

Department of Planning and Community Development

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Joseph C. Sullivan  
Mayor

Christine Stickney, Director  
Melissa M. Santucci, Principal Planner  
Kelly Phelan, Conservation Planner

Braintree Planning Board  
January 20, 2009  
Town Hall – Johnson Memorial Chambers

APPROVED

Present:

Robert Harnais, Chair

Joseph Reynolds, Vice Chair

Linda Cusick Woodman, Clerk

James Eng

Darryl Mikami

Melissa Santucci, Principal Planner

The Chair called the meeting to order at 7:00 P.M.

Roll Call: Mr. Reynolds, Ms. Cusick Woodman, Mr. Eng, Mr. Mikami, Mr. Harnais. All present.

**New Business/Old Business**

Zoning Board of Appeal Petitions – January 2009

*For details please see Ms. Santucci's reports.*

20 Mill Lane/Zebosky

Attorney Frank Marinelli was present to represent the applicant. He explained to the Board that the applicant proposes to take down the existing building and construct another with seven units level with Mill Lane and seven under to be accessed from the rear. This redevelopment is a use-of-right in this zoning district and the property has a significant hardship: extreme sloping topography. The applicant intends the building [less non-conforming than the one to be torn down] to be used as a contractor loft and garage, much like the building at 2 Garden Park.

The applicant has met with abutters Paul Holland and Mary O'Brien and they have signed letters of support for the project. Additional review will be undertaken by the Conservation Commission and the Planning Board [Special Permit for floodplain and Site Plan Review]. This is a beneficial redevelopment for the Town.

Ms. Cusick Woodman asked about the intended use of the property [small contractor, automotive, plumbing supply, truck storage] and commented that the existing building is in poor condition and must come down.

Mr. Reynolds asked if the bays would be leased and if there might be a heavy commercial use on the site. Attorney Marinelli responded that he was not sure of the applicant's intention in this regard. It is possible that they could be "condo-ed" and sold. There would be no heavy commercial use.

Mr. Mikami asked about the number of units [14] and if the bays could accommodate automotive uses, a mechanic's garage or storage for a small business with trucks in and out. Attorney Marinelli responded that these are permitted uses and more detailed plans will be presented when the applicant appears before the Planning Board. He added that improvements to the property will address the current uncontrolled runoff to wetlands.

Ms. Cusick Woodman asked if Mill Lane is solely for pedestrians. [yes]

Mr. Eng noted that there is no sidewalk on the applicant's side of Mill Lane. Discussion ensued about safety and ADA access which will be further addressed during the Planning Board's public hearing. Mr. Eng also raised the issue of the stability of the riverbank. The engineer should ensure that the travel lane leading to the parking spaces remains stable.

Ms. Santucci informed the Board that the Conservation Commission would make sure that the area is stabilized. The Conservation Planner has suggested that the area be heavily planted to get a good root system and that fencing be added for safety purposes.

Mr. Eng asked about the timeframe for the project. Attorney Marinelli stated that much would depend on the economy, but he anticipated that the applicant would want to start when the permits are issued.

Motion by Mr. Reynolds, second by Mr. Mikami to send a recommendation that the ZBA approve the petition.

Vote: 5/0

### 39 Lantern Lane/Dirrane

Martin Dirrane was present and informed the Board that he has submitted an application to the ZBA to appeal the determination of the Building Department that his project is a cluster development.

The Chair noted that the Building Department issued a memo in which the Dirrane's project is determined to be cluster housing, a use not allowed in a Residence B zoning district. He stated that he does not agree with that determination, but wished to emphasize that this opinion on whether or not the project is cluster development has no bearing on the merits of the application before the Planning Board which was filed under Braintree Zoning Bylaw Section 135-710. He then read the definition from the Bylaw for "cluster."

Ms. Santucci noted that a cluster development is allowed only in a Cluster zoning district, on property of at least 5 acres with at least 50% of the land left as open space. [The Dirrane's property is just under 2 acres.]

The Chair asked how you could have a cluster development in a district not zoned Cluster [You can't.] and Ms. Cusick Woodman asked if the wrong label had been hung on this application.

The Chair stated that he is concerned that this project has gone through many steps over the past few years and only now has the issue of whether or not it is a cluster development has been raised. He added that he told the neighbors during a site visit that he disagrees with the Building Inspector's determination.

Mr. Reynolds asked if there were a basis for determination. Ms. Santucci responded that the memo in question contains no justification to support their decision. She then noted that the Summary of Planning Board Actions in the Board's Policy Manual includes an application filed under Section 710 of the Bylaw. The Planning Board has jurisdiction over this proposal.

The Chair stated that labeling the project as a cluster is a way to stop the proposal, but it is an artificial way. The applicant has rights for a number of buildings on one lot and the Building Inspector's opinion voids the applicant's rights. There is a mechanism to go forward under the Bylaw: Section 710.

Mr. Mikami then asked whether or not to be defined as Cluster Housing an application must first meet other requirements. The Chair responded that the property must be zoned cluster. Mr. Mikami then stated that the Board would need to know if the property is zoned Cluster or not and if it is not, then it is something else. [yes]

The Chair informed the Board that he spoke with both the Director of the Department of Municipal Licenses and Inspections and the Inspector who wrote the memo and told them of his disagreement with their determination.

Mr. Mikami asked if a cluster development requires a minimum of 5 acres to which Ms. Santucci responded that property was required to contain at least 5 acres to be zoned cluster. She put forward the examples on Middle and Liberty Streets.

Ms. Santucci stated that she wants the Board to understand that the main issue for her was the fact that some years ago she and the Dirranes had meetings with Town Engineer, the former Inspector of Buildings and the former Director of Planning and Conservation and in 2006 those individuals advised the Dirranes to file under Section 710 of the Zoning Bylaw, which the Dirranes did. [They later chose to withdraw their application without prejudice.] The applicant has decided to file a new application under the same section of the Zoning Bylaw. It is puzzling that now he has been told that his proposal is really cluster development and not allowed pursuant to Braintree Zoning Bylaw Section 135-710.

To a question by the Chair regarding whether or not the units would be condominiums, Ms. Santucci responded that when the Planning Board deliberates, they are considering the use of the property for a certain number of dwelling units [in this case four], not their ownership of those units.

Ms. Cusick Woodman raised her concern that over two years ago the applicant was encouraged to go forward and suddenly a label was thrown into works and stopped the process. The Chair injected that the "label" was attached only after the filing of the application in 2008, not earlier.

He feels that one neighbor did a lot of research [in an effort to derail the project] and that helped the Building Department arrive at the determination that the applicant was proposing a cluster development.

Mr. Mikami asked if there were any other definition that could be applied to this project. The only "definition" is number of dwellings on one lot.] He continued and asked if it were conceivable or possible that the ZBA will determine that the development is a cluster. [Yes, then applicant could appeal in court.]

Mr. Eng was concerned that it seemed from 2006 to 2009 the definition had changed. The Chair repeated his earlier statement that a neighbor brought up the term cluster and the Building Inspector jumped on it as a way to shoot down the project. It is not fair to the Dirranes to be planning for so many years and now to have this determination complicate the process. He would recommend in favor of the applicant.

Motion by Mr. Eng, second by Mr. Reynolds to recommend that the Zoning Board of Appeal overturn the determination of the Building Inspector.

Vote: 5/0

Request for Minor Modification – 303 Grove Street/D. Lefas

*For details please see Ms. Santucci's report dated January 20, 2009.*

Socrates Gregoriadis addressed the Board to explain his request as stated in the letter from the property owner dated December 21, 2008. The Planning Board's Site Plan Review stipulates that the applicant is allowed up to 60 seats in the establishment and the interior space can accommodate 72 seats.

Staff stated that the parking calculation was based on the total square footage of the building and an increase in seating will not necessitate an increase in the 29 parking spaces provided on site.

Motion by Mr. Reynolds, second by Mr. Eng to allow the increase in seating [from 60 to 72].

Vote: 5/0

The Cheesecake Factory

Ms. Cusick Woodman informed the Board that an awning with the wording "The Cheesecake Factory" had been installed on the exterior wall of the restaurant. She feels it is a sign for which the Zoning Board of Appeal did not issue a permit.

The Board instructed Ms. Santucci to request enforcement by the Building Department.

Approval of January 6, 2009 Meeting Minutes

Motion by Mr. Eng, second by Ms. Cusick Woodman to approve the 12/16/08 minutes.

Vote: 5/0

The meeting adjourned at 7:50 P.M.

Respectfully submitted,  
Linda Raiss