

## CITY OF WALTHAM

### BOARD OF SURVEY AND PLANNING

The following are minutes of the 6:00 pm February 1, 2023 meeting held in the Auditorium of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. In attendance were Chairman Creonte, and members Barrett, Callahan, DeVito and Moroney.

The Vice Chairwoman opened the Public Hearing at 6:00 pm and informed the public that the meeting was being recorded by the local Waltham Cable Access Channel and if anyone was planning to speak, they were required to sign in. She also noted that Chairman Creonte and member Barrett were in attendance via FaceTime. She then said the Chairman would like to say something.

Chairman Creonte stated he wanted to hand the Chair over to the Vice Chairwoman Callahan since she is at the meeting and felt it would be better.

The Vice Chairwoman immediately open and closed the public hearing as there were no items on the agenda and opened the regular meeting.

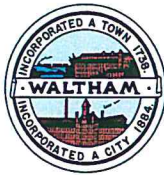
The Clerk read the first item on the agenda which was for deliberations and recommendation to the City Council on a Zoning Ordinance Amendment on Section 3.28- Family child care homes.

The Vice Chairman commented that the Board had a joint hearing with the City Council on January 9, 2023 to hear this zoning amendment and it was pretty straight forward and felt they have aligned with the State Law. She asked if anyone had and questions or comments on this.

Mr. DeVito agreed and also wanted to thank Councilors Darcy and Dunn for bringing this forward and he is certainly in agreement with. The Chairman is in agreement.

On the motion of Mr. DeVito, seconded by Mr. Creonte, the Board

VOTED: to send a favorable recommendation to the City Council on the Zoning Ordinance Amendment Section 3.28 Family Child Care Homes as written.



The Clerk read the next item on the agenda which was for an Approval Not Required plan for 200 Smith Street.

Attorney Philip B. McCourt, Jr. of 14 Church Street, Waltham came forward representing the petitioner and they are here asking that you consider allowing the property at 200 Smith Street be basically split in half. So, as you can see Wade Putnam's comments states it does meet all the requirements as it basically has a lot that has a lab that used to be the post office, and we just want to split it in half and eventually they would be going to get a special permit to rectify the current building to build something else up there. It's like a chicken and egg situation, we need the ANR plan approved first. Wade suggested we make the requirements of the ANR but then talks about the deed registering as this happens to be registered land, and in order to get this all approved and if you are to be so kind to approve the ANR plan, we will then file to register it but we would not record it until the Deed Court allowed the de-registration of the land otherwise, we couldn't record it.

Attorney Tim Sullivan is here as well as Brandon Lee who is the Engineer. If you look at the plan under notes, item #2 states, "the land heron is registered, but will be de-registered prior to recording of this plan." This is not terribly complicated.

Mr. Moroney said you saw Wade's email that says the de-registering must take place before the ANR is approved, isn't that correct.

Mr. McCourt said he understands the statement as it has to take place before the recording of the ANR plan, which he agrees with. You can de-register it until you have the separation of the land approved first.

Mr. Moroney said he doesn't understand how he can or other members of the Board can sit here and approve something that isn't the correct format be approved.

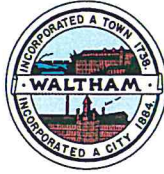
Mr. McCourt said that Wade's comments do state it meets all the requirements for approval.

Mr. Moroney said yes it meets the requirements but it doesn't meet them because he has this land court issue and you're asking him to change a piece of registered land.

Mr. McCourt said that the registered land and then de-register it, and again it's a chicken and egg situation, and something has to come first and it is this ANR plan. We are asking that you allow this piece of land that is up there to be split in two and subject to, and it's shown on the plan them de-registering it and not recording before that it done.

Mr. Chiasson, the Clerk of the Board commented that Wade keeps saying, previous to it being filed, and never mentions it can't be approved.





Mr. Moroney said okay, that is a good point.

Mr. Moroney then asked Mr. McCourt if he has seen the comments submitted to the Board from Brian Bower, Acting Chief Building Inspector.

Mr. McCourt said they did.

Mr. Moroney asked if he should read this into the record.

Mr. McCourt said that is up to you, but they agree to what he is saying, and we need to get the special permit to re-authorize the building, and we are happy to make that subject to the approval as well.

Mr. Moroney said that unlike Mr. Putnam's quote, Brian Bowers states, "This plan if approved creates a Zoning Violation in accordance with Article IV, Section 4.11 which states, a City Council special permit is required to increase the FAR above .25 and not to exceed .60."

Mr. Moroney feels that due to this statement they can't approve the ANR plan until you get the City Council's permission first.

Mr. McCourt said again, as he mentioned previously, we can't go to the City Council without the ANR approval for the two separate lots. If they don't get the City Council Special Permit then we wouldn't use the plan.

Mr. Barrett asked if Lot B is marked nonbuildable.

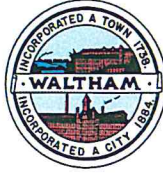
Mr. McCourt said neither lot is unbuildable.

Mr. Barrett said then that kills the FAR. If you make a notation on that plan that will take care of it.

Mr. McCourt said that they would make that notation on the plan that states that we need a special permit from the City Council.

Attorney Tim Sullivan, of Goldstein and Stearns also representing the petitioner, came forward to address that point that Mr. Barrett just mentioned. We actually brought in tonight a separate plan tonight that has an added note, #4- *"A special permit from the Waltham City Council will be obtained for Lot A prior to recording of this plan"*.

So instead of adding a note on the plan on Lot B- Non-Buildable we will add this to the plan which will cover the issue with the de-registering the plan etc.



That's the point to the email, it wouldn't be zone compliant until the plan was recorded, so this how we are addressing that issue.

Mr. Moroney said to Mr. Barrett, to answer your question that Lot B does not say it is a Non-Buildable Lot but it does say "No Building Here On", which is probably the same in legal terms.

Mr. Barrett agreed and with out a building they are not asking for FAR, so there is not reason to bring FAR up if there is no building. The ANR is not asking for any FAR or variances or special permits. So the FAR becomes a moot point.

Attorney Sullivan said on Lot B, that is correct, there is no FAR, there are not buildings. On Lot A the question that is being raised is when you change the lot line, its currently two lots, we are redrawing the lot, so when you redraw the lot line, Lot A becomes smaller of course, and that's the FAR question, so that is why we added the note on the plan that he feels addresses the issue.

Mr. McCourt came forward with the revise plan with the added note and the Board members reviewed it.

Mr. Moroney asked why this noted wasn't previously on the plan.

Mr. Sullivan replied that the issue was just raised that day so that is why they are just bringing the plan tonight.

The Vice Chairman woman asked the Chairman if he had anything to say.

The Chairman asked if the subdivided lots comply to current zoning now.

Mr. Sullivan said they comply with lot area and frontage, which is required for an ANR plan, the question that is being raised is FAR which requires special permit before recording.

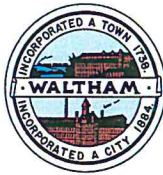
The Chairman said the subdivided lots must comply with current zoning, and asked if they comply.

Mr. Sullivan said yes, they comply.

The Chairman said then the only question is the FAR, and if the FAR is already in use, then it is an unbuildable lot at this time, is that correct?

Mr. Sullivan said the notation it does not create an unbuildable lot does the trick; the note is that prior to recording of this plan a special permit will be obtained with the Waltham City Council for Lot A.





Mr. Sullivan thinks we are just getting hung up on terminology, and it could just say, it can't be recorded with the special permit obtained. The building exists on the lot today, so this note regarding the special permit is good.

The Vice Chairwoman then said, they just passed into the Board another plan, and if you look on the plan, we have there are three notes, this new plan submitted just now has another note added, #4 – A Special Permit from the Waltham City Council must be obtained for Lot A prior to recording of this plan.”

Mr. DeVito asked Mr. McCourt if he could give the Board clarification of ownership of this property. He thought this property had a new owner and not the United States Post office.

Mr. McCourt said that is correct, the owner is currently Kings Property for a couple of years now.

The possible zoning violations were discussed further and the Members agreed the ANR plan does meet the requirements and they will let the other Boards worry about the rest of it.

Mr. Moroney asked to see the new plan with the added note.

The Vice Chairwoman asked if there was a motion.

Mr. Moroney made a motion to continue at the next meeting with and extension of time to act. He agrees with what Mr. McCourt is saying about the chicken before the egg, but he doesn't like having an egg and not knowing what the chicken is going to be. He is extremely nervous about approving a plan that his signature is going to be on for approval, but yet it has road blocks all over the place. He gets that is how the game is played but he doesn't understand why all of those approvals are not getting done first and then come to us for the ANR plan approval.

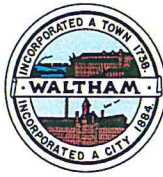
Mr. McCourt said they couldn't apply for the other permits without the plan separating the lots is approved. We have conditioned the plan that states we will get the special permit.

Mr. Moroney asked that you have to have a signed ANR plan to go deregister the lots.

Mr. McCourt said that is correct and to go to the City Council as they are going to be acting on Lot A, not on Lot B.

Mr. Barrett said he agrees with Mr. McCourt, it all makes sense and Wade states the plan meets all the requirements and it seems like we are going back to two meeting ago with these issues, it makes sense how they need to proceed. He also commented that Wade is in an Engineer and he personally would defer to the Attorneys that have expertise in this real-estate court matters.

Mr. Moroney asked Mr. Barrett his thoughts on what Mr. Bower says that it creates a zoning violation.



Mr. Barrett said he would let them worry about that with the City Council and any other Board, it is our job to make sure it meets our requirements and it does. None of us are lawyers, and if we make a mistake Brian, its an ANR that meets our requirements and he has no problem signing it. Mr. Devito and Ms. Callahan agreed with Mr. Barrett.

The Chairman said his only contention with this plan was it's compliance with the current zoning which it does, and he feels we are entitled to accept this plan as presented.

The Vice Chairwoman agreed, it meets the Boards requirements for approval.

The Chairman asked Mr. Moroney if he wants to continue with his motion.

Mr. Moroney withdrew his motion.

The Vice Chairwoman asked if there was another motion.

**On the motion of Mr. Creonte, seconded by Mr. Barrett, the Board**

**VOTED: to accept the Approval Not Required plan for 200 Smith Street with the added note- #4- A Special Permit from the Waltham City Council will be obtained for Lot A prior to recording of this plan.**

The Clerk read the next item on the agenda which was for an Approval Not Required plan for 28 Smart Street.

The Vice Chairwoman asked if any was there representing this petition.

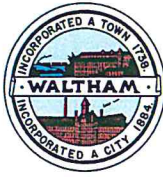
Scott Cerrato of 24 Pleasant View Drive, Exeter, New Hampshire came forward and reviewed the ANR Plan showing they are combining three parcels into one parcel.

The Chairman then commented that we have comments from Wade Putnam stating that this ANR Plan meets all our requirements and don't believe we have any issues with it.

The Vice Chairwoman asked the other members if they had any questions.

Mr. Moroney what the minimum frontage was.

Ms. Callahan though tis was 90-feet.



Mr. Cerrato said it is 70-feet.

Mr. Moroney found the 70-feet noted on the plan and was now good.

The Vice Chairwoman asked if there was a motion.

**On the motion of Mr. Creonte, seconded by Mr. Moroney, the Board**

**VOTED: to accept the Approval Not Required plan  
for 28 Smart Street as presented.**

The Clerk read the next item on the agenda which was for the approval of the minutes of the January 4, 2023 meeting.

The Vice Chairwoman asked if there was a motion.

**On the motion of Mr. DeVito, seconded by Mr. Moroney, the Board**

**VOTED: to approve the minutes of the  
January 4, 2023 meeting as  
presented.**

The Vice Chairwoman asked for a motion to adjourn.

**On the motion of Mr. Barrett, seconded by Mr. Moroney, the Board**

**VOTED: to adjourn the meeting at 6:29 p.m.**

Respectfully submitted;

Michael L.J. Chiasson, Clerk  
Board of Survey and Planning