



Braintree Town Council Committee on Ordinance & Rules

One JFK Memorial Drive
Braintree, Massachusetts 02184

MEMBERS

Sean Powers, Chairman
David Ringius, Jr, Vice- Chairman
Charles Kokoros, Member
Timothy Carey, Member
Charles B. Ryan, Ex-officio

January 16, 2019 MINUTES

A meeting of the Committee on Ordinance & Rules was held in the Cahill Auditorium on Wednesday, January 16, 2019 beginning at 7:00pm.

Chairman Powers was in the Chair.

Clerk of the Council, Susan Cimino conducted the roll call.

Present: Sean Powers, Chairman
David Ringius, Jr, Vice- Chairman
Charles Kokoros, Member
Timothy Carey, Member

Also Present: James Casey, Town Clerk
Christine Stickney, Director Planning and Community Development
Carl Johnson, Attorney for Simon Group
Rick Tonzi, General Manager Simon Group South Shore Plaza
Elizabeth Mees, Historical Commission Chair
Ronald Frazier, Historical Commission Vice-Chair
Rayna Rubin, Historical Commission
Santina Giannino, Historical Commission
Kate Nedelman Herbst, Historical Commission (not in attendance)
Residents, Rezone concerns

There was a moment of silence for all those serving in our armed services, past and present, and the meeting was opened with the pledge of allegiance to the flag.

Approval of Minutes

• May 9, 2018

Motion: by Councilor Kokoros to approve minutes of May 9, 2018

Second: by Councilor Carey

Vote: For (3 - Powers, Kokoros, Carey), Against (0), Absent (0), Abstain (1 - Ringius)

New Business

- **18 062 Rezone: Braintree Property Associates LP or take up any action relative thereto**

Carl Johnson, Attorney submitted the following information:

This petition is submitted by Braintree Property Associates Limited Partnership ("BPA") the owner of the South Shore Plaza ("Plaza") located at 250 Granite Street being Braintree Assessor's Parcel 2089-0-22 and contains 111.654 acres of land. BPA also owns the un-zoned private portion of Lakeside Drive, Silver Road and Bonnieview Road, and residentially zoned Assessor's Parcels 2039-0-56 (off Silver Road), 2039-0-6 (131 Lakeside Drive) and 2039-0-7 (135 Lakeside Drive) containing a total of 1.78 acres. The total land area owned by BPA is 113.425 acres. The land area subject to the requested change in zoning classification from un-zoned and Residence B to Highway Business District amounts to 4.348 acres or roughly 3.8% of the total land area owned.

Existing Zoning Classification of the 4.343 acres consists of 1.24 acres of un-zoned private roadway layouts (Silver Road, Bonnieview Road and the private portion of Lakeside Drive) and 3.103 acres of Residence B zoned land (131 and 135 Lakeside Drive plus vacant wooded lots).

The vacant wooded lots comprise 2.563 acres of land although zoned Residence B was commonly owned prior to the 1993 text amendment to Bylaw Section 135-701 Dimensional and Density Requirements, Note (9), and has been used for lot coverage, building coverage and open space calculations as part of the 111.645 acres that comprise the Plaza. As a result, the Plaza has paid real estate taxes on the 2.563 acres as HBD property at the commercial tax rate; the 2.563 acres comprises 60% of the land area petitioned to be rezoned.

The Rezone is sought to:

1. Provide uniformity of zoning for the entire 113.425 acres owned by the petitioner consistent with the Highway Business District zoning for the property at 250 Granite Street used as a Regional Shopping Mall, and to enable the entire property owned by the petitioner to be utilized for dimensional and density calculations.
2. The majority (60%) of the land area subject to the requested reclassification is already taxed and utilized as Highway Business District land as part of the Plaza.
3. The adjoining land area is used for Highway Business. Residential zoning is no longer a suitable or desirable use of the property. The residential zoned land is not adjacent to any other residential zoned land and the South Shore Plaza should be uniformly zoned.
4. The rezone will allow for conformity with established use of the site as provided in the Zoning Ordinance Table of Uses.

The public benefits to the general area and the community:

1. Principal public benefit is increased taxable land area at the commercial tax rate. The 1.78 acres of land not already taxed at the commercial rate (un-zoned roadway layouts and remaining Residence B property) will increase tax dollars paid by roughly \$30,000.00 annually.
2. The area subject to the rezone is a small piece of the 113.425 acres owned by BPA; the rezone, however, will permit future development opportunities on the entire property that is suitable, complementary and vital to the economic future and social vitality of the South Shore Plaza with direct economic and social benefits to the Town of Braintree and South Shore region.

Carl Johnson stated an issue that has come up is the gate at the end of Lakeside Drive. It has been there for 25 years and it is a condition of the Special Permit that it is gated and it provides a turnaround for buses and people doing drop-offs at Flaherty School.

Rick Tonzi, General Manager of the South Shore Plaza stated we are under incredible, challenging times. We are working hard to be here for another 60 years. That means change. There will be no impact on Flaherty School. The gate will remain. It was only opened 5 times this past year. It is important to keep the gate if access is ever needed for especially emergency personnel.

Councilor Kokoros stated he would like a legal document signed by the owners of the South Shore Plaza in an agreement with the Town of Braintree, even outside of the original conditions in the Special Permit. Is this something you would be agreeable to?

Rick Tonzi replied yes to being agreeable to this.

Councilor Kokoros stated he would like some sort of agreement outside of the Special Permit. The commitment is there and I will work with the Mayor's office and Town Solicitor to come up with something.

Carl Johnson, Attorney for Simon Properties stated this would be up to the corporate office. There has been no deviation from the Special Permit.

Councilor Powers asked who currently controls the gate from Lakeside Drive to the South Shore Plaza?

Rick Tonzi stated the Police Chief and the Fire Chief and himself under authorization of a town official.

Rick Tonzi replied to the question are we going to put an apartment building there? The rumors are out there but we have not had conversations with the developer on this. Simon meets every week on ideas and uses. The conversations are recreation, hospitality and food, retail. We do not have any deal at this time. We will not make a deal until we have confidence we can do something with the area. We have had a lot of conversations.

Councilor Kokoros stated I have difficulty as a representative in this district without knowing what will happen there. How can I support this. I don't have a level of comfort to support this at this time.

Councilor Ringius stated generally when rezoning a property you will not get a site plan of what is going to be there prior to the rezone. That's just the way it works. There is a lot of concern from residents who have reached out with concerns over the use. Highway business allows many different uses. I have concerns on the impact to Flaherty school if there were an apartment building built there. I have concerns on the unknown.

Councilor Powers asked about the Special Permits. Any new zoning does not affect the Special Permit. Carl Johnson, Attorney stated you could re-affirm the Special Permit and conditions that are currently in place. We do not know what would go there. Anytime there is a rezone there is a full permitting process and needs to go before the Planning Board. It has to be vetted and it has to receive a Special Permit.

Councilor Powers stated this is challenging. We have no hard plans in front of us. We have public agreement from the representatives of the mall that no egress or access would be allowed from Lakeside Drive to the mall. It has been stated there is currently no plans for any residential development. We would not allow anything to be built that would be detrimental to that neighborhood and Flaherty school.

Carl Johnson, Attorney stated we have coexisted extremely well with the neighboring school and have not overburdened the neighborhood with traffic. Simon is very responsive to any needs. Simon cannot afford to have a negative impact on the neighborhoods or anyone else. There is no present intent to use this as a multi-unit residential or condos. I cannot say that will never be the case but there is no one presently speaking to Simon about that. In the past they have talked to people but have elected not to do it.

Councilor Powers stated I would say you would run into some very strong opposition if it was the case. What is the will of the committee on this?

Councilor Ringius stated there is no reason to table this because all the information has been vetted. We should vote and make a recommendation to the full Council.

Carl Johnson, Attorney asked if there was something Councilor Kokoros wanted to work out first?

Councilor Kokoros stated as far as the Lakeside Drive access, both the turnaround with the gate and the Lakeside Drive private road access are two issues that need to be put to bed. There is no commitment on what will happen with this piece of property leaves me to not support some of the uses that would be allowed there. That would put me in the negative at this point.

Councilor Ringius stated one of us should make the motion.

Motion read by Councilor Ringius:

That the Town Council vote, at the request of the property owner, Braintree Property Associates Limited Partnership, to amend the Zoning Map of the Town of Braintree, by rezoning from Residence B District to Highway Business District that portion of Assessors Parcel 2089-0-22 not already zoned as Highway Business District, including the private portion of Lakeside Drive, Silver Road and Bonnieview Road unzoned or not already zoned Highway Business District, and Assessors Parcels

2039-0-56 (off Silver Road), 2039-0-6 (131 Lakeside Drive), and 2039-0-7 (135 Lakeside Drive). The parcels to be rezoned are shown on a plan entitled, "Rezoning Plan Lakeside Drive, Braintree, Mass.," prepared by Feldman Land Surveyors, dated October 15, 2018 and on file with the Town Clerk. The acreage to be rezoned totals 189,176 square feet or 4.343 acres. The rezoning request has been recommended favorably by the Planning Board, as detailed in its report to the Town Council dated January 15, 2019.

Motion: by Councilor Ringius

Second: by Councilor Carey

Vote: For (1 - Powers), Against (3 - Kokoros, Carey, Ringius), Absent (0), Abstain (0)

• **19 001 Town Clerk: Request to Amend General Ordinance Chapter 5.580 Taxicabs or take up any action relative thereto**

James Casey, Town Clerk stated this change request is to have the Taxicabs licensing renewal happen in June instead of February. This would help administratively for many reasons including the excise taxes need to be paid prior to the licensing renewal.

Motion read by Councilor Kokoros:

That the Town Council vote to amend the Town's General Ordinances, Chapter 5.580 "Taxicabs", as most recently amended, by deleting, in Section 5.580.020 "Expiration of License" the word "February" and replacing it with the word "June".

Motion: by Councilor Kokoros for favorable recommendation to the full Council

Second: by Councilor Carey

Vote: For (4 - Powers, Kokoros, Carey, Ringius), Against (0), Absent (0), Abstain (0)

Old Business

• **18 025 Mayor: Demolition Delay Ordinance or take up any action relative thereto**

The Demolition Delay Ordinance is something the Town has been looking at for a number of years now. The driving force is the Historical Commission. It allows for some time to take a look at the structure to determine if it is deemed to be historic in nature and if it is worthy of preservation, photography or to keep components of it. Proposed is for structures 75 years in age or older.

Elizabeth Mees, Historical Commission stated we want to reiterate our concerns for such a by-law. We feel it is in the interest of the town to preserve and documents historical structures as much as possible. This would give us a method of potential changes to give us the ability to document buildings if they are determined to be significantly historical.

The Demolition Delay will restrict what I can do to my property – this is entirely false.

Elizabeth Mees stated we just want documentation. We would hopefully take some photos from the public way and work with the property owner. If it was their desire to demolish their building we would work with them. The intent is not to limit the use of the property or gain entry or violate privacy in anyway.

It is merely a pause so we can have the time to document a historically significant structure. Many structures would not be determined historically significant. The Historical Commission meets monthly. A structure would be determined significant within 60 days. If determined significant then the 6 month clock would begin. A lot of structures are not significant in town. It will be a very quick determination. If not significant we could determine that 5-10 business day's maximum. We are open to discussion and to hear any thoughts you may have.

Councilor Powers asked if all building permits will be screened through this process.

Christine Stickney stated this is for a demolition. This committee is interested if there is going to be a total rising of a structure at certain age. The addition to a structure of that certain age is not a concern. Also if removal or rising of 50% or more of a structure of historical significance. The purpose is to take a look at the exterior of these buildings. That is what we want to preserve.

Councilor Kokoros asked if someone pulls a permit to say side the outside and add to it this will not trigger the demolition delay ordinance.

Elizabeth Mees stated no we are just talking about demolition.

Councilor Kokoros asked if the Historical Commission has seen the timeline documentation from the Building Department.

Elizabeth Mees stated yes we have. The greatest amount of structures will not be determined significant. We would expect a maximum 60 day turnaround to make a decision.

Councilor Ringius referred to two areas of concern in the Ordinance. There is a fine line between these historical structures and the rights of the private property owner.

5.700.040. Responsibilities of the Owner

Once a Significant Building is determined to be Preferably Preserved, the owner shall be responsible for properly securing the building, if vacant, to the satisfaction of the Inspector of Buildings. Should the owner fail to so secure the building, a subsequent destruction of the building at any time during the 6 month demolition delay period, which destruction could have been prevented by the required security measures, shall be considered a voluntary demolition in violation of this Ordinance.

5.700.070. Regulations and Fees

A. The Commission may promulgate regulations to administer the provisions of this Ordinance.

B. The Commission is authorized to adopt a schedule of reasonable fees to cover the costs associated with the administration of this Ordinance (including the costs of publishing and mailing hearing notices).

Councilor Ringius stated who will be responsible for those fees and when will those fees be determined.

Christine Stickney stated abutters 300 feet out are notified. The advertising of this is mailed out in envelopes/stamps are provided by the property owner. The advertising cost is for the newspaper. Our base fee is \$300.

Councilor Ringius stated is there any talk to increase the age of the buildings beyond 75 to 100 years? Elizabeth Mees stated we are open to discussion.

Councilor Kokoros stated he has an email from the Assessor's office stating 37% of structures are 75 years and older. I would entertain 100 years. I do not agree with 75 years.

Elizabeth Mees stated all we are trying to do is ask for a pause.

Councilor Ringius referred to the list of delays from other towns. Also asking to adjust the 60 days. I would like to see this move forward.

Three things: The month total, the year total and the schedule of fees.

Councilor Powers stated I would like to see what the fee schedule would be to have a discussion on that.

Elizabeth Mees stated so we should come back with adjustments to the age of the building/structure, the time-frame to make a decision (30-60 days) and if it were of significant it could be less than 6 months and the schedule of fees. Also the period of years of 75 or 100 and the reason behind it.

Councilor Kokoros stated I would like you to consider the 125 years. I think 30 days would be adequate to make a decision on whether or not there should be a delay and I would ask the Building Inspector here to talk about this time table and how things work now and the process and time, what the application is like, fees, etc. I would like to hear how the system works now and how it will work if we approve the demolition delay ordinance.

Councilor Powers stated I would like to see pros/cons for 100 years and 125 years.

Councilor Kokoros stated "Motion to Table Order 18 025 to a future meeting"

Motion: by Councilor Kokoros to Table Order 18 025 to a future meeting

Second: by Councilor Carey

Vote: For (4 - Powers, Kokoros, Carey, Ringius), Against (0), Absent (0), Abstain (0)

It was unanimously voted to adjourn the meeting at 9:18 p.m.

Respectfully submitted,
Susan M. Cimino
Clerk of the Council

Documents provided for Meeting

- 18 025 Mayor: Demolition Delay Ordinance
- 18 062 Rezone: Braintree Property Associates LP
- 19 001 Town Clerk: Request to Amend General Ordinance Chapter 5.580 Taxicabs