



Department of Planning and Community Development

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Joseph C. Sullivan
Mayor

PLANNING BOARD

Robert Harnais, Chair
Joseph Reynolds, Vice Chair
James Eng, Clerk
Darryl Mikami, Member
Melissa B. McDonald, Member

Braintree Planning Board
December 15, 2014
Cahill Auditorium

APPROVED

Present:

Mr. Robert Harnais, Chair
Mr. Joseph Reynolds, Vice Chair
Mr. Darryl Mikami
Ms. Melissa McDonald
Mr. James Eng

Christine Stickney, Director
Melissa SantucciRozzi, Principal Planner

Chairman Harnais called roll at **7:14 p.m.**
Ms. McDonald was not present for roll.

Zoning Board of Appeal Petitions – December

ZBA (14-36) 7:15 p.m.

17 Jay Street / John O'Leary

The Applicant did not make the meeting.

Staff summarized the application, Mr. Mikami had no questions.

Mr. Eng suggested no action until more information is submitted.

Mr. Reynolds agreed with Mr. Eng who made a Motion for No Action; seconded by Mr. Reynolds.

Vote: 4:0:0

Approval Not Required Subdivision Plan 7:19 p.m.

Washington Street and West Division Street (Plan 1058 Plot 1E)/Kris Howard of Vinfen

Kris Howard, Real Estate Project Manager of Vinfen

Joe Texieria, Construction Manager

Staff summarized and explained that the Board vote is conditional on the Mylar revision

Mr. Howard addressed the Board and explained that Vinfen has worked with a surveyor to assure they are in compliance in creating this one acre lot.

Mr. Eng asked why the lot is being developed. Mr. Howard explained the purpose is to establish a small residential building that will house brain injured residents.

Mr. Reynolds commented that the Staff Comments on the Approval Not Required was simply to revise some administrative information and he had no questions.

A resident of West Division Street, Joe Sargent, asked the Chair to comment. Mr. Harnais informed him that this was not a Public Hearing but he was welcome to comment. Mr. Sargent asked what the issue with the Application was. Ms. SantucciRozzi explained that the Plan was submitted with an incomplete Town Hall address, without an Assessor's reference and without the Applicant's name.

Mr. Sargent asked if it was typical for a company like Vinfen to go before the Planning Board before they actually own the property. Mr. Harnais said it was not unusual, sometimes a sale is contingent on getting permitting.

Miriam Sternagle, a West Division Street resident, addressed the Board and asked why the Applicant submitted this request prior to the other house selling.

Ms. Stickney addressed the Board and explained that this property arose from a Bradford Street property that Mayor Sullivan and Counselor Clifford worked on. It was processed under a Chapter 30B, Section 16, Disposition of Public Property. The Town made a Request for Proposals that allowed companies like Vinfen to apply. The Applicant can submit the Application with the Owners signature.

Mr. Harnais assured Ms. Sternagle again that it was not unusual that the Applicant submitted an Application before ownership.

Ms. Sternagle implied that it was suspicious that the property shown on the ANR Plan already had survey stakes and it was unusual that the police patrolled the street one day. Mr. Harnais urged her to have that discussion with the Chief of Police.

Mr. Eng made a Motion to endorse the Approval Not Required conditional on the revisions; seconded by Mr. Reynolds.

Vote: 4:0:0

Adoption of 2015 Planning Board Meeting Schedule 7:29 p.m.

Staff made the request to adopt the proposed 2015 Planning Board Meeting Schedule.

Mr. Eng announced he would not be available for the March 10, 2015 meeting.

Mr. Reynolds made a Motion to adopt the proposed 2015 Meeting Schedule; seconded by Mr. Mikami.

Vote: 4:0:0

Request for As-Built Approval and Release of Surety 7:31 p.m.

20 Pond Street/MSMM LLC (12-04)

Attorney Carl Johnson appeared for MSMM, LLC

Staff summarized the issues, confirmed that all outstanding issues are complete; recommended As-Built approval and the release of the \$1,000.00 surety.

Mr. Eng asked how many apartments are currently rented; Mr. Johnson was not sure but speculated about 9.

Mr. Reynolds had no questions, he made a Motion for As-Built approval and release of surety; seconded by Mr. Eng.

Vote: 4:0:0

Discussion: Default Status of Oregon Avenue Definitive Subdivision (03-17) 7:33 p.m.

Peter Morin, Braintree Town Solicitor, addressed the Board and explained that he has been in negotiations with the Attorney for the Bond Company, North American Specialty Insurance Company. Relative to the Oregon Avenue development, the Bond Company wrote the surety policy in the amount of \$78,000.00. Now that the Town is calling in the Bond, the Company is requesting that the Town accept a settlement. He said the Insurance Company is offering \$58,000.00 to settle the issue. He said the estimate provided by Amory Engineering in 2013 was \$58,470.00; the estimate provided by the Braintree Engineering Department was \$70,000.00 including a 20% contingency. He said the Bond Company's offer did not include the 20% contingency.

Chair asked if Mr. Morin recommended accepting the \$58,000.00; Mr. Morin said yes and he believed part of the work could be performed in-house.

Mr. Mikami did not agree with negotiating the bond. He reminded Mr. Morin that the Bond Company accepted payment from the Applicant in the case that something happened and now they are not fulfilling their obligation. Mr. Morin agreed and said further that he would not deal with this company again if this is their practice. Mr. Mikami reminded him that Oregon Avenue had difficulties and we want to make sure that it is completed correctly. Mr. Morin said it will be done correctly regardless of the bond amount.

Mr. Eng asked Mr. Morin if he was confident that the work would be completed with the \$58,000.00. Mr. Morin said yes. Mr. Eng urged Mr. Morin to further negotiate with the Bond Company to perhaps split the difference.

Mr. Reynolds commented and asked when the work would start and end; Mr. Morin estimated in the spring of 2015.

Mr. Harnais asked if Mr. Morin could further negotiate the difference. Mr. Morin said that the Board can request that he seek additional monies on a contingency basis that, if not fully utilized, it could be returned.

Ms. Stickney commented that the bond was estimated on 2012 costs, she asked Mr. Morin how we cover the cost if current costs are more. Mr. Morin agreed that this lump sum settlement presents some risk regarding past and current costs but there are some savings that may buffer against inflation.

Mr. Morin recognized that the Board took reasonable steps prior to calling the bond.

Ms. Stickney suggested we obtain a time schedule to accommodate the neighbors who have been inconvenienced for 12 years. She noted that this would involve using the Town Department of Public Works for part of the completion and therefore should establish a definite schedule so it does not fall by the wayside. Mr. Morin assured the Board that it could be accomplished in the 2015 spring-summer season.

Mr. Reynolds made a Motion to accept the recommendation of Town Council contingent upon further negotiations of the bond funds; seconded by Mr. Mikami.

Vote: 4:0:0

Member McDonald arrived at 7:44 p.m.

Continued Public Hearing

Whites Hill Estates II - OIB Corporation 7:45 p.m.

Definitive Subdivision Plan Amendment (File 04-02)

Paul Marchionda, P.E., Marchionda & Associates, L.P., Stoneham, MA
Kevin Emery and Jim Douglas, O.I.B. Corporation

Mr. Marchionda addressed the Board and explained that he completed the list of items that were requested by Staff. He presented a pre-blast survey map and confirmed that there is no time limitation for affected property owners to file a claim for any blasting damage. He said that it was decided that Lot 17 will be donated to the Town, that it is shown on the Plan as a buildable lot and that all the other lots will meet the Town requirements.

Chair called for public comments:

District 4 Counselor, Stephen O'Brien addressed the Board. He expressed his continued opposition of the project. He said that per the Army Corps of Engineers Report, Smelt Brook is federally funded but locally maintained. He urged the Board to continue to research the flood and blasting impact of this project. He noted several points, most referring to the State Regulation 527 CMR of the Board of Fire Protection Regulations. Specifically:

1. To expand the blast distance beyond the 250 FT minimum;
2. Preblast surveys not be allowed to be waived by the Fire Department for any reason;
3. That the cost of all reasonable Preblast Surveys be the burden of this Developer and future Developers of the individual lots;
4. Contrary to CMR Regulations, the Blaster should not be permitted to submit a Statement of Compliance (to adhere to a scaled distance) that waives the need to conduct Preblast Surveys;
5. The limitation of 30 days for property owners to request the Blast Inspection Report should be expanded;
6. The limitation of 30 days for property owners to report damage should be expanded;
7. That the Lot 17 and total land donation immediately be presented to the Town Council for authorization to convey a Permanent Conservation Restriction;
8. School impact; and
9. The length of the road.

Chair called for public comments:

George Keegan - 66 Mayflower Road asked for more clarification of the proposed drainage plan and wanted to know who did the calculations. He was concerned about increased mosquito breeding because of the detention pond in the area of the school. Further, he said that there is no recorded drainage easement in the Norfolk Registry on the Burke property or abutting properties. He suggested a different drainage plan. He noted past developers decision to not develop the property because of the ledge problem and he disagreed with allowing the project.

Nanette Ramsey - 97 Liberty Street, reminded the Board that the neighbors have objected to this project since it began many years ago. She noted the blasting impact on the 1927 water tower; mosquito breeding at the retention pond; a lack of adequate access for safety vehicles; concerns of the one-way road; traffic line-of-site difficulties and additional traffic congestion. Additionally, she noted the overburdening of schools and town services. She said regardless of blasting insurance, property damage inconveniences homeowners.

Jim Dawson - Mayflower Road, the retired Commissioner of Pond Meadow Park addressed the Board and presented a historical account of the White's Hill project. He said that in his experience, the effect of stormwater should be considered and noted a previous Weymouth Landing flood and the effect of drainage in the area. He summarized his belief that the proposed three retention ponds that will impact stormwater drainage.

Ron Kearns - 200 Pilgrim Road, noted the project being denied by the Town in the past. As he understood, Braintree's decision to not approve the past project(s) was upheld by the Courts. He agreed with Mr. Dawson that we should not shift the drainage solution for Weymouth Landing to the rear of Mayflower Road. He said he believed the retention system is a time bomb that will become a problem for the Town. He is opposed to the project but if allowed, the blasting liability area should be doubled to 500 FT. He noted his concern about blasting impact on the Town water tower and the burden additional children will add to the school system. He believed the changes in stormwater drainage would be additional liability on the Town of Braintree in addition to the monies it already invested in the Weymouth Landing improvements.

Chairman Harnais clarified for Mr. Kearns and interested residents that this project was never before the court. The project(s) that were referred to was a different type of project and further, the Court agreed only in part with the Town of Braintree. Mr. Harnais said that he obtained a copy of the case to see for himself and assured them that it was a different project. He said, the belief that this project has been shot down by Braintree and the Court is an inaccurate account, he urged those interested to review the case.

Chris Mazza – 22 Williard Street, asked that the Board update the questions and concerns of the residents.

Nanette Ramsey - 97 Liberty Street, commented about the land surrounding the Water Tower being deforested.

Member McDonald reminded all those present on the matter that this application has been before the Board for 9 months. She said the only issue before the Board at the current meeting is the length of the road. She noted numerous studies that were required; they were provided and they prove no negative impact. Additionally, drainage is and will be addressed further. She said the blasting has been addressed but is an ongoing concern; she suggested strict conditions to protect the residents and the Water Tower.

Ms. McDonald asked the developer if the mitigation of blasting damage includes damage to future homes that will be developed on these lots. She asked how the property owners will be protected.

Residents and the Board were informed by Ms. SantucciRozzi and Kevin Emery that the construction of homes is the responsibility of the Building Department and that new homes are warranted for one year by the individual builders.

Mr. Mikami agreed with Ms. McDonald and commented that the Lot 17 disposition has been resolved. He suggested that Staff condition a guarantee for any Water Tower damage. Relative to the blasting zone, he suggested Staff consult with Engineering and the Fire Department about the blast zone limit.

Relative to ground water, Mr. Mikami asked Mr. Marchionda if there is assurance of no water problems. He also asked how the studies were determined. Mr. Marchionda said the studies are based on a 100 year storm, factoring 7 inches of rain within a 24 hour period. He noted he reviewed the post development water study and will review it again considering the project changes.

Mr. Mikami said he wanted an estimate of the amount of blasting and duration, he asked how many truckloads? Mr. Marchionda explained that not all the material will be trucked off site; that some of the material will be repurposed for building retaining walls. Mr. Douglas added that the rock is going to be used for construction on site, he stressed that they will intentionally minimize the number of trucks to save expenses.

Mr. Mikami asked about the number of anticipated blasts – Mr. Marchiona said there will be one blast at a time. Mr. Mikami asked if OIB will develop all of the 9 lots. Mr. Douglas did not have a definite answer; Mr. Emery said there is a possibility that the lots will be purchased by and blasted by one builder.

Mr. Eng discussed enlarging the 250 FT blast impact area. Mr. Douglas suggested residents located between 250 FT and 350 FT area can request a survey but they will not approach those homeowners.

Mr. Eng asked about test blasting. Mr. Marchionda discussed the practice of small blasts to measure and access the best way to approach the blasting project. Mr. Douglas, said that the Fire Department sets machines that measure the vibrations and they work with the blaster to protect property owners.

Mr. Reynolds briefly touched on the blasting to assure the residents that the Board is aware of their interest. Relative to the water issues, he said with all the studies and the questions about water issues, he feels confident the Board has covered all their bases. He said the Board has worked hard to create a mitigation plan for this project.

Mr. Harnais read the CMR and noted the time frame to report damage is 30 days from the blasting incident. He said that the question about Lot 17 is answered; it will be donated to the Town. He addressed the residents and explained that although the Board cannot prevent development, he did assure them that the Board can control the interest of property owners.

Mr. Reynolds then discussed the remaining waiver, the length of the road. The previous concerns regarding Lot 17 have been addressed, the developer needs a waiver for the Roadway on the Plan that was submitted at 1,250 FT.

Mr. Reynolds said that there have been other roads; similar to this, since the Subdivision Rules were implemented, that were granted waivers. There are roads in the town that are longer that have not experienced issues, the Fire Department went on record stating they did not have an issue with access or egress with this proposal. He said he felt confident with these assurances and that the length of the road is an important element to the success of the project.

Mr. Mikami noted that Lot 17 and the land donation goes before the Town Counsel for a vote. Counselor O'Brien said that a land donation draft will follow the Planning Board meeting. Mr. Harnais confirmed that there would be a letter in writing – Ms. SantucciRozzi explained that OIB, Peter Morin and Staff discussed the Lot donation previously and it will be submitted to Peter Morin who will work with the Town Council.

Ms. SantucciRozzi suggested the Board discuss the 20 FT no disturbance buffer that affects the abutting homes on Pilgrim Road which would allow her to begin the Draft Conditions.

Ms. McDonald asked Mr. Marchionda to remind her how the 20 FT width for the buffer was established. He explained the subject buffer could not be wider because the lots need terraces to achieve the grading per the drainage calculations.

Mr. Reynolds made a Motion to Grant a Waiver for the length of the road (1,250 FT); seconded by Mr. Mikami

Vote: 5:0:0

Mr. Reynolds made a motion to continue the matter to January 13, 2015 at 8:30 p.m; seconded by Mr. Eng.

Vote: 5:0:0

Mr. Harnais announced that Member McDonald will be resigning from the Board and that she will not vote on further issues because she will not be available for those in the future.

Ms. McDonald departed the meeting at 9:41 p.m.

**233 Middle Street – John Scott Nursing Home – Welch Healthcare & Retirement Group
Major Modification to Planning Board Decision (01-06)** 9:43 p.m.

Frank Marinelli, Esq., 439 Washington Street, Braintree; for the Applicant
Richard Welch – President, Welch Health Care & Retirement Group
Michael Welch - Welch Health Care & Retirement Group
Paul Casale, VP Welch Health Care & Retirement Group
Kevin Kozack and John Reposa - Cutler Associates, Architect, Design & Build Firm
David Kelly – Project Engineer, Kelly Engineering Group, Inc.

Chair read the Public Notice.

Mr. Marinelli introduced Richard and Michael Welch and summarized the project background. He provided renderings of the project and highlighted the improvements that included parking and a port cohere. The project reduces the size of the building, opening the corner and adding landscaping.

Mr. Kelly discussed the drainage including a second catch basin that will be taken by pipe to the street.

District 4 Counselor O'Brien addressed the Board and noted he was not notified about the project until the Planning Staff sent him the notice. Mr. Marinelli apologized to Counselor O'Brien and said that it was not intentional.

Mr. Harnais assured the Counselor that he was an advocate of Counselor involvement. Mr. Mikami commented that it is a nice looking project and asked about the parking plan. Mr. Marinelli said the parking will be reduced by 2 spaces and because the project is an overall reduction, they will more than comply with parking restrictions.

Mr. Eng asked about the curbing and the lighting. They are planning on concrete curbing. Mr. Welch also explained about the upgraded lighting and that low light is planned.

Mr. Reynolds complimented the project and had no questions.

Mr. Harnais complimented the project suggested the use of granite curbing.

Mr. Eng asked how many linear FT of concrete curbing is proposed and asked Mr. Welch to reconsider using granite.

Ms. SantucciRozzi explained she had a previous discussion with Mr. Marinelli about the utilities that resulted in the removal of Condition 17.

Mr. Reynolds made a Motion to Accept the Correspondence dated October 14, 2014 through December 11, 2014, including the Original Decision dated June 14, 2001 and April 3, 2001; seconded by Mr. Eng.

Vote 4:0:0

Mr. Eng made a Motion to close the Public Hearing; seconded by Mr. Reynolds

Vote: 4:0:0

Mr. Eng motioned to approve the Special Permit and Site Plan Review, conditioned on changing the proposed use of concrete curbing to sloped granite curbing; seconded by Mr. Reynolds.

Vote: 4:0:0

7, 7 Rear and 11 Independence Avenue – Thomas Fitzgerald 10:15 p.m.

Use Special Permit and Site Plan Review (14-06)

John Garland, Attorney for the Applicant, 15 Foster Street, Quincy

Thomas Fitzgerald, Applicant

Arthur Choo, Architect, Arthur Choo Architects of Quincy

Steve DeRoche, Civil Engineer, Neponset Valley Survey Associates of Quincy

Erin Joyce – Civil Engineer, Joyce Consulting Group

Bob Connolly, Karma Environmental Services

Tony Andronico, LSP

Mr. Garland addressed the Board and explained that he was unaware that there would not be a full Board for this matter. Mr. Harnais apologized and informed him that Ms. McDonald resigned from the Board, she will only be attending one more meeting in January, 2015.

Under the circumstances, Mr. Garland asked for a continuance to January 13, 2015.

Mr. Reynolds made a Motion to Continue the matter to January 13, 2015 at 8:45 p.m; seconded by Mr. Eng.

Vote: 4:0:0

10 Forbes Road (Suite 270) – Gail Driscoll of Bella Derma Aesthetics Clinic 10:20 p.m.
Use Special Permit and Site Plan Review (14-11)

Gail Driscoll, RN, BSN - Medical Aesthetician, owner of Bella Derma Aesthetics, LLC

Chair read the Public Notice.

Gail Driscoll addressed the Board and explained the service of semi-permanent makeup for the purpose of patients with hair loss or those undergoing chemotherapy and radiation. Another purpose of the service is for people over age of 50 to redefine eyebrows. The permit is for Chanell Smith Conway. She has a Boston permit to perform this service in the City of Boston and would like to be permitted in Braintree.

The Chair welcomed public questions, there were none.

Mr. Mikami asked about the operation and how is it regulated. Ms. Driscoll said they have been in business for 9 years – they are licensed by the State Board of Cosmetology and overseen by a Medical Board. The proposed service license and facility is regulated by the Braintree Board of Health.

Mr. Mikami asked about the hours and any plans to add employees or any operation changes. Ms. Driscoll said they will keep the same hours and are not planning to add employees, except for Ms. Conway. She explained that the service is by appointment only; it involves makeup only, no tattooing.

Mr. Eng asked Staff if there were any Health Department comments. Ms. Stickney said yes, the Applicant has to abide by the local regulations and next to go to the Board of Health for the facility and Ms. Conway's license.

Mr. Reynolds clarified that the review was for the one individual and did not have any further questions or objections.

Mr. Mikami made a Motion to accept the Correspondence dated November 21, 2014 through December 12, 2014; seconded by Mr. Reynolds.

Vote: 4:0:0

Mr. Reynolds made a Motion to Close the Public Meeting; seconded by Mr. Eng.

Vote: 4:0:0

Mr. Reynolds made a motion to approve Conditions; seconded by Mr. Eng.

Vote: 4:0:0

Section 135-904.2(B) Billboards – Mayor Sullivan 10:38 p.m.
Zoning Ordinance Text Amendment (TCO #14-066)

Town Solicitor, Peter Morin
Attorney Carl Johnson

Mr. Morin addressed the Board and explained that the Mayor wants to amend the existing bylaws to allow billboards within highway-business zoned property, falling under the jurisdiction of outdoor advertising. He said it offers the Town the possibility of alternative revenue. The bylaw should be written to avoid impact on any residential areas and it will be sensitive to conservation areas. The current bylaws have to be updated to meet the current sign technology that is being used.

Mr. Mikami asked if there would be an appeals process for Applicants that are denied a permit. Mr. Morin said there is always an appeals process. The Special Permit granting authority would be the Planning Board, enforced by the Building Department and have to meet the Outdoor Advertising Board rules and regulations. He said further that they envision only one or two spots maximum. It is intended to write the bylaw to meet statutory and constitutional standards but still provide residential protection.

Mr. Eng asked if there is a possibility of an Application with the potential of disrupting a residential property. Mr. Morin said there is the potential for bad applications; it is the intention to implement limitations on an Applicant to be eligible. Such, any advertising will be limited to 1,000 FT from any residential property. Additionally, the Planning Board has the authority to deny an Application based on aesthetics, flicker, flash, or any interference with adjacent property.

Mr. Reynolds confirmed with Mr. Morin that the commentary offered by Ms. Stickney will be incorporated into the bylaw language. Mr. Morin said her comments will be incorporated into an updated draft for the next meeting. Mr. Reynolds also confirmed that the proposed zoning locations are limited to highway business zones.

Ms. Stickney expressed her concern about how to limit the intended highway location from the unintended highway. Mr. Morin said he fully intends to explore any consequences to the fullest extent before it is passed.

Mr. Johnson offered several comments. He informed the Board that currently, any off premise sign within 660 FT of a state highway is not allowed, it is regulated by the State Licensing Board. He suggested that the Town tailor their standards including size control in the format of the bylaw. He agreed with Ms. Stickney that a special overlay would control the placement of the billboard advertising.

Mr. Reynolds discussed the possibility of wireless operation being hacked. Mr. Morin concurred that it is difficult to capture ever changing technology and incorporate it into the language.

Mr. Eng made a Motion to Continue to January 13, 2015; seconded by Mr. Reynolds.

Vote: 4:0:0

Approval of Minutes – October 14, 2014 10:47 p.m.

Mr. Eng made a Motion to accept the Minutes of October 14, 2014; seconded by Mr. Reynolds.
Vote: 4:0:0

With no further business, Mr. Reynolds made a Motion to Adjourn the Planning Board Meeting;
seconded by Mr. Eng.

Vote: 4:0:0

Meeting adjourned at **10:48** p.m.

Respectfully Submitted,

Elizabeth Schaffer