



Department of Planning & Community Development
Zoning Board of Appeals



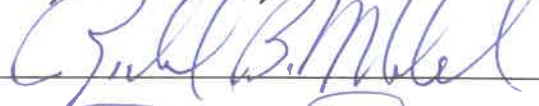
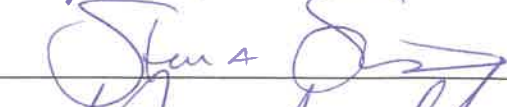

RECEIVED
BRAINTREE, MA
2019 FEB 26 AM 9:10

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

Joseph. C. Sullivan
Mayor

TO: James M. Casey, Town Clerk
FROM: Zoning Board of Appeals
DATE: February 25, 2019
**RE: DECISION – Request for Six (6) Month Extension to Exercise Granted Relief
Zoning Board of Appeals Petition #18-10
128 & 0 Town Street, Braintree
BSC Partners, LLC and Town of Braintree, Petitioners**

On **February 25, 2019**, on a motion duly made and seconded, a super-majority of the Zoning Board of Appeals voted to **APPROVE / DENY** the above referenced request for a six (6) month extension to exercise such rights, originally granted by the Zoning Board of Appeals on March 26, 2018, recorded with the Town Clerk on April 9, 2018, and hereby extended to **September 26, 2019**. The members of the Zoning Board of Appeals pursuant to M.G.L. Chapter 40A, Section 10 and the Braintree Zoning Bylaw Chapter 135, Articles IV, voted as follows:

	<u>In Favor</u>	<u>Opposed</u>
Stephen Karll, Chair	X	_____
Michael Ford, Member	X	_____
Richard McDonough, Member	X	_____
Stephen Sciascia, Associate	_____	_____
Gary Walker, Associate	_____	_____
Stephen Karll, Chair		
Michael Ford, Member		
Richard McDonough, Member		
Stephen Sciascia, Associate		
Gary Walker, Associate		

The motion, obtaining the super-majority vote, passes and the petition is **APPROVED / DENIED**

Any person aggrieved by this decision may appeal to the Norfolk County Superior Court or to the Land Court, by bringing an action within twenty days after this decision has been filed in the office of the Town Clerk on 2/26/19. (See M.G.L. Chapter 40A, Section 17)



Department of Planning & Community Development
BRAINTREE, MA
Zoning Board of Appeals






2018 APR -9 AM 9:46

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

Joseph. C. Sullivan
Mayor

TO: James M. Casey, Town Clerk
FROM: Zoning Board of Appeals
DATE: March 26, 2018
RE: **DECISION – Zoning Board of Appeals Petition #18-10**
128 & 0 Town Street, Braintree
BSC Partners, LLC & Town of Braintree, Petitioners

On ~~March 26, 2018~~, on a motion duly made and seconded, a super-majority of the Zoning Board of Appeals voted to **APPROVE / DENY** the above referenced Zoning Board of Appeals petition. The members of the Zoning Board of Appeals pursuant to M.G.L. Chapter 40A, Section 15 and the Braintree Zoning Bylaw Chapter 135, Articles IV, VI and VIII, voted as follows:

	<u>In Favor</u>	<u>Opposed</u>
Stephen Karll, Chair	<u>X</u>	<u> </u>
Michael Ford, Member	<u>X</u>	<u> </u>
Richard McDonough, Member	<u>X</u>	<u> </u>
Stephen Sciascia, Associate	<u> </u>	<u> </u>
Gary Walker, Associate	<u> </u>	<u> </u>
Stephen Karll, Chair		
Michael Ford, Member		
Richard McDonough, Member		
Stephen Sciascia, Associate		
Gary Walker, Associate		

The motion, obtaining the super-majority vote, passes and the petition is **APPROVED / DENIED**

Any person aggrieved by this decision may appeal to the Norfolk County Superior Court or to the Land Court, by bringing an action within twenty days after this decision has been filed in the office of the Town Clerk on 4/9/18. (See M.G.L. Chapter 40A, Section 17)

**Town of Braintree
Zoning Board of Appeals**

RECEIVED TOWN CLERK
BRAintree, MA
2018 APR -9 AM 9:46

**Notice of Decision –
Variances Granted**

**Petitioners: BSC Partners, LLC and Town of Braintree
Property Owner: Town of Braintree
RE: 128 and 0 Town Street, Braintree, MA
Petition No. 18-10**

This is a petition filed by BSC Partners, LLC & Town of Braintree, c/o Scott Lacy, Esq., 31 Cowell Street, Plainville, MA 02762 (owner of property, Town of Braintree) for relief from Bylaw requirements under Chapter 135, Sections 135-407, 609 and Article VIII for relief from the off-street parking requirements for a multi-purpose athletic center (87,710 sq. ft. building footprint). The applicant seeks a permit, variance and/or finding that the proposed alteration will not be more detrimental to the neighborhood. The property is located at 128 and 0 Town Street, Braintree, MA 02184, and is within a Watershed Highway Business District Zone, as shown on Assessors Map 1042, Plot 01 & 02, and contains a land area of +/- 688,997 sq. ft.

Notice

Pursuant to notice duly published in the Braintree Forum, a newspaper in general circulation, and posted at Town Hall, and by written notice pursuant to G.L. Chapter 40A, Section 11, mailed to all parties in interest, a public hearing was held by the Zoning Board of Appeals at Town Hall, One JFK Memorial Drive, Braintree, MA on March 26, 2018 at 7 p.m. Sitting on this case for the Zoning Board of Appeals were: Stephen Karll, Chairman; Michael Ford and Richard McDonough, Members; and Stephen Sciascia, Alternate.

Evidence

Attorney Scott Lacy appeared on behalf of the petitioners, BSC Partners, LLC (“BSC”) and the Town of Braintree. Mr. Lacy provided an overview of the process that had led to the proposed athletic facility. The Town of Braintree, acting through the Mayor, solicited proposals pursuant to special legislation enacted by the Commonwealth of Massachusetts, entitled *Chapter 141 of the Acts 2011*. The special legislation allowed the Town of Braintree to seek a single contractor to design, build, and operate an athletic facility on Town-owned land. The area designated for the proposed athletic facility is a 6-acre lease area located on the Braintree High School campus, adjacent to Carson Field. BSC Partners, LLC was the selected developer. The proposed use is identified as an Indoor Commercial Recreational Facility, requiring a Special Permit in a Highway Business/Watershed Protection Overlay Zoning District.

The 6-acre lease area is part of a larger 15.88 acre, Town of Braintree-owned property. Attorney Lacey noted the 15.88 acre lot is part of the Braintree High School campus, encompassing a total of approximately 83 acres. The 15.88 acre lot was approved by an

“Approval Not Required” (ANR) endorsement by the Planning Board on February 8, 2016. In addition, the entire 15.88 acre lot was rezoned to Highway Business/Watershed Protection Overlay Zoning District by the Town Council on August 18, 2015.

Attorney Lacy discussed the facility was previously granted a variance in 2016 from the off-street parking requirements to construct a 208,542 sq. ft. commercial recreation/athletic facility, with a building footprint of 157,160 sq. ft. (ZBA Decision Number 15-61). The approved facility consisted of two (2) hockey rinks, an indoor swimming pool, an indoor multi-sport turf field, indoor work-out/training facilities, wellness/sports facilities and other accessory uses. The facility required 835 off-street parking spaces and the petitioners requested relief for the entire 835 off-street parking spaces. The basis of the requested relief was for the facility to utilize/share the existing 461 adjacent Braintree High School parking spaces. As part of proposed improvements by the petitioners, the number of provided spaces would increase to 475 off-street parking spaces.

The facility was granted a six month extension to January 12, 2018 to act on the zoning relief granted by the Board. The extension request was due to the project requiring a Special Permit from the Planning Board (filed on December 23, 2015) for both the Commercial Recreation Use and the location of the proposed athletic center within a 100 ft. buffer zone. However, due to concerns by the Planning Board and general public regarding the proposed project, the petitioners could not act on the approval by January 12, 2018.

Attorney Lacy discussed that after a combination of Planning Board/public concern and questions surrounding drainage and traffic impacts, the petitioners reduced the project to a 87,710 sq. ft. building (44% reduction). The primary change was the elimination of the turf field and some other related accessory uses. The reduction of the building size also allowed for movement of the building further out of the 100 ft. buffer zone, but still included non-structural activities such as walkways and drainage that will still encroach into the 100' buffer zone. The revised project was approved verbally by the Planning Board on January 25, 2018. As part of the approval, the Planning Board instilled a number of conditions to provide safeguards should detrimental impacts occur from the athletic facility that would impact the surrounding uses/area.

Attorney Lacy discussed with the members of the ZBA that the footprint of the proposed athletic facility is 87,710 sq. ft., with a total building area of 113,900 gross sq. ft. The athletic facility would occupy the majority of the 6-acre lease area previously discussed. The facility, pursuant to Zoning By-law Section 135-806, requires 464 off-street parking spaces based on its commercial recreation use. In addition, Section 135-806 requires 735 parking spaces for the high school, co-located on a portion of the previously discussed 15.88 acre lot. The 83 acre high school campus currently offers 722 existing off-street parking spaces. With the proposed construction of the athletic facility, the adjacent parking lot will increase to providing 515 parking spaces and the entire 83 acre school campus will offer a total of 776 parking spaces. The high school is an exempt educational use under G.L. c. 40A, §3 and could invoke such provision for relief from the parking requirements under the Zoning By-laws, but the Town, as the co-applicant, did not wish to disturb the parking available to the high school and instead preferred that BSC seek a variance from the parking requirements.

In support of the parking variance, BSC and the Town submitted information demonstrating that the timing of use of the high school and the athletic facility are opposite, such that the bulk of the parking may be allocated to the high school during the school day and then to the athletic facility after school hours and on weekends. BSC submitted a Traffic Impact and Assessment Study ("Study") prepared by Bayside Engineering, dated October 26, 2015 and revised on May 17, 2016, that supports the compatible use of the parking spaces for the high school and athletic facility, in addition to accommodating a Massachusetts Interscholastic Athletic Association ("MIAA") event. The study projects the number of parking spaces needed to accommodate a MIAA hockey event at the athletic facility would be 482 off-street parking spaces. Furthermore, adjusting for employees within the pro shop, concession areas, and family entertainment areas that would be open and during the MIAA event, the peak parking demand would be 500 for an MIAA hockey event, based on similar facilities. Further, Bayside Engineering's Traffic Study concludes that the main parking lot between the athletic facility and the high school provides more than adequate parking, when analyzed under the Institute of Traffic Engineers (ITE) analysis, field analysis and projected use analysis; the traffic engineer was of the opinion the existing parking area sufficiently provided off-street parking for both uses. Lastly, safe access and egress and movement on the site is accomplished through the use of existing parking areas and entrances, which further protect the surrounding neighbors from any adverse impact from the use of the parking areas.

As grounds for the variance, Attorney Lacy noted the unusual set of circumstances that led to the identification and creation of this parcel for this purpose, that being the requests for proposals solicited by the Town asking a private developer to build this facility on a site chosen by the Town, as opposed to the traditional method where a private developer would own a parcel and decide how best to develop that parcel. Here, BSC has no control over the size, location or zoning associated with the parcel, as those decisions were made by the Town. As only 6-acres were released by the School Committee to the Mayor for the purpose of leasing to a private party selected to construct and operate this athletic facility, with the balance of surrounding land remaining under the control of the School Committee, BSC does not have any option to acquire additional surrounding land to increase its parcel size to alleviate its parking requirement. Also, where the 6-acre parcel is located between Town Street and on Carson Field, there is no room for additional parking. Further, where the Town's request for proposals requires BSC to construct the Petersen Pool, a hockey rink and other amenities associated with an athletic facility and provide discounted use of the facility for Braintree teams, while recognizing that BSC must operate the facility in a manner so as to be financially viable, the size and scope of the facility itself must be sufficient for BSC to achieve financial viability. Accordingly, the size and shape of the leased parcel, as well as the size and location of the proposed athletic facility on that leased parcel, are unique. It should also be noted that, if the Town chose to construct the athletic facility itself to support the primary educational purpose of Braintree High School, the facility could be built, pursuant to G.L. c. 40A, §3, by applying only reasonable dimensional restrictions and not by a literal enforcement of the Zoning By-laws.

In addition, Attorney Lacy noted the high water table associated with this parcel, located between 7 and 18 inches below the surface, making it virtually impossible to consider an underground parking facility or significant expansion of surface parking within the confines of the 6-acre parcel.

Attorney Lacy asserted that the public welfare and convenience will be served by granting the variance, as the long-awaited Captain Petersen pool will finally be built and housed in a state of the art athletic facility that will be open to Town residents and youth sports teams. Further, Attorney Lacy argued that a literal enforcement of the Zoning By-laws would create a hardship for BSC, who is limited to constructing the facility within the 6-acre leased parcel designated by the Town, with surrounding parcels used by and under the control of the School Committee and located outside of the Highway Business Zoning District.

Chairman Karll inquired about the conditions that were part of ZBA Decision Number 15-61. Attorney Lacy stated the ZBA Decision conditions were the result of the Board being the first regulatory "stop" for the proposed athletic facility. As such, the Board instilled a number of conditions, namely for the petitioners to develop a parking management/monitoring plan and initiate a signage program for the prohibition of parking on Town Street. Mr. Lacy stated the recent approval by the Planning Board was based on a number of conditions. Specifically, the Planning Board decision instilled conditions that were duplicative of conditions that were contained in ZBA Decision Number 15-61. As such, Attorney Lacy discussed replicating the conditions of ZBA Decision 15-61 for the revised and smaller athletic facility would be unnecessary and redundant. After reviewing ZBA Decision Number 15-61 and the Planning Board Decision dated January 26, 2018, Chairman Karll, Mr. Ford and Mr. McDonough agreed with Attorney Lacy that the conditions as part of the ZBA Decision 15-61 were in fact replicated in the Planning Board Decision. Therefore, the Board did not feel the need to instill the conditions as part of the revised project.

The petitioner presented site plans entitled " Peterson Pool Indoor Sports Complex, 128 Town Street, Braintree, Massachusetts", originally dated December 21, 2015 and last revised on February 5, 2018, pages C-0.0, C-1.0-1.1, C1.2, C-2.0, C-3.0-3.3, C-4.0-4.1, C-5.0-5.3, C6.0-6.3 and PA, prepared by Level1 Design Group of Plainville, MA and Studio Troika of Boston, MA. The applicant also presented traffic and parking assessment plans entitled "Transportation Impact and Access Study-Proposed Braintree Athletic Center" October 26, 2015 and revised on May 17, 2016, and prepared by Bayside Engineering of Woburn, MA. The applicant also presented ZBA Decision Number 15-61 and the Braintree Planning Board Site Plan Review and Special Permit Decision, dated January 26, 2018.

The Planning Board submitted a recommendation to endorse the staff recommendation of approval. Frank Morrissey, of 6 Cameo Road, stated he wanted the petitioner/Town to ensure that there will be no parking on Town Street and/or is enforced. No one else at the Zoning Board of Appeals spoke in favor of or opposition to the petition.

Findings

The Board found the shape and size of the leased area to be unique, in that the 6-acre leased area was selected by the Town for the purpose of constructing the athletic facility, that BSC has no control over or ability to acquire any additional abutting land under the custody of the School Committee to expand the parking area, and that the lot's high water table makes the expansion of parking facilities on the lot difficult, if not impossible. The Board further found that

a literal enforcement of the Zoning By-law parking provisions would prove to be an undue hardship to BSC, as the co-applicant's traffic engineer had documented peak parking demands associated with the proposed athletic facility will be less than the 515 parking spaces in the adjacent parking lot that would be provided. In addition, the Board found the proposed peak parking demand occurs after school hours and/or occur during the summer months of July and August when school is not in session, as documented in the *Traffic Impact and Access Study*, dated October 26, 2015 and revised on May 17, 2016, prepared by Bayside Engineering. As a result, the Board found that the sharing of the proposed 515 off-street parking spaces adjacent to the proposed athletic facility would be the most appropriate solution to address the parking requirements for the proposed athletic facility and Braintree High School. The Board further found that the requested relief could be granted without nullifying or derogating from the purpose and intent of the zoning by-laws, as adequate parking will be provided for both the high school and the athletic facility, adequate access/egress and vehicular movement on the site will be provided, and the use of the parking area will not have a detrimental impact on the surrounding neighbors.

Decision

On a motion duly made and seconded, the Board unanimously (3-0) voted to grant the requested variance from the off-street parking requirements, pursuant to Bylaw Section 135-407, in accordance with the plans submitted.

Under G.L. c.40A, Section 11, the Zoning Board of Appeals granting of the variance relief will not take effect until it has been recorded, along with the Town Clerk's certification of no appeal or that an appeal has been dismissed or denied, in the Norfolk County Registry of Deeds.

Any person aggrieved by this decision may appeal to a court of competent jurisdiction pursuant to G.L. Chapter 40A, Section 17.