakeside Drive is gated and can only be opened by Public Safety. Attorney Johnson explains there is no "cut-through" traffic in this area, and this will not change. This rezone would have zero impact to this area, and this would not be used as a "through" road.

Attorney Johnson is not sure if there is going to be a request that access ways be maintained and be protected; he points out that a lot of the roadways around the mall are Commonwealth of Massachusetts roadways. Simon Properties has a history of working with the school and will continue to do so. Since this is a one-way street, Ms. Huang she wants to protect the neighborhood. She feels changing zoning might impact opening of gate, and she wants to know how it will protect the neighborhood. Chair Harnais states that would be addressed when proposals come forward.

Liz Page, 137 Storrs Avenue, Vice President of North Braintree Civic Association, has some concerns for good reasons. When the Plaza wanted to do their expansion, because they were going to be crossing from Highway Business to Residential, they had to do a Site Plan Review. The closing of the access at Lakeside Drive was part of their conditions. That cannot be undone. Mrs. Page wants to know what future plans are because there are tons of rumors going around, and she would prefer that the Applicant has discussions with the neighborhood. She feels it is not as simple as it sounds.

Alan Flowers 48 Fallon Circle, would hope that the Planning Board would recommend against this rezoning. He feels we have way too much business zoning in Braintree, and we need to retain residence zoning not more businesses. Mr. Flowers asks that the Planning Board reject this petition.

John Haran, 141 Walnut Street, explains that this area currently serves as a buffer between the Plaza and the neighborhood. He states it is very visible to the Parkside Circle residents. He has concerns about visibility to Parkside Circle. Mr. Haran urges the Planning Board to recommend against this, as he has a problem with rezoning any type of residential property into highway business or commercial.

Michael McCarthy, 151 Walnut Street, feels most of the questions have been focused on access. He asks if there would be any connection planned to allow traffic to flow through Lakeside Drive. Mr. McCarthy, knowing that this is a dead end, asks would there ever be a plan to extend this parking lot so that you have access and outlet onto Lakeside Drive. Mr. McCarthy states there is a perception that, once rezone, there will be an access and outlet from the mall, where there is now a gate. Attorney Johnson can say that this is not going to happen. This was not just a Site Plan Review, it was the longest Special Permit in existence with over 140 Conditions in the 1993 permit, and these Conditions will survive. There would be no change to Lakeside Drive, unless it is something that the Town and the neighborhood would want. There are no plans to have access and outlet onto Lakeside Drive.

Chair Harnais opens discussion to Planning Board.

Member Baker asks if residential was ever looked at for these parcels. Member Baker clarified whether this additional open space is needed if they want to do something else at the mall. Attorney Johnson states there is 34% open space where 24% is required. Attorney Johnson does not ever envision using the green space; the mall is a cluster of buildings. Attorney Johnson provides a history of property ownership. Simon has owned since 2001; Simon Property Group is very protective of their property. They have to report to Wall Street every quarter. They re-invest in their properties quite a bit. Because of location to nearby highways, you can operate

a mall and not impact neighborhoods. Attorney Johnson states there is no plan right now; there is nothing in the immediate future. Member Baker clarifies with Attorney Johnson how potential development might occur.

Member Mikami clarifies that the Planning Board provides just a recommendation for this, but the actual final vote and determination comes from Town Council. Attorney Johnson confirmed that this was correct. Member Mikami confirms, theoretically, that the entire area could be redeveloped.

Assistant Director SantucciRozzi states the area could be redeveloped or used in support of developing the property; she explains that the proposed area adds about 1% more land to the already 111 acres dedicated to the mall. The Assistant Director explains that there is some reserve parking on the northern portion of that area. She doesn't think that the intentions have anything to do with opening circulation, and she asks for clarification on where the one-way that residents were referring to is on the plan. Attorney Johnson states this is all protected area that lies within the jurisdiction of the Massachusetts Department of Conservation and Recreation (DCR). Attorney Johnson explains that the bridge behind Uno's is an easement owned by the DCR. There is not a lot of room to be doing something in that area. It is not feasible. One constraining factor is where to put ice and snow. Attorney Johnson highlights an area used for ice and snow, because it is not used very often. It is used occasionally by the neighborhood, and the South Shore Plaza built an entrance to the softball fields and made an area for parking in this area. Attorney Johnson states anytime you have a project in the future, you have the ability to enhance the area, protect it, screen it, and landscape it. Attorney Johnson states the area behind Nordstrom's is not parked very often.

Member Mikami asks staff how this fit into the new zoning goals. Assistant Director SantucciRozzi states one of the things we are trying to do is eliminate split lots and inconsistency in zoning patterns. If you look at an aerial view, every neighborhood that abuts reservoir is developed to the absolute extent that they can; they are high and tight with the land around the reservoir. This area has the biggest buffer; if this area is rezoned into the South Shore Plaza's main lot all the restrictions on South Shore Plaza are on this addition. She feels that this portion that abuts the water has the largest buffer zone. Staff has this piece on proposed Comprehensive Zoning to be rezoned to Highway Business. South Shore Plaza decided that they want to advance this application and file separately. Assistant Director SantucciRozzi expresses that there are some positives that this property is owned by South Shore Plaza, and the strict restrictions carry forward. Staff confirms that the restrictions of the gate on Lakeside Drive were part of the conditions before she began working in the department and it was perfected and carried forward in the expansion in 2008. Staff states this small 4 acre parcel is more suited to be part of the South Shore Plaza then carved out separately.

Member Mikami confirms this makes sense, there are protections with it being in the plaza, and there would be additional protections since a Special Permit would be required for any future action. Member Mikami states, while there is logic behind this, there are emotional components. Member Mikami wonders what Simon is thinking. Could the Applicant address this? Mr. Fox states there is not a project waiting in the wings. The rezone is part of an effort to attract projects, and Simon will be operating in a completely transparent process when there is a project in the works. Mr. Fox states they are a retail organization; because the retail world is changing, Mr. Fox states far down the road, it is difficult to say. In the near term, Mr. Fox states their focus would be some retail and entertainment. Member Mikami asks, theoretically, you could have a freestanding building or an attachment to the existing mall. Mr. Fox states they are not contemplating mixed use or residential.

Liz Page, 137 Storrs Avenue, with all due respect to what Assistant Director SantucciRozzi is saying about the density of the homes on Packard Avenue, they are residential homes and have very little impact. Ms. Page states, if they were to take the proposed area and do a cul-de-sac of 10 low-scale homes overlooking waterfront, it would be quite nice. She states Highway Business in the new Comprehensive Zoning Laws that are

being proposed would allow for a hotel or apartment buildings; it could be a four-story building that would take up this lot. This would be a very dense impact on the neighborhood. She has heard that this might be recreation where there might be some kind of an enclosed golf business. Ms. Pages doesn't understanding drawing cars from a regional shopping plaza to a small corner location attached to a residential neighborhood. She would like to have assurances that this would be buffer or open space. Although it makes sense for the Plaza, it doesn't make sense for the neighborhood.

Justine Huang, 25 Lakeside Drive, has been a resident there for 11 years; she discusses use of neighborhood and opening up the barricade with no access other than Lakeside Drive would increase traffic and be a danger to the neighborhood. She asks the Planning Board to consider protection of the neighborhood in their decision.

Mr. Fox wants to clarify that they are not proposing tonight nor are they contemplating for the future opening up access at all. They take their relationship with their neighbors very seriously.

Member Downey refers to earlier discussion about proposed uses or plans and understands that Simon does not have any concrete plans, and he confirms that any proposed uses would be complimentary to existing businesses. Member Downey asks what other similar situated malls are doing. Mr. Fox states they are all different and unique cases so it is hard to compare. He can say, in a larger picture, that some of the recent developments have been more of the experiential, such as entertainment or fitness use, something other than fashion-type retail, that could attract people to the properties. Member Downey asks what other interaction the Applicant has had with the neighborhood. Attorney Johnson states they view this as a ministerial change, but have met with this neighborhood quite a few times. A lot of their meetings had to do with worries about traffic and other impacts. Attorney Johnson states they haven't had much interaction because they haven't had a project since the Nordstrom development. Attorney Johnson understands there is a lot of apprehension, but states there is no plan for residential. Attorney Johnson states you don't look at this parcel as an isolated four-acre area that will support some development. The land area alone is valued at \$85Million. There were discussions with a residential development, but they were broken off because it was thought that it didn't work for this area.

Member Joyce had a point of clarification regarding the inclusion of these parcels to help with dimensional and density calculations for any future development or current development. She asks if this area proposed is currently being used for any of those calculations. The areas highlighted in yellow and white are all being used in support of the mall's coverage and open space calculations. The only parts not currently used in the calculations are the red and blue highlighted areas, which are 1.78 acres. Member Joyce summarizes that the land highlighted in yellow is currently allowing the Plaza to operate as it does today, so there wouldn't be a situation where the Plaza could sell that land or take it away from its overall acreage. Attorney Johnson states Simon does not sell property. Member Joyce concludes that, if you were not to rezone this, the chance for it ever to be single-family homes is not possible because of the development that has already occurred onsite. Attorney Johnson states it would not be economically feasible to separate the land for sale.

Chair Harnais feels the concern is not the rezone, but what would be coming later. Chair Harnais feels he is not concerned with the rezoning, but he will have concerns with what is coming down the road.

Jennifer Wadland, 37 Parkside Circle, asks if it is switched from Residential to Highway Business, do we lose control of what can go there. Chair Harnais explains that is not correct; whether it is Residential or Highway Business, there is still a permitting process, site plan, etc. You cannot just put anything there. Chair Harnais explains, as a project comes forward, the Planning Board would look at it carefully. Ms. Wadland asks why rezone it at all. Chair Harnais clarifies that this is one of the properties targeted by the Town to be rezoned as

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part of the Comprehensive Zoning because we look at overall use of the property, and that is how it gets rezoned. Chair Harnais clarifies that if you look around at other cities and towns, it is not all residential around schools. Ms. Wadland is concerned that additional houses would be continued to be purchased. She feels residents just want to raise their families and do not want Braintree to be a “destination”.

Chair Harnais asks Ms. Wadland, if someone owned a piece of property for many years, should they be able to use that piece of property. Ms. Wadland feels if it is zoned appropriately. Chair Harnais reminds that the Town has targeted this as a rezoned area, but there is a big difference between rezoning something and just putting on blindfolds and letting them do whatever they want. Chair Harnais understands people’s fear, but he clarifies that we are not approving any structure to be built there. Chair Harnais has concerns as to what might be built there. The rezone itself does not approve any structure. Ms. Wadland feels this is tricky; Braintree is over-developed and wonders when it stops.

Liz Page, 137 Storrs Avenue, asks what is the total acreage being discussed? Attorney Johnson clarifies that it is 4.34 acres; Attorney Johnson clarifies that the color red and color blue on the plan cover 1.78 acres, and this is not in the current density and dimensional calculations. The area highlighted in yellow is already included in the 111 acres and already included in the density and dimensional calculations. Ms. Page asks what portion is buildable and concludes that the red area is the only buildable area. Attorney Johnson clarifies that she is looking at this as a 4 acre lot independently, but it is a component of one large lot; it counts to the whole. It is not a segmented parcel. Ms. Page states there is more than enough open space already to build. Attorney Johnson explains that a lot of the open space is in the 21 acres that is too remote from the mall, and he discusses a history of that area.

Brendan Lee, 153 Storrs Avenue, states Simon cares about their investors and making money; the residents care about the Town. He feels they already have a plan, but they are not currently going to share it with the public or their competitors. He refers to Legacy Place where there is a large residential location. Mr. Lee feels Simon didn’t buy this property just to create a buffer, and by giving up Residential B zoning, we are giving up what we can prevent from going there. He feels this should remain Residential B.

Mary Cody, 63 Parkside Avenue, asks if it is possible, at some point, for the property to be subdivided in the future. Assistant Director SantucciRozzi states any property is sub-dividable depending upon availability of frontage and meeting dimensional requirements. There haven’t been any suggestions, questions or anything from Simon and their representatives asking about potential to sub-divide this over the past 15 years. Assistant Director SantucciRozzi explains that, whatever land that might be taken away from the developed portions of the mall, they would still need to satisfy those zoning requirements. The reality is that all of the parking you see there today, except for 11 spaces—which is the surplus, is required to support the development that is there now.

Member Downey **MOTION** to close the public hearing; seconded by Member Joyce; voted 5:0:0.

Member Joyce **MOTION** to make a favorable recommendation for the rezone request to the Town Council (the final voting authority on this rezone); Member Baker seconded; voted 5:0:0.

Chair Harnais announces that this will be before the Town Council on January 22, 2019.

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CONTINUED PUBLIC HEARING

White's Hill Drive – File #18-20

Grading Permit

McGourty Company, Inc.

8:44 PM – Five Planning Board Members participated. Member Baker recuses himself from this Hearing and Alternate Member Hector Erinna will be voting on this Hearing.

Present for the Applicant:

Brian McGourty, Applicant

Paul Marchionda, Marchionda and Associates LLP

Paul Marchionda, Marchionda and Associates LLP, reminds the Planning Board that this hearing was opened last month is for a Grading Permit for the nine lots on Whites Hill. Mr. Marchionda states one of the main focuses at last month's meeting were what kind of landscaping we would provide to screen the two walls. By staff recommendation, it made a lot of sense to go with these engineered, block walls – two eight-foot high walls that are 15-16 feet apart. The Landscape Architect has look at the site; staff asked about planting being allowed inside the 20-foot "no disturb" zone. The "no disturb" zone was set-up to be an area where vegetation would be maintained to provide a buffer to the neighborhood. Mr. Marchionda provides photographs of this area and states it is basically all briars in that area, which doesn't provide much screening; the Landscape Architect has made a suggestion to densely cover the area with a variety of plantings. A machine would be placed on the outside of the 20-foot area to reach inside to create small excavations for the plantings. They would not have to cut any trees. Mr. Marchionda feels this is the best solution because it provides a very dense buffer to the neighborhood; he feels that is the only substantive outstanding issue that staff had in their review.

Assistant Director Melissa SantucciRozzi, states she did a Staff Report and draft conditions and issued it yesterday. She had a couple of issues; she is looking for the Planning Board to weigh in on whether they are okay with plantings in the "no-disturb" area. There will be very strict conditions related to this if the Board does go along with allowing that. It is the only 20-foot strip within 400 feet horizontally and 70 feet vertically that isn't going to be disturbed in this area. The second thing she raised is that they have done quite a bit of plantings along the walls; she has asked for similar plantings on the two lots to the left (Lots 2 and 3). She asks for the Planning Board to weigh in on this, as well. There were some questions on the wall that will go adjacent to the Town right-of-way from the Town Engineer. She discusses access to Town Property. She had general questions on how people would access the back of their properties. She wants to make sure that all portions of the properties are accessible and don't become an area for dumping and piling things. The last item, getting back to disturbance and tree removal, the Planning Staff is recommending or suggesting that Planning Board institute a minimum number of plantings per lot to ensure that there is re-vegetation of these properties once they are cleared for development. Assistant Director Melissa SantucciRozzi states the wall that Mr. McGourty is using has been used at other locations in Town. She is asking for information on the wall to be provided as part of the record. She asks if the Planning Board or neighbors have a preference on the face of the wall, but states the existing vegetation and proposed vegetation should result in something that is softened.

Chair Harnais opens discussion up to the public.

Timothy Greene, 115 Pilgrim Road, confirms that 20 feet off property line there would be an 8 foot wall and then in 12-14 feet another 8 foot wall. Mr. Marchionda explains that the first wall is about 25 feet off the property line and then about 16 feet to the second wall. Mr. Greene is very concerned about this type of design; he is not here to say "no" to the project; however, two 8-foot walls is too much; he would prefer four 4-foot walls. That size scope of

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wall is almost like a sound barrier that you would have on a highway. If you are a resident of Pilgrim Road, you are looking at 16 feet of walls. He feels we are naïve if we think it won't become a drop-off. There is no way to take care of trees and plantings once they are done, and he feels that animals will eat all the vegetation. Mr. Greene has pictures of slope, road and drainage; he feels it is the size and scope of wall that he objects to. He asks if there is someplace in Braintree in a residential zone that he could see this in concept. Mr. Greene provides pictures that he has of eight-foot posts with a 16-foot survey stick set back 13 feet to provide an idea of the scope of what is going up here.

Mr. Greene states one of the things that Pilgrim Road is lucky with is that the water flows between properties down the hill. Mr. Greene feels you are putting up something that will be 22 feet high. He provides photos from the property line and the slope; it looks to be about a 17-18% slope. He feels this is an unfair burden on Pilgrim Road. Instead of two large walls, he suggests working with the slope. The Berlin Wall was only 11 feet tall, and we are looking at 16 feet here. He understands there are going to be houses up there at some point, but this is an unfair burden to Pilgrim Road. He feels the Planning Board needs to get out to Pilgrim Road and see what they are looking at. He feels landscaping will not last, as the deer and turkeys will eat it all. He would like to come to a reasonable alternative that still provides a slope, but doesn't give a sense that people are in a prison in their backyard looking at a massive wall.

Mr. Marchionda offers a comment that the plantings selected by the Landscape Architect are deer resistant and they would really blossom because of the soil and exposure to the sun; the Landscape Architect is confident that this is a very hardy landscape plan that will function very well for a long period of time.

Member Downey asks if there has been any discussion about the feasibility of doing four walls of four feet high each. Mr. Marchionda explains the original proposal was a series of four-foot walls, but the review from the Engineering Department and the Stormwater Division felt that two higher walls would be a better solution with a fence on top, so the Applicant went through the expense to include the ready-block walls in the plan.

Member Mikami clarified with staff that at the last meeting it was explained that Town Engineer determined two 8-foot walls would be better to elongate slopes to allow for plantings. Assistant Director SantucciRozzi states that is a fair comment. She adds that the drainage line refers to the front portion of the property needing to drain toward subdivision road. Before Phase II of the road was cut in, the entire slope from the water tank down drained down into the backyards on Pilgrim Road. She has witnessed that over the last 10-15 years. The minute that the road intercepted that hill, it immediately removed a large portion of the watershed that was draining to this area. There still is a substantial portion of the right side of the subdivision road backing up to Pilgrim Road; the front portion of the lots (and that line is now on the Grading Plan) is going to drain to the street and the back portions will continue to drain down the hill, until Mr. McGourty obtains the Grading Permit and he can start doing the work. Staff continues to explain that on these two particular properties there is going to be a lot of opportunity for natural infiltration given the yards that will be created in the level area. Some of the water that ran down the slope with nowhere to go will hopefully be absorbed. The Assistant Director feels these walls are essentially maintenance free. There will be some requirements by the Town Engineer that will need to be recorded by Mr. McGourty along with the two deeds. The individuals purchasing homes will be fully aware of the restrictions, limitations and ongoing requirements for those lots. The Assistant Director raised the point about maintenance at the first hearing; she mentioned that we might need to add something about no leave dumping at the bottom of the slope; we don't want people throwing leaves over the walls on top of the plantings. Those are things that the Planning Board can institute as part of Grading Permit, and those are things that can be survived if the Board feels they are necessary in order to provide an extra level of protection for Pilgrim Road.

Member Mikami wants to make sure when we Bond this out, there is sufficient room in case there is an error with the walls or the drainage. The Assistant Director clarifies we are holding a bond for the Subdivision Roadway, which is held under OIB. They will go in and clean the entire drainage system; that isn't Mr. McGourty's responsibility. He is just developing the lots. The only bonds that we have in the draft conditions now are \$1,000 per lot for As-Built plans for the 9 lots. If there is anything else that the Board is looking for, the Board needs to specify. Member Mikami states that seems low, and the Assistant Director clarifies that it is to cover the cost of the As-Built Plan. Member Mikami wants to discuss the plantings and refers to the staff's comments that in Phase I all the lots were clear-cut. Member Mikami clarifies with staff that five lots were developed in Phase I.

Member Mikami asks what the Assistant Director is thinking for minimum amount of trees per lot. Assistant Director Melissa SantucciRozzi states, on the lots that have the wall, what is being proposed are sufficient—41 or 42 trees spanning the length of the tiers across the back or 20 trees per lot; however, the lots on the other side of the street are smaller, as they are very vertical, and she suggests half of what is proposed for the other side of the street. Member Mikami asks if the trees are in front and back; the Assistant Director has no preference on location, but she wants to ensure they are trees and not shrubs. Member Mikami recommends a landscape plan, as it could be lot-by-lot. The Assistant Director would like as much direction as possible from the Board.

Member Mikami discusses the extensive movement of fill; who will oversee this on a day-to-day basis. Mr. Marchionda states there has been a Stormwater Pollution Prevention Plan developed for the lot; Mr. McGourty is certified as the overseer of that. Also, with regard to landscaping on lots, we have to develop individual site plans for each lot for building permit purposes; at that point, they will have more of the exact foundations, and we could show landscaping on those plans. The Assistant Director thinks that is reasonable if the Planning Board stipulates a number per lot, and the expectations are clear up-front. Member Mikami clarifies with staff that the oversight of grading is acceptable. Assistant Director Melissa SantucciRozzi states the SWPPP is a very detailed document, and the Stormwater Staff has been a great addition to the team.

Mr. Greene, 137 Pilgrim Road, states he wants to put in the record that he was at the last meeting, but he didn't speak as he wanted to hear what was being proposed and why; one thing that came up at both meetings is that they want two walls so they could have bigger backyards. He feels the new resident backyards shouldn't be more important than the backyards of Pilgrim Road residents. Chair Harnais clarifies that the Planning Board was told the Town Engineering recommended two walls. Mr. Greene clarifies if four walls were done, it makes sense that the surface up top would shrink, and there was no planting design before. He feels this was all based on a terrace design up top. Mr. Greene is not here to oppose the project; he is here to look for a reasonable alternative rather than putting a plateau behind the houses. While he appreciates the plantings, he has his doubts; he just wants both parties to work together and hitting the slope on the first thirty feet of Pilgrim Road is not fair. Assistant Director Melissa SantucciRozzi states the yards in this new development are not level and not ideal. There are still portions that are graded out at a two-to-one slope, which is a 45 degree angle. The Assistant Director made the same recommendation for these two walls for screening and condensing. She states a lot of this won't be visible once the plantings go in. It is a balance of trying to achieve some type of reasonable grading and softening whatever goes in to do that. The best part about this is the shift in the drainage pattern away from Pilgrim Road. Everybody on the Town side was making recommendations for a two-tiered wall for a more structurally sound design; this particular product doesn't require the geogrid, which allows for these type of plantings. This will get water into detention basin and away from backyards. Mr. Marchionda addresses the issue with 8-foot walls not because of bigger back yards. The backyards are quite small. It was to minimize sloping.

Member Downey discusses ensuring dumping does not occur and asks if this can be put into the conditions or would the conditions be just for the Grading Permit. Assistant Director Melissa SantucciRozzi clarifies that the As-Built Certificate will be recorded against each lot and will survive conditions and will be tied to each property. She

clarifies that if the Planning Board wanted it stronger, we would have to get into specific lot restrictions; however, she feels this is more of an education piece, which can be written into the conditions.

Member Joyce has no further comments or questions; initially, she had favored the shorter walls, but taking into consideration that you can better screen the taller walls with trees this may be better. The smaller walls may only have shorter plantings for screening. Member Joyce discusses the plantings per lot and states it seems like the lots vary. Member Joyce asks how we did this on other projects that were similar in nature, and there is discussion related to this on the Del's Way project, which staff felt was landscaped nicely. Member Joyce feels it is hard to visualize whether ten trees would be enough per lot, given the complexity of the grade and difference in lot size.

Assistant Director Melissa SantucciRozzi states, if the Planning Board cannot come up with a minimum number of trees per lot this evening, she asks for it to be set for lots 2 and 3. Going forward, if the Board is comfortable, we institute a condition that says we have a cursory review of the Landscaping Plan prior to the issuance of the Building Permit. Staff's goal is to layout as much of the requirements upfront, especially when it might impact cost. Member Joyce asks if it is common for lots like these, when going for Building Permit, to have a landscape component. The Assistant Director states "no". The Assistant Director states the reality is there is a lot of clear-cutting going on in subdivisions, and it is not a good look. If the Board wants to move forward on the Grading Permit, we could have the Applicant come back with the Landscaping Plan to the Board. Staff states there are different ways to address this situation. Staff also reminds that the issue of planting in the "no disturb" area needs to be addressed. Member Joyce asks if there is any utility in the 20-foot "no Disturb"; Mr. Marchionda states "no". Staff states the 20-foot wide utility easement was left over from Phase I; staff confirms there are no physical utilities in there now.

Chair Harnais agrees with Mr. Green's comments on the two-big walls; however, he has to defer to the Engineer. If it was to make bigger yards, Chair Harnais wouldn't agree with it at all because that is unfair. Chair Harnais doesn't want to arbitrarily set a number on trees per lot. He feels the buffer should have some sort of screening, and he feels that residents on Pilgrim Road have the right to have walls that are screened.

Member Mikami **MOTION** to accept the correspondence into record; seconded by Member Downey; voted 5:0:0.

Member Mikami asks if there are any other issues that haven't been sufficiently covered; staff states she needs two votes – plantings in no-disturb and landscaping on lots. Staff reminds the Planning Board that they put a restriction on the "no disturb" that states it has to remain in a natural state, and she would require a vote from the Board to modify this. Assistant Director SantucciRozzi will draft a condition that references the Board's vote and be very specific and incorporate strong language about "no-disturb" with no removal of trees. Chair Harnais states there should be no removal of trees. Mr. McGourty states the only reason to go into the buffer zone was to add additional trees to create a buffer from the walls; it would be a matter of digging through briers to plant trees. Chair Harnais feels planting in the "no disturb" should be allowed but nothing should be removed.

Member Joyce **MOTION** motion to allow for the addition of plantings in the "no-disturb" buffer zone based on the landscaping plan; seconded by Member Downey; voted 5:0:0.

Member Joyce **MOTION** to close the public hearing; seconded by Member Downey; voted 5:0:0.

Mr. McGourty states there is a lot of vegetation staying on some of these lots; he refers to lots 9, 8 and 7. Mr. McGourty states that it is difficult to come up with a landscape plan prior to selling the lots and getting a Building Permit. Assistant Director SantucciRozzi just wants to make sure that the Board's requirements are clear; if there is no expectation on landscaping then she won't put anything in; if there is an expectation, she feels it needs to be

in the conditions. Member Joyce would like to see some plantings but states it is difficult to come up with plantings for each lot. Chair Harnais expects that there will be plantings of a high standard. The Applicant has no problem with that at all. Member Joyce and Assistant Director SantucciRozzi discuss the "limit of work" line for erosion controls and a modification to Condition 11 that states the "limit of work" line will be staked prior to any clearing and that the work shall not go beyond the "limit of work" line. Member Joyce feels that will help to ensure that existing vegetation remains to the extent that is planned. Member Joyce states, given that we have the landscape plan for the walls, she would move forward without making further requirements for landscape plans specifically.

Member Joyce **MOTION** to approve the Grading Permit with the inclusion of conditions as discussed and revised at this meeting; seconded by Member Downey; 5:0:0. Member Baker has recused himself from this hearing; Alternate Member Hector Erinna voted on this application. Member Baker returns to the meeting.

CONTINUED PUBLIC HEARING

510 Union Street – File #18-21

Special Permit and Site Plan Review

Edward Mulkerrins

9:48 PM – Five Planning Board Members participated.

Present for the Applicant:

Edward Mulkerrins, Applicant

Edward Mulkerrins, owner of the property, has no further comments or presentation.

Chair Harnais opens the meeting to the general public.

Albert Weiners, 535 Union Street, confirms that the Planning Board has had a chance to read his letter. Chair Harnais confirms that the Planning Board received his letter as part of their material.

Member Baker confirms that parking remains the same on the lot with the same driveway. The Applicant confirms that it is remaining the same. Member Baker asks if exterior work is just landscaping. Mr. Mulkerrins confirms that it is landscaping and removing 10 years of leaves.

Member Mikami confirms that this house was originally zoned as a two-family. Staff Planner, Connor Murphy, states historically it was a two-family; it was switched to a single-family with an in-law apartment. Through transaction history people thought it was a two-family and tried to operate as a two-family. The Building Department requested enforcement and explained there was a way to do this legally, and that is why the Applicant is before the Planning Board.

Member Mikami mentions that neighbors are concerned that there was an effort previously to subdivide the property and add additional structures; Mr. Mulkerrins explains that someone previously tried to sub-divide the property, but that was not him. Mr. Mulkerrins states he just purchased the property recently; that was a previous owner. Member Mikami confirms that there will be no change in the structure or footprint. Member Mikami confirms with staff that this is pretty straight-forward. Mr. Murphy has toured the interior with the Applicant; it is set up like a two-family, although from the outside it looks like a one-family. Member Mikami confirms there is not enough frontage to subdivide the property. Member Mikami confirms that the Applicant just wants to fix-up a two-family and improve the neighborhood. Member Mikami confirms that the Applicant is going to be improving some of the landscaping.

Member Downey asks how long ago it was a two-family. Staff was not exactly sure, but they can research the file.

Chair Harnais asks when this property was purchased; Mr. Mulkerrins states about 4-5 months ago. Chair Harnais confirms that the Applicant has read the proposed conditions. Mr. Weiners states the house was built in about 1940, but it has been a single family for about 60 years. Mr. Weiners concern is parking, and he feels the garage is undersized to fit the cars of today.

Member Joyce **MOTION** to enter into record the correspondence; seconded by Member Downey; voted 5:0:0.

Member Downey **MOTION** to close the Public Hearing; seconded by Member Baker; voted 5:0:0.

Member Downey **MOTION** to approve the Special Permit/Site Plan Review subject to the conditions discussed at this meeting; seconded by Member Joyce; voted 5:0:0.

CONTINUED PUBLIC HEARING

236-240 Wood Road – File #17-12

Special Permit and Site Plan Review

Logan Communications, Applicant

9:56 PM – Five Planning Board Members participated.

Chair Harnais explains that the Applicant has asked for this hearing to be continued without testimony to the February 12, 2019 meeting of the Planning Board.

Member Downey **MOTION** to continue this hearing until the Planning Board Meeting on February 12, 2019 at 7:15 PM; seconded by Member Baker; voted 4:0:0.

Director Stickney asks if the Planning Board wants to see applicant to ask about these continuances; Chair Harnais states it is not necessary.

CONTINUED PUBLIC HEARING

115 Messina Drive – File #18-18

Special Permit and Site Plan Review

Boston Air Systems

9:57 PM – Four Planning Board Members participated. Erin Joyce has recused herself from this hearing; Alternate Member Hector Erinna will vote on this application.

Present for the Applicant:

Michael Joyce, Engineer

Barry Dwyer, Partner, Boston Air Systems

Michael Joyce, Joyce Consulting Group, representing Boston Air Systems as the Civil Engineer for project, reminds the Planning Board of the proposal for a second-story office over existing office space at the front of the building and a proposed warehouse addition in the rear to take the place of 3 shed and two metal storage containers on the site. Since the last meeting they have increased the width of the buffer strip on the eastern side of the property from 5' to 7.5'; this will enable them to put some screening trees in addition to the low-lying shrubs they had proposed. They have removed jersey barriers. They have made clarifications to the parking table, and one of the sheds has been removed from the site in an effort to clean up site.

APPROVED

Member Baker asks about the removal of temporary structures that were discussed at the last meeting; Mr. Joyce states they have removed one so far with a plan to remove the remaining 2 in coordination with construction of the warehouse.

Member Mikami reminds that he asked for a definitive plan for removal of the illegal structures. He understands one is removed; what is the plan with the remaining two? Mr. Joyce explains that the structures contain constructive products that they have created in the warehouse. The structures would have to be removed for construction. Mr. Dwyer explains what these structures are used to hold. Member Mikami reminds that the three different structures were put there at different times illegally. Member Mikami is not hearing any solution and would appreciate something more definitive.

Member Downey asks if this is something we could put as a condition. Assistant Director SantucciRozzi states the structures will need to be relocated to get the foundation in; Mr. Joyce confirms they will have to be removed prior to construction. Member Baker states regardless, when construction starts it has to be addressed; he feels if the Applicant figures it out now, it will make their process easier. Mr. Joyce proposes providing a condition of a transition plan or shed removal plan. Assistant Director SantucciRozzi asks if the Planning Board wants the structures gone tomorrow or prior to construction because the permit is good for three years. Mr. Joyce explains the priority is to build the warehouse as soon as possible. Mr. Joyce states the structure is pre-fab with a three-month lead time. Mr. Joyce confirms that they have not provided an updated Landscape Plan. Assistant Director SantucciRozzi suggests removing structures from the site by June 1, 2019. Planning Board members are in agreement.

Member Mikami **MOTION** to accept correspondence into record; seconded by Member Downey; voted 5:0:0.

Member Downey **MOTION** to close the Public Hearing; seconded by Member Baker; voted 5:0:0.

Assistant Director SantucciRozzi confirms that staff has permission to update all of the plans.

Member Downey **MOTION** to approve File #18-18 Special Permit and Site Plan Review, 115 Messina Drive, subject to the conditions discussed at this meeting; second by Member Erinna; voted 5:0:0. Erin Joyce has recused herself from this hearing; Alternate Member Hector Erinna voted on this application.

NEW BUSINESS/OLD BUSINESS

Request for Minor Modification - Special Permit/Site Plan Review
250 Granite Street – File #08-03 - Requested by: Tesla Corporation
10:10 PM – Five Planning Board Members participated.

Present for the Applicant:

Trevor Smith, Senior Manager, Tesla Corporation

Trevor Smith, Senior Manager for Tesla, begins by explaining that they are looking to install eight superchargers in the second level of the Sears parking lot at South Shore Plaza. These charging stations are designed to enable long-distance sustainable mobility and promote the adaption of electric vehicles. Typically, people are stopping of for 40 minutes to one hour to recharge their vehicle to 80% to 100%. The Applicant likes to pair this with amenities and properties that give Tesla owners and electric vehicle drivers the opportunity to patron at nice amenities while they are waiting for the car to charge. The Applicant has about 15 stations in the State currently. The closest to Braintree are in Dedham, Sagamore and South Bay.

APPROVED

Assistant Director SantucciRozzi explains that she has prepared a Staff Report and the Planning Board has looked at charging station at the mall in the past. This one is a little bit different because the physical place where The car will be in the plug in is on the second floor of the Sears garage in the proximity of the Nordstrom loading area, but all of the equipment will be on the outside on an island. Staff explains there was a lot going on in the island, with a lot of equipment and vegetation removal; staff felt as though re-plantings weren't appropriate. She explains that the Applicant didn't update any of that material or use the correct base landscaping plan.

The Assistant Director explains that Mr. Smith and his crew went out and inventoried what was there. What needs to be the base of what is to be modified is the approved Landscaping Plan for South Shore Plaza, which she has attached to the back of the Staff Report.

Assistant Director SantucciRozzi suggests that the Planning Board can do one of two things: (1) The Planning Board can vote conditional, and the Applicant has to submit the proper plans; it will be a one-for-one replacement of trees with only landscaping visible and not cabinets and electronics. Once all materials are submitted, we will write a decision, the Planning Board Clerk can sign it, and we can record it with the Town Clerk; or

(2) The Applicant can prepare and submit proper materials, come back before the Planning Board when that is done and we can vote. Staff is comfortable with either option. If the Planning Board is inclined to do the conditional vote, it needs to be very clear to the Applicant that he needs to submit the right materials or this will not advance. Staff is flexible and has no problem working with the Applicant if they are comfortable going that way and the Planning Board is comfortable.

Member Mikami confirms that the Applicant is clear on what staff has suggested; Applicant is clear and willing to work with staff on proper vegetation plan. Mr. Smith was hoping to get any other comments, if there were any, so they could incorporate them at the same time. Member Mikami asks who is initiating this? Is it South Shore Plaza or Tesla? Mr. Smith explains that Tesla has an existing national relationship with Simon Properties, where they identify properties that are good fits for Tesla's network. This was Tesla approaching Simon stating this is a great fit. Member Mikami asks if the BELD has to make any modifications to set up charging stations. Mr. Smith explains Tesla is setting up separate service for this. BELD is putting in a "pass-through" switch-gear, and Tesla is installing their own transformer separately metered to Tesla. It is nothing more than extending the primary line 10 to 15 feet and placing a Tesla transformer in the landscape area. Assistant Director SantucciRozzi can reach out to BELD related to the conditions, if the Planning Board prefers this, as the transformer is probably being supplied by BELD. Member Mikami asks staff which route is better to go with approval. Assistant Director SantucciRozzi clarifies that either option is acceptable.

Member Downey clarifies there is "zero loss" of parking spaces and asks if that is because of the surplus of 11 parking spaces; staff explains that because it is a one-for-one eight spaces for eight stations there is no loss. The Applicant explains that they are not restriping, equipment is not being placed in a parking space, and there is no reduction of spaces. Member Downey clarifies that you cannot park there unless you are charging your vehicle. Mr. Smith clarifies it depends site-by-site with the property owners, but parking would be designated for Tesla vehicle chargers. Member Downey asks how long it takes to charge; Mr. Smith clarifies the average time is 35 to 40 minutes.

Member Joyce clarifies, if there was to be a restriction on those parking spaces for electric vehicles, she would consider that a reduction. Assistant Director SantucciRozzi states, from her perspective, these are still parking spots. Assistant Director SantucciRozzi feels that they are probably more popular than we think; therefore, we are not considering these a loss of spaces. Assistant Director SantucciRozzi explains why a Minor Modification is

necessary. If a vehicle other than Tesla parks there, they are not going to be towed. Mr. Smith explains that they are trying to migrate to properties that have a surplus of parking. If other cars park here, the Applicant does not tow, but they would simply try to boost public awareness to identify spaces as electric vehicle charging stations.

Chair Harnais feels like the Applicant can work with the Planning Department to get things right.

Member Mikami **MOTION** to approve the Minor Modification conditional upon the Applicant addressing items to the satisfaction of Planning Staff, with no Minor Modification Decision to be prepared and signed by Planning Board until all materials have been supplied; seconded Member Downey; voted 5:0:0.

NEW BUSINESS/OLD BUSINESS

Request for Minor Modification - Special Permit/Site Plan Review

7, 7R, and 11 (now known as #9) Independence Avenue (File #14-06)

Requested by: Thomas Fitzgerald

10:30 PM – Five Planning Board Members participated. Erin Joyce recuses herself from this hearing; Alternate Member Hector Erinna participates.

Present for the Applicant:

Attorney Jack Garland

Michael Joyce, Engineer

Thomas Fitzgerald, Applicant

Member Mikami states, as a point of order, that the Director of Planning and Community Development put out a statement, and he is questioning whether we should take any testimony.

Director Stickney confirms that Member Mikami is referring to her rebuttal to the Affidavit. She did discuss this issue with our Legal Department, and she was directed on how to response to it. Director Stickney provided Mr. Garland and Mr. Fitzgerald with a copy of her rebuttal. She mentions it should be noted in the record that she has responded to the Affidavit and she is not in agreement with Mr. Fitzgerald's Affidavit.

Attorney Jack Garland is here on behalf of the Applicant, Thomas Fitzgerald, and refers to the motion made by Member Mikami at the last meeting stating that no further discussion of the Applicant's request for Minor Modification be heard until plans were submitted. Attorney Garland explains that Mr. Fitzgerald has submitted plans on time to the Board for their consideration regarding 3 requests for minor modification (moving rooftop garden to ground level, changes to façade of building, legalizing 36th unit). Attorney Garland explains that Mr. Fitzgerald has thought long and hard about the third request and is here to inform the Board that he is withdrawing that request to legalize the 36th unit, and he is willing to pull a demotion permit to remove the penthouse. Attorney Garland explains that leaves a Minor Modification request for two items, and the Staff Report reflects favorable upon those requests. Attorney Garland explains that Mr. Fitzgerald is at a point where he has obtained approvals or "sign-offs" by the Building Department, the Fire Department and the named architect on the project relative to safety issues for occupancy on the building itself. The Applicant is trying to obtain a temporary occupancy permit so that he can move forward with marketing the units. Mr. Fitzgerald's understanding is that the Planning Department has to sign off on their aspect of the temporary occupancy permit. Attorney Garland's understanding is that all safety issues that concern the Fire Department or the Building Department have been satisfied.

APPROVED

Attorney Garland states that, with regards to the issue related to the application for the affordable units, the consultant that Mr. Fitzgerald hired had been less than responsive. Two weeks ago, Attorney Garland sent her a final piece to complete the regulatory agreement that needs approval by the Town and the State. Mr. Fitzgerald is also circulating Mortgage Subordination Agreements for any Mortgagee on the property, which is one of the requirements of the Affordable Agreement, as well. Those issues are in progress.

Mr. Fitzgerald states that the temporary occupancy permit has been signed off by the Building Department, the Fire Department and Arthur Chiu (the Architect of Record); Mr. Fitzgerald is looking for temporary occupancy so that he can go forward and sell the units and get them occupied. He explains that he is the buyer of this property for almost seven years and has paid all of the taxes for the past twenty years; he has spent almost \$800,000; he has come before the Planning Board twice, twice to the Zoning Board and got his approvals. His Affidavit is a sworn Affidavit of how that all happened. Mr. Fitzgerald states, at this point, he cannot take a Major Modification that will drag him another three to four months, where he cannot sell and he runs the risk of another appeal. That will put him out of business. He is here tonight to get this building moving. He doesn't want to give the Penthouse up, but he doesn't think he will get a recommendation from this staff to the Board, nor will he get a vote. He has offered to the Mayor and the Town an additional affordable unit, but this has been rejected. He has taken an affordable unit away, and he is now at three but would have been at four.

Chair Harnais states he doesn't disagree with Mr. Fitzgerald, but he is going to correct him. Chair Harnais states this process has not been as simple as the Applicant mentioned. It has been difficult. Chair Harnais thought, from the very beginning, that this was a very good project. Chair Harnais thought, based upon the unfair situation with the Abutter who agreed not to appeal if the penthouse was removed from the proposal, that the Applicant should have gotten the penthouse. Chair Harnais states this case has dragged on forever, and it cannot be blamed on the Planning Department or the Planning Board. All of the conditions were set and could have been done from day one; things were done that didn't make sense. Chair Harnais has always said this was a good project, but it has become an albatross. Mr. Fitzgerald felt he wouldn't have gotten his Building Permit without permission from the Planning Board. Chair Harnais states Mr. Fitzgerald didn't go by the conditions. There is disagreement between Chair Harnais and Mr. Fitzgerald on whether Mr. Fitzgerald has complied with the conditions. Mr. Fitzgerald feels, in order to move forward and not get hung up for another four to five months, he needs to remove the penthouse.

Member Erinna asks if he will abide by conditions set forth currently. Mr. Fitzgerald states "yes".

Member Baker clarifies that, in the Planning Board conditions, the Applicant was approved for 35 units, but the Building Permit was issued for 36 units. Mr. Fitzgerald states after it was approved by the Zoning Board. Member Baker states, in the paper trail, if the Applicant had come back to the Planning Board, more than likely, you would have gotten the 36 units. Member Baker states, although the abutter did not keep their word, the Applicant was also not being upfront the Planning Board to come back and resolve the situation. Mr. Fitzgerald was under the impression he had 36 units from the beginning. Chair Harnais disagrees that the Applicant followed all of the conditions.

Member Mikami states the Planning Board voted on 35 units, and he believes that the Braintree Water Department approved 35 units. The Planning Board never approved 36 units. Member Mikami states that was a vote that was taken, and the Applicant was present for the vote. Member Mikami doesn't know how the Applicant can interpret 35 for 36 and an Order of Conditions any way you want. Member Mikami asks Director Stickney, if Mr. Fitzgerald removes the penthouse and does all of these other things, is this no modification, a Minor Modification or still a Major Modification.

APPROVED

Director Stickney states there are a couple of things that need to be considered. Mr. Fitzgerald is willing to remove the penthouse in order to get a Certificate of Occupancy; however, the conditions have not been complied with; just removing the penthouse does not comply with the conditions. Director Stickney states that Mr. Fitzgerald is not in compliance with the Special Permit.

Attorney Garland refers to the last Staff Report, where he details issues that he feels have been addressed; he mentions that with regard to paving, curbing and landscaping issues, the Applicant was open to having a Bond posted. Attorney Garland feels that the issues raised in the Staff Report were mostly addressed. There were a couple of issues -- namely the concrete walkway, site cleanup and condenser location -- have been addressed. Whatever is outstanding, he hopes the Planning Board would not say come back in the future. Attorney Garland understands Director Stickney's point that there has been a "tug and pull" for quite some time. Attorney Garland feels a lot of the issues have been addressed, but there are some issues that cannot be addressed in January. Director Stickney states this is not a public hearing; it is a discussion on whether the Applicant should be entitled to a Certificate of Occupancy for the 35 units approved. The Applicant has not taken down the 36th unit nor have they addressed the Affordable Housing. In fact, the Applicant recorded a deed that excluded the Affordable Housing. Director Stickney doesn't understand how there could be sales without the Affordable Housing units included. Director Stickney states the Applicant was going to put a document to rescind the deed, but as of today is has not happened.

Attorney Garland understands from Director Stickney that this hasn't been done. Chair Harnais thought that had been done. Attorney Garland explains that Mr. Fitzgerald had other counsel working on this. Mr. Fitzgerald insists that he removed it from the Registry of Deeds. Director Stickney states the land has been taken out of Land Court but the deed has not been rescinded, and she explains Legal Counsel has checked it with Planning Staff. There is disagreement between Director Stickney and Mr. Fitzgerald on this issue.

Director Stickney states it is totally out-of-hand, and she would recommend "no action" by the Planning Board. Mr. Fitzgerald states he is looking for an occupancy permit; everyone else says the building is safe; in reference to the items that are unfinished—landscaping, topcoat and asphalt—it will be done in the spring. Director Stickney states it has been over two years and asks why it hasn't been done; the site work hasn't been done nor has it been inspected by Planning Staff. Director Stickney does not understand how the Applicant can be requesting a Certificate of Occupancy when he has not met the conditions, he hasn't done the site work and you have a Deed that totally goes against the Special Permit on the Affordable Housing units. Mr. Fitzgerald disagrees about the deed and states that was his lawyer trying to get title insurance done on the condo documents, and Mr. Fitzgerald did not realize that. Director Stickney states it was recorded on October 24, 2018. Mr. Fitzgerald states he removed the deed two days later. Director Stickney explains online the Master Deed is still there. Chair Harnais asks wouldn't there have to be a Confirmatory Deed filed. The Applicant is not sure.

Assistant Director SantucciRozzi expresses concern because Mr. Fitzgerald wants to get a Certificate of Occupancy so that he can begin to sell units, but staff has not even weighed in on which units are going to be the affordable units. She explains that the units are proposed by the Applicant, but then the Planning Staff needs to weigh in. She asks what if Mr. Fitzgerald sells a unit that Planning Staff thinks should be an affordable unit. The point to the Master Deed, the conditions say that staff needs to see a copy of it and make sure all the stipulations are in place before that is recorded. Staff has never seen one thing. There are so many things happening that staff is not involved with. Assistant Director SantucciRozzi asks Mr. Fitzgerald and his counsel if they look at the materials that they submit to the Department before they are submitted. Attorney Garland states "yes". Assistant Director SantucciRozzi asks why they submitted a Site Plan that says 35 units on it, if you are asking for 36 units. Why do the Landscape Plans not address the comments made by staff in

November 2017? She feels that all that is necessary is to read the materials and provide them to the Applicant's consultants. She feels the plans are not legible.

Member Baker asks how you get a temporary occupancy permit when you are demolishing the top floor; Mr. Fitzgerald explains he is asking for a temporary occupancy permit and states the demolition doesn't affect the lower units because it is up on the roof. It will allow Mr. Fitzgerald to bring people into the building to sell units. Director Stickney questions the credibility of the Applicant and brings up another location where promises were made were not kept.

Chair Harnais feels we are in a difficult situation, the conditions have to be met, but he gets a feeling that if the Applicant doesn't get this done the project may not be completed. He realizes that this has aggravated the Planning Board and Planning Staff have worked very hard at this; He is at a loss. He doesn't want to see the building be vacant. Chair Harnais states there have been some inconsistencies with statements being made.

Member Downey feels there has been a failure to communicate and he asks about a checklist; Assistant Director SantucciRozzi states it is all outlined in the Staff Report. She feels there is nothing more for her to do, as someone is not making sure that what is submitted by the Applicant addresses items in the Staff Report. Assistant Director SantucciRozzi states her responsibility is to receive the information and report it to the Planning Board. She discusses the history of the prior application for Minor Modification in 2017, which was withdrawn. Assistant Director SantucciRozzi has provided multiple letters over the past two years that are very clear, but she has no authority to direct the Applicant's people on how to draw plans.

Member Mikami **MOTION** to recommend "no action" as a favor to Attorney Garland and Mr. Fitzgerald; by doing this you have time to get this resolved with Planning Staff; seconded by Member Erinna; 5:0:0. Erin Joyce has recused herself from this hearing; Alternate Member Hector Erinna voted on this Minor Modification.

NEW BUSINESS/OLD BUSINESS - Zoning Board of Appeal Petitions – January 2019

10:59 PM – Five Planning Board Members participated. Erin Joyce is no longer present at this meeting; Alternate Member Hector Erinna participates.

Chair Harnais reminds the public that, as we have done for past months where the Planning Board has taken up the recommendation of Staff, for the January 2019 Zoning Board of Appeals Petitions, we will once again move forward the January Zoning Board of Appeals Petitions with the recommendations of the Zoning Administrator as the Planning Board's recommendations.

Member Downey **MOTION** to approve the Zoning Administrator's recommendations for each of the Petitions shown below; seconded by Member Mikami; voted 5:0:0. Erin Joyce is no longer present at this meeting; Alternate Member Hector Erinna participates.

Petition #18-48

1 Reservoir Circle

Christopher Kelly, 1 Reservoir Circle, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to demolish attached single car garage and construct two-story addition (340 sq. ft. building footprint); proposed addition would maintain, but intensify pre-existing nonconforming side yard setback (5.8 ft.) and is pre-existing nonconforming with regard to lot area, lot width, side/rear yard setbacks and in-ground pool setback. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 1 Reservoir Circle, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2082, Plot 26, and contains a land area of +/- 8,635 sq. ft.

APPROVED

Staff Recommendation
CONTINUANCE

Petition #18-53

120 & 180 Pearl Street

Anna Haluch, 65 Belmont Street, South Easton, MA 02375 (Property Owners: Francis X. Messina and Ivory Plaza LTD Partnership) for relief from Bylaw requirements under Chapter 135, Sections 135-407 and 904.2 to install one (1) 229.42 sq. ft. illuminated wall sign, one (1) 141.80 sq. ft. illuminated wall sign and two (2) ground sign panels for tenant Total Wine; proposed signage exceeds the total allowable height, square footage and number of signs. The applicant seeks variances and/or findings that the proposed project will not be more detrimental to the neighborhood. The properties are located 120 & 180 Pearl Street, Braintree, MA 02184 and are within a Highway Business District Zone, as shown on Assessors Map 1029, Plot 16 & 18, and contains a combined land area of +/- 10.61 acres.

Staff Recommendation

While the ZBA has approved an almost 8 ft. tall wall sign for TJ Maxx, most of the letters were 6' in height. The additional height was due to their logo which has a lowered "J" and "X". The HomeGoods sign is 6 ft. and the Homesense is 4 ft. Since the proposed signage is two rows of letters, to reduce the total height to 4 ft. would produce a sign that would be out of scale comparatively. However, the total height should not exceed 6 ft. in height to be consistent with TJ Maxx & HomeGoods. While the ZBA approved an additional wall sign facing the MBTA tracks for TJ Maxx/HomeGoods/Homesense (all three business combined on one sign), the petitioner has not moved forward with the proposal. Staff was not in favor of the additional wall sign. Therefore, staff recommends the main wall sign and tenant panels will provide more than appropriate signage for the new business.

Staff Recommendation

APPROVAL WITH CONDITIONS:

- 1.) No side wall sign;
- 2.) Front wall sign to not exceed 6 ft. in height; and
- 3.) No sign illumination from 1am-6am, pursuant to Section 135-905;

Petition #18-54

137 Walnut Street

John and Katherine Joyce, 137 Walnut Street, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403 and 701 to construct two-story side addition (315 sq. ft. building footprint) and extend rear deck (18 ft. x 8 ft.); proposed additions would intensify pre-existing nonconforming rear yard setback (13.32 ft.) and is pre-existing nonconforming with regard to lot area, width, depth and front/rear yard setbacks. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 137 Walnut Street, Braintree, MA 02184 and is within a Residence B Zoning District, as shown on Assessors Map 2038, Plot 45 and contains a total land area of +/- 5,620 sq. ft.

Staff Recommendation

APPROVAL WITH CONDITIONS:

- 1.) Provide evidence of rear abutter support;
- 2.) Reduce the number of basement level exterior doors to two (2);
- 3.) No provisions to create a second, separate unit within the single family residence to be allowed;
- 4.) Any changes to the approved plans will require ZBA approval;

APPROVED

- 5.) Certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and
- 6.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

Petition #18-55

2 Elm Street

Peter Palzkill c/o Beacon Rock Realty, 2 Elm Street, Braintree, MA 02184 ((Property Owner, PL Properties II LLC, c/o Peter Le) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 904.1 and 904.6 to install a 3' x 10' illuminated wall sign that would exceed the total allowable height and square footage. The applicant seeks variances and/or findings that the proposed project will not be more detrimental to the neighborhood. The property is located 2 Elm Street, Braintree, MA 02184 and is within a General Business District Zone/Village Overlay District, as shown on Assessors Map 2026, Plot 2, and contains a land area of +/- 3,615 sq. ft.

Staff Recommendation

APPROVAL WITH CONDITION:

- 7.) Building/property to comply with regard to allowable window signage (no more than 20%) prior to issuance of a sign permit; and
- 8.) No sign illumination from 1am-6am, pursuant to Section 135-905

Petition #18-56

352-354 Washington Street

Mai Phung, 204 Adams Street #5, Dorchester, MA 02122 (Property Owner: Julie Ha Vo) for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 613 and 701 for additions to pre-existing nonconforming use (residence on the second floor) by the way of constructing two (2) dormers and exterior secondary egress; property/building is pre-existing nonconforming with regard to lot area, frontage, width, front/side yard setbacks and off-street parking. The applicant seeks a permit, variance and/or finding that the proposed alteration is not more detrimental to the neighborhood. The property is located 352-354 Washington Street, Braintree, MA 02184 and is within a General Business District Zone/Village Overlay District, as shown on Assessors Map 2024, Plot 22, and contains a land area of +/- 4,538 sq. ft.

Staff Recommendation

DENIAL

Petition #18-57

9-11 Marietta Avenue

Craig & Kerry Stark, 11 Marietta Avenue, Braintree, MA 02184 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 407, 701 and 806 to construct 7' x 8' dormer; addition would intensify existing front yard setback deficiency (1.4 ft.); property/building is pre-existing nonconforming with regard to lot area, width, depth, front/rear setbacks, detached garage setback and off-street parking. The applicant seeks a permit, variance and/or finding that the proposed project will not be more detrimental to the neighborhood. The property is located at 9-11 Marietta Avenue, Braintree, MA 02184 and is within a Residence C Zoning District, as shown on Assessors Map 3050, Plot 42, and contains a land area of +/- 15,000 sq. ft.

Staff Recommendation

APPROVAL WITH CONDITIONS:

- 9.) Any changes to the approved plans will require ZBA approval;
- 10.) New dormer siding materials/color to match existing dormer/building;

APPROVED

- 11.) Prior to issuance of a building permit, submission of a plot plan depicting additional/expanded parking areas to the Planning and Community Development Department; and
- 12.) Submission for a building permit to replace/rehabilitate the existing detached garage within two years of the ZBA approval.

Petition #18-58

1784 Washington Street

Larry Colson, 94 Gold Street, Randolph, MA 02368 for relief from Bylaw requirements under Chapter 135, Sections 135-403, 609 and 701 to demolish existing 1.5 story, single family dwelling (+/- 1,020 sq. ft. building footprint) and construct new two (2) story single family dwelling (+/- 2,000 sq. ft. building footprint); property is pre-existing nonconforming with regard to lot area and width. The applicant seeks a permit, variance and/or finding that the proposed project is not more detrimental to the neighborhood. The property is located at 1784 Washington Street, Braintree, MA 02184 and is within a Watershed Residence B Zoning District, as shown on Assessors Map 1080, Plot 1, and contains a land area of +/- 10,928 sq. ft.

Staff Recommendation

APPROVAL WITH CONDITIONS:

- 1.) Any changes to the approved plans will require ZBA approval;
- 2.) Submission of a certified foundation plan submitted to the Planning & Community Development Department prior to vertical construction; and
- 3.) As-built plan submitted to the Planning & Community Development Department prior to issuance of a Certificate of Occupancy.

NEW BUSINESS/OLD BUSINESS

Approval of Planning Board Meeting Minutes for July 10, 2018, December 11, 2018 Executive Session and December 11, 2018 Regular Session

10:59 PM – Five Planning Board Members participated. Erin Joyce is no longer present at this meeting; Alternate Member Hector Erinna participates.

Member Downey **MOTION** to approve the minutes from the Planning Board Meetings on July 10, 2018, December 11, 2018 Executive Session and December 11, 2018 Regular Session; seconded by Member Mikami; voted 5:0:0.

Member Downey **MOTION to adjourn** the meeting; seconded by Member Baker; voted 5:0:0.

The meeting adjourned at 11: 02 PM.

Respectfully submitted,
Louise Quinlan,
Planning/Community Development