



## Department of Planning and Community Development

Melissa M. Santucci Rozzi, Principal Planner  
90 Pond Street – Braintree, Massachusetts 02184  
Phone: 781-794-8234 Fax: 781-794-8089

Joseph C. Sullivan  
Mayor

**APPROVED**

### PLANNING BOARD

Robert Harnais, Chair  
Joseph Reynolds, Vice Chair  
James Eng, Clerk  
Darryl Mikami, Member  
Michelle Lauria, Member

Braintree Planning Board  
November 7, 2011  
Town Hall

#### Present:

Mr. Robert Harnais, Chair  
Mr. Joseph Reynolds, Vice Chair  
Mr. James Eng, Clerk  
Mr. Darryl Mikami, Member

Christine Stickney, Director  
Melissa Santucci Rozzi Principal Planner

The Chair called the meeting to order at 7:00 P.M. and called the roll: Mr. Harnais, Mr. Reynolds, Mr. Eng, and Mr. Mikami all present.

*Please note: Member Lauria absent.*

### **New Business/Old Business**

#### Zoning Board of Appeals – November

At this time Mr. Harnais explained that the Planning Board is for recommendation purposes only in this process and that the Zoning Board of Appeals has final say.

#### #11-47

Firestone Auto Repair, 535 Granite Street

Michael Harvey of Harvey Signs, 30 Osgood Street, Methuen, MA 01849, was present and addressed the Planning Board.

Mr. Harvey stated that he was representing the Firestone facility located at 535 Granite Street and explained that the proposal is to install a 2'9" x 14'1/4" wall sign and a 20' x 4'3" ground sign. He went on to say that the square footage is a reduction to what currently exists at the location and that it falls within the sign code.

Mr. Mikami had no questions at this time.

Mr. Eng had no questions at this time.

Mr. Reynolds had no questions at this time.

Mr. Harnais had no questions at this time.

Motion by Mr. Reynolds, second by Mr. Eng to recommend approval.  
Vote: 4/0

#11-49  
30 Portland Street

Attorney Russell Peck, Jr., 506 Washington Street, Braintree, MA 02184 and Charles K. Johnston (Executor of the Estate of Ruth C. Johnston) 17 Douglas Avenue, Wilmington, MA 01887 were present and addressed the Planning Board.

Atty. Peck explained to the Planning Board that the Executor's Aunt had sold a wedge of property measuring 406 square feet in 2003 prior to her death. This transaction was completed without a lawyer involved and as a result the parties did not know that a full deed needed to be certified in Land Court, nor was this brought before the Zoning Board for approval. The issue therefore remains up in the air in regards to the variance. As this wedge of property has already been sold they want to file for the variance to rectify the situation. Atty. Peck had pictures and certifications that he presented to the Planning Board members for their review. He went on to say that there have been no objections by the neighbors about this wedge of property and that they understand the issue. He sees no negative affects.

Mr. Mikami asked for clarification if the property has already been sold. Is this something that the Trustee must fix before it can be sold or is it the new owners that want it fixed? Atty. Peck replied that the Executor is trying to resolve the issue so in the future both properties (#24 and #30 Portland Street) can be sold. Mr. Mikami again asked for clarification that the property had not been sold. Atty. Peck answered that the property had not been sold, only the wedge of land, which had been sold in 2003.

Mr. Eng had no questions at this time.

Mr. Reynolds had no questions at this time but stated that based on the Planning Staff Report he is in agreement that there is no detriment to the public. He also sees no harm to the abutters or to the integrity of the lot.

Mr. Harnais stated that he is in agreement. He asked if the Estate owns both of the lots at this time, and if not, which lot does the Estate own. Mr. Charles Johnston, the Executor of the Estate replied that the property to the right (#30 Portland Street) is the one owned by the Estate. The lot to the left (#24 Portland Street) is the one that the wedge of land was sold to and is currently owned by Thomas K. and Mary E. Matthews. It was confirmed that the corner lot was the one that purchased that wedge of land. Mr. Harnais also confirmed with Mrs. Matthews (present at the meeting) that she did own #24 Portland Street. Mr. Harnais had no further questions.

Ms. Santucci Rozzi explained that in 2003 there had been a conveyance of 406 square feet of land. At that time the Planning Board had endorsed the ANR plan because it met the provisions of the law but the process was never perfected. She pointed out that another matter of importance is that when that piece of property was carved out they also made their lot width deficient, therefore they need to make sure that they are also requesting a variance for the lot width. Atty. Peck debated this, stating that it was already a non-conforming lot and the overall change is not that large. Ms. Santucci Rozzi questioned how this was being measured. Atty. Peck replied that the original requirement is 15,000 square feet, the existing is 7,750 square feet which will be decreased to 7,347 square feet. He added that the minimum lot width is 100 feet with the existing being less than 100 feet which will be decreased to 92 feet. Atty. Peck stated that the existing lot depth and rear setback are to remain the same. Ms. Santucci Rozzi said that this was all pointed out in her Staff Report and the lot width will now be non-conforming. Atty. Peck again stated that the lot had already been non-conforming.

Mr. Harnais said that this is something that should have been taken care of prior to the sale or purchase. This shows that when you purchase property you should make sure that all the proper steps are taken. There were no further questions by the Planning Board members.

Motion by Mr. Eng, second by Mr. Reynolds to recommend favorable action.  
Vote: 4/0

Mr. Harnais clarified that this issue now goes before the Zoning Board.

Mr. Mikami stated for clarification that the Planning Board had voted only on this request, not the non-conforming aspect of the second lot. Unless that issue is addressed

that lot would not be able to be sold either. Mr. Harnais said that is something they will have to take to the next step.

Mary E. Matthews, of 24 Portland Road, Braintree, MA 02184 was present and addressed the Planning Board.

Mrs. Matthews said that she is the owner of #24 Portland Street and asked if it could be explained to her what she had to do. Mr. Harnais asked if she had purchased the wedge of land. She replied that she had. Mr. Harnais told her that what impacts her is the fact that she purchased a piece of property and that all the steps required were not taken to actually make it her property. Now that is being done and is going to the Zoning Board. Mrs. Matthews asked what she has to do. Mr. Harnais answered she had to apply for a finding before the Zoning Board.

Ms. Santucci Rozzi explained that essentially these two issues come in as companion applications because both pieces of property are involved. In this case a non-conforming piece has gotten a little bit larger and still doesn't conform. A non-conforming piece has gotten smaller and they are here to get approval for a variance. She pointed out that as noted on the ANR plan the wedge is to be combined with lot #55. She also explained that the property that gets bigger must get a finding and the property that gets smaller must get a variance. Mr. Harnais stated that Mrs. Matthews must go for a finding to rectify the situation on her end. Ms. Santucci Rozzi stated that she had spoken with Mrs. Matthews and advised her to set up a meeting with her. Mr. Harnais agreed.

Mrs. Matthews said that she still finds this issue confusing and asked if it could be spelled out for her what she needs to do to correct it. Mr. Harnais asked her what departments she had been in contact with. She replied the Assessors' Office and the Town Clerk's Office. Mr. Harnais informed her that neither of them would have anything to do with this process. She also had been to the Engineering Department and tonight is the first time she has heard anything about zoning. If she could be told what to do to fix this situation she will do it.

Mr. Harnais told Mrs. Matthews that what had been approved tonight was the carving out of that lot. Ms. Santucci Rozzi added that this allowed #30 Portland Street to carve it out and sell it to #24 Portland Street, retroactively legalizing that conveyance.

Mr. Harnais further explained that Mrs. Matthews had purchased this piece of property but unfortunately all the steps were not completed and that falls on both the buyer and the seller. When you purchase a piece of property you want to be sure that all the steps are conforming and when you sell a piece of property you want to be sure that you do it correctly. This was not done in 2003 and now it needs to be rectified. He told Mrs. Matthews that she has to put in an application to the Zoning Board for a finding for this

piece of property. He went on to say that the requirements for a finding are not as restrictive as those needed for a variance. She has to show that combining this property with her lot will not be more detrimental. Mr. Harnais also said the two parties involved had done this with out the proper steps and now she must put an application in with the Zoning Board for a finding. This will go before the Planning Board then on to the Zoning Board. Mrs. Matthews wanted to know why no one had explained this to her previously as she has been trying since August to rectify the situation. Mr. Harnais replied that she had gone to departments that do not deal with this.

Ms. Santucci Rozzi told the Planning Board that Mrs. Matthews had come to the Planning Department and inquired about the ANR process. She had been shown the files and it was explained that the process in this case had not been done correctly with the deed not being recorded until this past August. Mr. Harnais told Mrs. Matthews this had not been done the way it should have been done and now is the time to fix it, which is what the Planning Staff/Planning Board is here to do. It was then clarified by Mr. Harnais that Mrs. Matthews has to fill out an application for a finding only.

#11-46  
703 Granite Street

Deanna Chrislip and Brian Hale, of Design Workshop Inc., Indian Orchard, MA 01151, were present and addressed the Planning Board.

The Applicant seeks permission to install a wall sign for the American Career Institute which occupies the second and third floor at 703 Granite Street. It was explained that the proposed wall sign will be installed above the first floor and is in conformance with Zoning Bylaws. The proposed sign is 36.7 square feet and when combined with the existing signs for the Bank and Restaurant that currently occupy the building the total will not exceed the maximum allowed for this Zoning District.

Mr. Mikami stated that the proposed sign meets the Zoning Bylaws and he had no questions at this time.

Mr. Eng stated that the proposed sign looks better.

Mr. Reynolds had no questions at this time.

Mr. Harnais had no questions at this time.

Motion by Mr. Eng, second by Mr. Mikami to recommend favorable action on the signage relief being requested.

Vote: 4/0

#11-48  
56 Logan Road

The Applicant John F. McKinley Jr., of 56 Logan Road, Braintree, MA 02184 was present and addressed the Planning Board.

Mr. McKinley described the proposal to replace an existing deck with a new deck and three season porch. He explained that there currently exists an old non-conforming deck that is in poor condition. In addition there is an existing screened porch which is also in poor condition. The proposed footprint will be within the existing footprint.

Mr. Harnais asked for clarification that the relief being sought is a finding. Ms. Santucci Rozzi confirmed this adding that the proposed structure would be 1 foot smaller thus improving the rear setback.

Mr. Mikami had no questions at this time.

Mr. Eng had no questions at this time.

Mr. Reynolds had no questions at this time.

Mr. Harnais had no questions at this time.

Motion by Mr. Reynolds, second by Mr. Eng to recommend favorable action on the requested relief.

Vote: 4/0

#11-50  
0 View Street

Attorney Carl R. Johnson III, Attorney for the Applicant was not present at this time to be heard for a recommendation from the Planning Board.

Motion by Mr. Eng, second by Mr. Reynolds to table the request.

Proposed 2012 Planning Board Meeting Schedule

Ms. Santucci Rozzi asked that the Planning Board refer to the proposed 2012 Planning Board meeting schedule, stating that this needs to be approved for next year. She asked the Planning Board if they would prefer to meet on February 7, 2012 or February 14, 2012. The Planning Board decided to hold the February Planning Board meeting on Tuesday, February 7, 2012.

Motion by Mr. Eng, second by Mr. Reynolds to accept the 2012 Planning Board meeting schedule.

Vote: 4/0

Discussion of 2011 Holiday Traffic Plans  
The Marketplace at Braintree

Ms. Kelly Marinho, Property Manager with KeyPoint Partners, One Burlington Woods Drive, Burlington, MA 01803, was present and addressed the Planning Board.

She informed the Planning Board that she had spoken with the Braintree Police Department and the traffic plan for the 2011 Holiday Season would be the same as it had been for the last five years. There will be a police detail controlling the traffic light at the entrance. This will begin the day after Thanksgiving and run through January 1<sup>st</sup>.

Mr. Mikami had no questions at this time.

Mr. Eng wanted to know if there had been any traffic issues or concerns. Ms. Marinho replied that there had been no complaints or comments.

Mr. Reynolds had no questions at this time.

Mr. Harnais asked for clarification that KeyPoint had worked with the Police Department. Ms. Marinho stated that the traffic plan had come from the Police Department.

Discussion of 2011 Holiday Traffic Plans  
South Shore Plaza

Ms. Judy Tullius, CSM/CMD, General Manager, South Shore Plaza, 250 Granite Street, Braintree, MA 02184 was present and addressed the Planning Board.

It was explained to the Planning Board that South Shore Plaza has worked with the Police Department and the traffic plan is essentially the same as last year with the exception of monitoring by mall security. The Planning Board had a copy of the new schedule. There had been a decrease in hours of operation for the first and second week of December and an increase in hours during the last week of the month. There is also an increase in the number of details. The plan includes the area by Dave & Buster's as well as Barnes & Noble's. They have been working with Sean Lydon of the Braintree Police Department. Washington, Common and North Street are also being taken into consideration.

Ms. Tullius said that at this time Macy's is planning on opening at 4:00 A.M. the day after Thanksgiving and Target and 8 small shops will be opening at midnight. Mr. Eng inquired if a Special Permit was needed for these early openings. Ms. Tullius replied no. With the exception of these early openings the hours are the same as last year on the day after Thanksgiving.

Mr. Eng asked when Dave & Buster's will be opening. Ms. Tullius informed him that the Grand Opening is scheduled for December 12<sup>th</sup>. Mr. Eng inquired about their operating hours. Ms. Tullius said they would have to ask them to confirm their hours.

Ms. Tullius informed the Planning Board that there had been one new development since last year. Simon Malls are having a promotion selling VIP packages for the day after Thanksgiving. These include VIP shopping passes, a VIP lounge and VIP parking. This is the idea of the regional/national marketing teams. The VIP parking will be in the south garage. There will be 140 parking spaces blocked off. Allied Parking's event planning team is the planners and they will provide security. This parking will be strictly monitored and is for one day only. Should they need additional parking there is a back up plan to use the north garage (near Sears Auto) in which case a shuttle would be used.

Mr. Reynolds asked if there are a number of stores that have opened since this time last year. Ms. Tullius replied that there had been a significant amount of new stores that have opened but traffic has not really increased. Mr. Reynolds stated that overall they have done a very good job and he is glad that they work so closely with the Police Department since they have so much experience. Ms. Tullius said they really rely on the expertise of the Police Department. Mr. Reynolds brought up the back gate questioning if this was an option as a "relief valve" if needed. Ms. Tullius told him that yes that exists as an option.

Mr. Mikami asked about Target and the shopping carts in the parking area. Ms. Tullius said they do a good job at keeping them in control with the first shift going out about 8:30 in the morning.

Mr. Eng had no questions at this time.

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Approval Not Required Plan – 62 and 70 Robbie Road  
Kevin G. Wiles, Applicant

It was noted that at this time the applicant wishes to withdraw the application and asks the Planning Board that should he re-file within the fiscal year (before July 1, 2012) that the application fee be waived.

Motion by Mr. Reynolds, second by Mr. Mikami to accept the withdrawal of the application.  
Vote: 4/0

Motion by Mr. Reynolds, second by Mr. Eng to waive the application fee if filed within the next fiscal year.  
Vote: 4/0

Request for As-Built Approval – Priscilla Avenue Definitive Subdivision [#99-12]  
Requested by Kevin Kane of Aspinwall Corporation

It was noted at this time that Mr. Kane was still working on finalizing the Priscilla Avenue easements that had been discussed at the Planning Board meeting on October 11, 2011.

Motion by Mr. Reynolds, second by Mr. Mikami to continue the Request for Approval to the December 13<sup>th</sup> Planning Board meeting.  
Vote: 4/0

Motion by Mr. Mikami, second by Mr. Eng to adjourn the Planning Board meeting at 10:00 P.M.  
Vote: 4/0

Respectfully submitted,

Beth A. Herlihy



Joseph C. Sullivan  
Mayor

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### PLANNING BOARD

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Michelle Lauria, Member

Braintree Planning Board  
November 7, 2011 – Public Hearing @ 7:30 P.M.  
Town Hall

**Present:**

Mr. Robert Harnais, Chair  
Mr. Joseph Reynolds, Vice Chair  
Mr. James Eng, Clerk  
Mr. Darryl Mikami, Member  
Christine Stickney, Director  
Melissa Santucci Rozzi Principal Planner

692-700 West Street/Gerald M. Ridge-Blue Hill Cemetery  
Application: Special Permit and Site Plan Review  
#11-05

*Please note: Member Lauria absent.*

Mr. Harnais opened the continued Public Hearing at 7:30 P.M.

Attorney Michael F. Modestino was present to represent the Applicant, Mr. Gerald M. Ridge Jr., of Blue Hill Cemetery, Inc. and David Crispin of BSC Group, 700 West Street, Braintree, MA 02184.

Atty. Modestino addressed the Planning Board stating that this matter had been continued from the September 13<sup>th</sup> Planning Board meeting. Since that time he has met with Christine Stickney and Dave Crispin of BSC Group. He referenced the letter they had received dated September 6, 2011 and stated that many of the issues in this correspondence had been ironed out. It was also mentioned that parking issues have been resolved as well.

He noted that relative to Ms. Stickney's concerns of the cemetery dedication that the Applicants have chosen to go before the Board of Health to clarify the use of the parcel

of land as a cemetery. They had a hearing scheduled with the Board of Health for October 27<sup>th</sup>. That scheduled hearing had been postponed and the next available meeting is not until December 15, 2011. There is a question with the Town as to whether or not the location is actually designated as a cemetery. Atty. Modestino pointed out that this had always been used for cemetery purposes, and they would like to make progress and go forward.

Mr. Harnais stated that the Town is questioning if this is classified as a cemetery or not and that is an issue that can not be resolved at this meeting.

Atty. Modestino stated that the south side of the property has always been used for cemetery purposes. Ms. Stickney mentioned that there had been some changes to the site plan, including the rearrangement of some parking and some flood plain issues had been addressed.

Mr. Crispin explained the revisions stating that he had spoken with Ms. Stickney regarding the zoning line. There will be elimination of the parking in the residential zone and there will be no effect on traffic flow. Ms. Stickney raised a question regarding the impervious surface which Mr. Crispin confirmed would be 100 square feet less than the original plan.

Mr. Harnais said that this issue is at a stand still until we see what happens with the Board of Health. This will be determined when they have their meeting with Marybeth McGrath. He apologizes that they have to wait.

Mr. Mikami stated that he does understand the issue presented with this controversy and if it is determined that the use at this location is not a cemetery what other locations are to be considered. Atty. Modestino replied that while the client has considered other locations as far as the business plan goes it would not work. The utilities and security are not options in other locations under the ownership of his client. Mr. Crispin explained that in 1935 there had been approval for the cemetery use. The rest of the cemetery did not have Board of Health approval because it predates Massachusetts General Law Chapter #114. In Mr. Crispin's opinion both sides of West Street predate this and are part of the land history. Atty. Modestino added that in 1935 when approval was granted additional parcels were obtained and had been added to the existing cemetery.

Mr. Harnais expressed that if they do not get approval of the cemetery classification, they need to look at an alternative plan. It is Atty. Modestino's opinion that his client does not want to abandon the project.

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Planning Board Minutes

November 7, 2011 – Public Hearing @ 7:30 P.M.

Mr. Reynolds inquired if there was any value in discussing other matters regarding this project this evening. Mr. Harnais said that he did not feel it would be helpful to go forward tonight. Both Mr. Reynolds and Mr. Harnais said this was up to the client. Atty. Modestino replied that with out having a recommendation from Ms. Stickney, he does not see how this can go forward to a vote. Mr. Harnais added that he does not feel that they can go forward with out the determination by the Board of Health. Ms. Stickney stated that it would behoove the applicant to go to the Board of Health adding that the Planning Board could not substantiate the findings in the conditions if they were to go forward at this time with out the Board of Health determination. Mr. Harnais added that he feels that it would also be best to have the 5<sup>th</sup> Planning Board member present as well at the time the vote was to be taken.

Ms. Stickney pointed out that the next Planning Board meeting was scheduled for Tuesday, December 13<sup>th</sup> and the Board of Health meeting is not scheduled until Thursday, December 15<sup>th</sup>, which would result in this being held over until the January Planning Board meeting. Mr. Harnais said that while he realized this is subject to the Board of Health determination, he would not mind more information to the overall proposal being presented at the December Planning Board meeting. Mr. Reynolds wanted to know if there would be any value in that. Ms. Stickney stated that would make it difficult for the Planning Staff to draft the conditions.

Mr. Harnais asked if it would be best to not vote on the application this evening and to let the applicant present additional information prior to the Planning Board meeting in January. At that time this could then be moved along. Ms. Santucci Rozzi informed the Planning Board that there are (4) four hearings scheduled for the December Planning Board meeting so far, including a new application at 8:15, Covanta at 7:45 and another from this evening that is to be continued to that date. Mr. Harnais said it was up to the Planning Board to decide how they would like to proceed. Mr. Reynolds inquired if the applicant would have any additional information to present at the December Planning Board meeting. Atty. Modestino replied that more than likely they probably would not.

Motion by Mr. Eng, second by Mr. Reynolds to continue the Public Hearing to the January 10, 2012 Planning Board meeting at 7:30 after the issue has been resolved with the Board of Health.

Vote: 4/0

Ms. Stickney pointed out that the applicant had done well with all the issues and the Planning Staff will review these again. Mr. Reynolds inquired that if at the January Planning Board meeting the Board of Health had voted to go forward, would the Planning Staff then be ready to draft the conditions. Ms. Stickney replied that if at that

time the Planning Staff was instructed to do so. She went on to explain that with this application there are five approvals that are needed. These are: Site Plan Review, Special Permit for access across the zone, 100 Year Flood Plain, Watershed and Buffer Zone within 100 feet. Ms. Stickney said that at the site level almost all of the issues have been addressed. The Conservation Commission has issued the Order of Conditions and the Town Engineer has looked at the flood plain issues. Mr. Reynolds stated that the Board of Health decision will have an impact on the conditions. Ms. Stickney confirmed this and it will help with the findings for the Planning Board decision as well. Mr. Reynolds said that the assumption is that those will be discussed at the Public Hearing also. Ms. Stickney said yes and that she thinks it is best to wait and see what the Board of Health says as they may also have recommendations for inclusion in the conditions.

Respectfully submitted,

Beth A. Herlihy



Joseph C. Sullivan  
Mayor

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Braintree Planning Board  
November 7, 2011 – Public Hearing @ 7:55 P.M.  
Town Hall

Present:

Mr. Robert Harnais, Chair  
Mr. Joseph Reynolds, Vice Chair  
Mr. James Eng, Clerk  
Mr. Darryl Mikami, Member

Christine Stickney, Director  
Melissa Santucci Rozzi Principal Planner

101 Wildwood Avenue/Steven Charbonnier  
Application: Grading Permit  
#11-07

*Please note: Member Lauria absent.*

Mr. Harnais opened the Public Hearing at 7:55 P.M. and read the Public Hearing notice.

Mr. Steven M. Charbonnier of 101 Wildwood Avenue, Braintree, MA 02184 was present and addressed the Planning Board. Mr. Charbonnier explained that in the fall of 2009 he had hired Brian Sylvester, a Landscaper to do grading work at his property located at 101 Wildwood Avenue. At this time brush was removed and they began to do approximately 150 yards of fill work. This work was completed in the spring of 2010, which included an additional 35 yards of loam and grass was put down as well. Since that time it has been brought to his attention that he should have filed for a permit to have this work done.

Mr. Harnais opened the Public Hearing to the public.

Mr. Richard R. Stoye, of 201 Cain Avenue, Braintree, MA 02184 addressed the Planning Board. Mr. Stoye explained that he is a direct abutter and gave a brief history of his numerous involvements with the town over the years. He stated that he had never heard of asking for a permit for something that had been done over two years ago. Mr. Stoye stated that several trees had been removed during the work and someone in the neighborhood had serious flooding for the first time in 47 years after this work had been done. Mr. Stoye said that he had two questions: 1) What is the purpose of granting a permit after work has already been done and

2) What are the purpose of the Massachusetts and Zoning Laws if not to protect the rights of abutters who may be downstream from the graded area? Mr. Stoye mentioned considerable flooding that occurred in December of 2009. He went on to say that in May of 2010 the Building Inspector had determined that a grading permit was in order. In addition, he stated that his next door neighbor had been told in September of 2010 that the Planning Staff was working with a requester to get a permit granted. Mr. Stoye respectfully asked that the Planning Board not grant the permit.

Mr. Herbert Clark, representing the trust for 219 Cain Avenue, Braintree, MA 02184, which is directly behind the property on Wildwood Avenue, addressed the Planning Board. He stated that Mr. Stoye had presented the Planning Board with his concerns. He went on to say that after the change in landscaping under discussion; 219 Cain Avenue had sustained (7) seven inches of water in the basement which resulted in \$10,000.00 in damage including mold and loss of property. He also wanted to know what is the purpose of a retroactive permit. Mr. Eng asked if there had been any flooding since this occurrence. It was explained that a drainage system has subsequently been put in place and there had been nothing like the (7) seven inches. Ms. Alice Clark addressed the Planning Board stating that this had occurred on December 27, 2009, that there had been no bad weather and that the water had just started flowing in to the basement. Mr. Harnias asked if anyone had determined where the ground water had come from. Ms. Clark replied that there was no rain and no snow and that they had never had water before.

Mr. Mikami asked if the applicant had paid for any of these drainage issues with the neighbors, had he been sued. Mr. Charbonnier replied that he had not. Mr. Mikami then asked if the drainage system is inside. Ms. Clark informed him that it was inside all around the cellar. Mr. Mikami questioned why the applicant felt that a permit was not needed. Mr. Charbonnier said that he acted upon the recommendation of his landscaper.

Mr. Mikami asked that given the subsequent issues of the flooding, how this issue should be resolved. The project cannot be “undone”, so how does it get fixed? Ms. Santucci Rozzi addressed the Planning Board. She stated that the size of the property needs to be looked at along with the fact that the area to the back is densely wooded. She referred to the town topography maps pointing out that there is a low point on the neighbors’ property with the land then going up and the Planning Staff does not see how the work on Mr. Charbonnier’s property could be the cause of this problem as it is the Planning Staff’s opinion that the work had been minor. She added that as far as recourse for the damages goes that becomes a civil matter. She asked that the Planning Board refer to the grading plan showing that this had been minor activity.

Mr. Mikami asked if it would be an option to have the applicant hire a professional engineer. Ms. Santucci Rozzi wanted to know if he was talking about mitigation. She stated that there could be some sort of study done. Mr. Mikami said he was thinking of the protection of the neighbors, feeling that a professional evaluation should be done. Mr. Eng brought up the town topography maps, pointing out the grade between the homes and that the water should be ponding there. He agrees with Mr. Mikami that an individual with hydraulic expertise is needed. There is a low area between all the homes and the water should channel away.

Mr. Reynolds said that he agreed with Mr. Mikami and Mr. Eng that the Planning Board needs to obtain more information. He referred to the fact that there was no description of the removal of the trees. Mr. Charbonnier replied that a tree company had done that work. Mr. Reynolds wanted to know where the trees had been. Mr. Charbonnier did not have any photos but explained that they were in the middle of the area and that he had kept (2) two good trees. Mr. Reynolds wanted to know if the trees had been mature. Mr. Charbonnier replied that they had been large and he felt that they were dangerous in regards to the safety of his children. Mr. Reynolds then questioned the area that forms the valley wanting to know if the low point is wooded. Mr. Charbonnier replied that it was. Mr. Reynolds inquired if the property goes right up to the property line on Cain Avenue. Mr. Charbonnier told him that it goes down and then works its way back up to the neighbors' yards. Mr. Reynolds asked if it now floods. Mr. Charbonnier said that in the heavy rains 1 ½ years ago it did. Mr. Reynolds asked for clarification that it was a (2) two foot change in elevation. Mr. Charbonnier replied that it was just over (2) two feet and it had been explained to him that (2) feet and under do not require a permit. Mr. Reynolds asked if the height had been 164 feet and was now 166. Mr. Charbonnier replied that it is now 164 and had been 162. Mr. Reynolds also asked if Sylvester Landscape had been in business long. Mr. Charbonnier replied that yes they had. Mr. Reynolds then inquired if any technical tests had been done or if Mr. Charbonnier had just been told that he did not require a permit for the work. Mr. Charbonnier confirmed that was correct. Mr. Reynolds concluded by saying that he was in agreement with Mr. Mikami and Mr. Eng that they do not have enough information. This is a situation that was done in violation and may have impacted the abutters.

Ms. Linda M. Porter, 105 Wildwood Avenue, Braintree, MA 02184 was present and addressed the Planning Board. She told the Planning Board that her property abuts that of Mr. Charbonnier and that she had lived there for 42 years. She described again how the land slopes down and then back up again. Ms. Porter explained that Mr. Charbonnier had removed trees in his yard that were not in the heavily wooded area. She apologized to the neighbors present for the expenses they had faced and went on to say that the low area between the various homes was always wet. She mentioned the gulley had been there before the homes were built. It is her belief that the water from the various properties all runs down to that area. Mr. Eng asked her if she gets water in her basement. She replied that if it rains quite hard she does and she believes that other people in the area get water also. Mr. Eng then asked Mr. Charbonnier if he gets water. He replied that he does. Mr. Eng questioned further if he only got it during the flooding storm in March. Mr. Charbonnier said that no that was not the only time. For clarification Mr. Eng inquired that his basement was not perfectly dry. Mr. Charbonnier replied that it was not.

Mr. Clark stated that while he did acknowledge the existence of the gulley he felt that the landscaper should have paid attention to this. Mr. Harnais questioned why there had been the massive amount of water in the basement with no rain. He went on to say that the water damage in question with no rain may have had nothing to do with the grading work that had been done.

Mr. William G. Porter, 105 Wildwood Avenue, Braintree, MA 02184 was present and addressed the Planning Board. He stated that he abuts Mr. Charbonnier's property. He described that the water had been there prior to Mr. Charbonnier moving in. He believed that a river had run under Wildwood Avenue before the houses on Cain Avenue had been built and cited flooding on

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Planning Board Minutes

November 7, 2011 – Public Hearing @ 7:55 P.M.

Jefferson Street, and around Dunkin Donuts, the restaurant and the railroad tracks during the heavy rains previously discussed.

Mr. Harnais addressed the issue of getting a permit after the fact. He stated that in some cases people do things on purpose while in other cases they rely on the professionals that they hire. Now it is the purpose of the Planning Board to come to a solution. Ms. Santucci Rozzi questioned if the Planning Board was looking for Mr. Charbonnier to have additional engineering work done. Mr. Harnais replied that they cannot go back to the way things were prior to the work being done so let's see what can be done to make the situation better.

Mr. Eng suggested having the town engineer do preliminary work and if it was decided that professional assistance was necessary than the applicant would have to go forward with that.

Motion by Mr. Eng, second by Mr. Mikami to have the town engineer review the situation and give advisement.

Vote: 4/0

Ms. Santucci Rozzi asked the Planning Board for clarification if she was to go to the town engineer on behalf of the Planning Board. This was confirmed. She then questioned that when a site inspection is done and he makes his recommendations if he says that there is no way this work could cause this damage that they come back in December. She also inquired that if suggestions are made should these then be brought before the Planning Board in December for discussion with the applicant. This was confirmed by Mr. Harnais.

Motion by Mr. Eng, second by Mr. Mikaim to continue the Public Hearing to December 13, 2011 at 7:30 P.M.

Vote: 4/0

Respectfully submitted,

Beth A. Herlihy



Joseph C. Sullivan  
Mayor

## Department of Planning and Community Development

Melissa M. Santucci Rozzi, Principal Planner  
90 Pond Street – Braintree, Massachusetts 02184  
Phone: 781-794-8234 Fax: 781-794-8089

### PLANNING BOARD

**APPROVED**

Robert Harnais, Chair  
Joseph Reynolds, Vice Chair  
James Eng, Clerk  
Darryl Mikami, Member  
Michelle Lauria, Member

Braintree Planning Board  
November 7, 2011 – Public Hearing @ 8:00 P.M.  
Town Hall

**Present:**

Mr. Robert Harnais, Chair  
Mr. Joseph Reynolds, Vice Chair  
Mr. James Eng, Clerk  
Mr. Darryl Mikami, Member

Christine Stickney, Director  
Melissa Santucci Rozzi Principal Planner

257 Ivory Street/Covanta-SEMSS  
Application: Special Permit and Site Plan Review  
#11-06

*Please note: Member Lauria absent.*

At this time Ms. Stickney addressed the Planning Board and informed them that the Applicant had requested a continuance until the December 13<sup>th</sup> Planning Board meeting. They have been provided with draft conditions and would like to have their legal counsel look these over.

Motion by Mr. Reynolds, second by Mr. Mikami to continue the Public Hearing to the December 13<sup>th</sup> Planning Board meeting at 7:45.

Vote: 4/0



Joseph C. Sullivan  
Mayor

## Department of Planning and Community Development

Melissa M. Santucci Rozzi, Principal Planner  
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### PLANNING BOARD

Robert Harnais, Chair  
Joseph Reynolds, Vice Chair  
James Eng, Clerk  
Darryl Mikami, Member  
Michelle Lauria, Member

APPROVED

Braintree Planning Board  
November 7, 2011 – Public Hearing @ 8:35 P.M.  
Town Hall

**Present:**

Mr. Robert Harnais, Chair  
Mr. Joseph Reynolds, Vice Chair  
Mr. James Eng, Clerk  
Mr. Darryl Mikami, Member

Christine Stickney, Director  
Melissa Santucci Rozzi Principal Planner

825 Granite Street/B & R Partners, LLC  
Application: Special Permits and Site Plan Review  
#11-08

*Please note: Member Lauria absent.*

Mr. Harnais opened the Public Hearing at 8:35 P.M. and read the Public Hearing notice.

Attorney Frank A. Marinelli, 439 Washington Street, Braintree, MA 02184 was present to represent the Applicant B & R Partners, LLC, Sealcoating, Inc. 120 Industrial Park Road, Hingham, MA 02043, and addressed the Planning Board. Also present were Elizabeth Wuori and Richard Goodick of Sealcoating, Inc. Atty. Marinelli had a visual presentation and presented the Planning Board with additional documentation.

Atty. Marinelli explained that Sealcoating, Inc. is proposing to redevelop and make improvements to the site of the vacant Coca Cola plant located at 825 Granite Street and the property is under agreement. The building was built in the 1960s and is in need of upgrades. Sealcoating, Inc. will be making improvements to the facility including improvements to drainage and the stormwater storage will be in compliance with the DEP. There will be a state of the art fueling station included in the improvements. Atty. Marinelli added that the continued vacancy of an industrial building is not good for the town.

Atty. Marinelli gave a brief history of Sealcoating, Inc. He informed the Planning Board that this is a fourth generation company and has been in business for 50 years. The sealcoating business does work for numerous cities and towns and its work year generally is from April to November. The trucks used are smaller than those that were needed for the Coca Cola operations and based on the traffic study which has been presented to the Planning Board will generate less truck/vehicle trips than when Coca Cola was in business at this facility. There has been a parking study done as well and the proposal includes 100 parking spaces for employees and visitors which are adequate given the number of employees and the town requirements. The truck parking is separate and will be to the rear and side of the facility. The approximately 73,000 square foot industrial building is on a 9.1 acre site and is in a commercial zoning district. They will be removing some asphalt at the front of the building and replacing it with landscaping for an overall aesthetic improvement. When Coca Cola was in operation at the location there had been underground storage tanks which are no longer allowed and were removed in the 1990s. The proposed state of the art fueling island was again mentioned.

Mr. Tom French of Highpoint Engineering, Inc. addressed the Planning Board. Mr. French began by stating that all Fire Department requirements would be met. The tanks are on reinforced concrete pads. The operation of the pumps is secure requiring a code to be entered prior to pumping operations and they will be located to the west of the building. There will be 920 gallons of propane stored behind the building to the north which is necessary to go with the trucks to the job sites. In addition there will be 7,000 gallons of diesel fuel and 3,000 gallons of gas on site.

It was explained that the "L" shaped pavement addition (there will be a total increase in paved impervious area of approximately 14,000 square feet) is necessary for circulation in the facility. The result will be 53% open space with the watershed requirement at a commercial site being 40%. There will be vertical tanks located at the westerly portion of the building. The depressed topography of the existing loading docks will be utilized where a containment area will be created. The tank height will be 33 to 34 feet high with the limitation being 45 feet in a commercial zone. These tanks will have a 20,000 gallon capacity. There will also be a dry material hopper of about the same height for material needed to mix with the sealant to be brought to the job sites, resulting in 3 structures on the westerly end of the building.

The operation of the business was discussed. There are (4) four trucks that do the work. The sealant is loaded in the morning and the fueling of the vehicles is done at the end of the day. The containment area can hold the capacity of the storage tanks. Regarding the bridge repair aspect of the business there will be 13' x 30' storage bins for sand, crushed stone, and concrete. There will also be a staging area for re-use or recycling neither of which present a hazardous concern.

It was again mentioned that the building had been built in the 1960s with little improvement being done since that time. There will be a 160 foot wide trench drain to get and process stormwater runoff, which is a significant drainage improvement. The improvements will require the removal of some trees and there will be a meeting with the Conservation Commission on November 9<sup>th</sup>. A Habitat Evaluation has been done and they are going to clear debris from the area.

Mr. French again mentioned the pavement at the site, wetlands and the buffer zone. He stated that this leaves small area to increase the pavement. The net increase of 14,800 square feet was again pointed out. The new landscaping was also mentioned. There was also an explanation of the fueling station and the storage. These will be in secure areas accessible only to Sealcoat, Inc. employees. There will be a fire suppression system as requested by the Fire Department. Mr. French described the drainage and the flood water storage. The drainage will come down to the north side of the site and drain to the trench drain. This has been designed in accordance with the storm water design of the Mass. DEP. The Wildlife Habitat Report that had been done shows this as a previously disturbed area that is of little value and the proposal will be improving it drastically. A good portion of the site falls in the 100 year flood plain (elevation #119) which will be maintained with the exception of a small area around the fueling station and the proposed areas of the tanks and enclosure. There will be 100% flood storage as required by the DEP. Erosion control will be provided on site and there will be a sweeping process (3) three times per year and the stormseptor unit will be cleaned one time per year.

Mr. Harnais opened the Public Hearing to the public and then to the Planning Board.

Mr. Mikami asked for clarification that there were no issues with the height of the tanks. Atty. Marinelli replied that there is a 45 foot requirement in a Commercial District and that the proposed tanks were less than 34 feet. Mr. Mikami questioned the public and employee parking. Mr. French stated that both would be outside the fenced area. There will be screening of the fueling area with some trucks being allowed in the fenced area. Mr. Mikami wanted to know if the gated area had a guard. Mr. French replied that it is gated and secure but not guarded. There will be gate pass access. Mr. Mikami questioned if the vehicles were to be washed on site. Mr. French said that they were, but the details with Braintree Water and Sewer had not yet been worked out. It was confirmed that this would be done inside the building with non-toxic materials.

Mr. Mikami asked about odor and noise and what affects they may have on the neighbors. Mr. French replied that there are asphalt tanks so there will be some odor but based on the screening and the distance from the neighbors he does not expect this to be an issue. Mr. Mikami wanted to know if there would be an asphalt smell. Mr. French said that during normal business hours no. Mr. Goodick, of Sealcoating, Inc. clarified

that only when the trucks are being filled and it would be minimal. Mr. Mikami questioned the noise during business hours and if this was an issue at their existing facility. It was confirmed that there was noise during business hours but it had not been an issue.

Sealcoating, Inc.'s safety record was then questioned. There had been no material or fuel spills. There had been an overheating of a truck which caused the Fire Department to respond. Mr. Mikami wanted to know if that would result in an explosion. It was explained that no, it would be a fire if it got to that point.

Mr. Mikami wanted to know if Sealcoating, Inc. had local competitors and if they had similar equipment. Mr. Goodick said there were, located in Taunton and also on the North Shore, and that the equipment was similar. Mr. Mikami asked if they would be keeping their Hingham location. Mr. Goodick replied that they had outgrown that location and that they would be moving operations to the Braintree facility. They needed more space to run the business properly. Mr. Mikami asked if 6:00 A.M. would be the first shift. It was explained that they operate on a split shift and that the trucks are gone by 6:00 A.M.

Mr. Mikami asked if the traffic numbers decreasing were based on actual counts from the Hingham location. Atty. Marinelli said that the actual counts were from on-site in Hingham and the category counts were from prior use at this location. Mr. Mikami asked for clarification that the reduction was relative to the Coca Cola operations but it would be an increase relative to Sealcoating, Inc. Ms. Santucci Rozzi clarified that the counted trips at Hingham as compared to those for the Coca Cola facility show a decrease in peak hours of operation and there will not be an increase in vehicle trips.

Mr. Eng stated that he felt it to be a nice plan with nice features but he was concerned with the issue of fumes for the homes nearby. He wanted to know if the fueling was similar to a gas station. Mr. French said that there will be 2 pumps for diesel and for gas. Mr. Eng wanted to know if these would catch the fumes. That was confirmed. He then wanted to know if there were complaints from neighbors was there a contingency plan. That has not been worked out to date. Mr. Eng wanted to know if the other similar firms have had complaints and wanted to know if there were complaints what can be done. He asked if the Hingham location was near houses. Mr. Goodick replied that it was not. It was in the South Shore Industrial Park where there were other businesses and they had not had any complaints.

Mr. Eng asked for confirmation that the drainage had been designed to a 100 year storm. Mr. French replied that was the case. The compensatory flood storage had been

designed to be provided at the required elevations.. Mr. Eng said that he was very happy with the improvement to the runoff at the site over what exists today. Mr. French explained that with the existing drainage all the runoff from the parking lots sheets down and goes through the vegetation. He stated that there will also be a rain garden installed in the corner of the site. As regular maintenance there will be sweeping of the lots and cleaning of the drains.

Mr. Reynolds brought up the issue of snow. Mr. French explained that they have plans for snow storage which will be “up-drainage” side so that the resulting runoff will drain down.

Mr. Reynolds asked for clarification regarding the storage tanks. Mr. French explained that they will be (4) four feet below grade and that the surrounding walls will go up (4) feet. Mr. Reynolds wanted to know if that area can flood. There will be sump pump. Mr. Reynolds said that he appreciated the additional efforts in dealing with the runoff.

Mr. Harnais asked that there is not much odor unless there is a spill. Mr. Goodick replied that was true. Mr. Harnais also inquired if the vehicles were up to code. This also was confirmed.

Mr. Mikami asked that if they were moving operations into a larger space were they giving thoughts to expanding their business. Mr. Goodick replied that they did not have plans to expand as that would require looking at yet another facility. Mr. Mikami wanted to know that if there were to be an addition for more tanks would they have to come before the Planning Board again. Mr. Harnais confirmed this.

Ms. Santucci Rozzi discussed the agenda for the Planning Board meeting scheduled for December 13<sup>th</sup> and said that the Planning Staff would work on the findings and conditions. Mr. Eng inquired about the Conservation Commission. It was stated that there would be a site visit and (2) two more meetings prior to the December meeting.

Motion by Mr. Eng, second by Mr. Reynolds to continue the Public Hearing until the Planning Board meeting on December 13<sup>th</sup> at 8:15 P.M.

Vote: 4/0

Respectfully submitted,

Beth A. Herlihy