



## **CITY OF WALTHAM**

### **BOARD OF SURVEY AND PLANNING**

The following are minutes of the 7:00 p.m. November 1, 2017 public hearing held in the Public Meeting Room of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. In attendance were Chairman Creonte and members Barrett, DeVito, Duffy, Moroney and Tarallo.

The Chairman opened the public hearing at 7:00 p.m., informed the public that the meeting was being taped by the local WCAC Channel and if they were going to speak they were required to sign in. Then, he opened the public hearing.

He then asked for a motion to appoint Janice Deveney as Acting Clerk of the meeting.

On the motion of Mr. Barrett, second by Mr. Devito, the Board

VOTED: to appoint Janice Deveney as acting Clerk for the  
November 1, 2017 meeting.

The Acting Clerk read the 1<sup>st</sup> item on the agenda which was for a Special Permit More Than One Principal Building on a Lot at 86-88 Maple Street a/k/a 469-489 Moody Street.

The Chairman asked if there was someone present representing this petition.

Attorney Ranen S. Schechner of 10 Cedar Street, Woburn, MA came forward representing Ralph Amelia of R&A Realty Trust.

Attorney Ranen reviewed the site plan dated October 21, 2017 showing the revision the Board had requested. One of the major concerns was to have the petitioner come back with drainage improvements. The Petitioner is prepared to capture and control all runoff from the roof of the 86-88 Maple Street building on site. They had submitted a drainage analysis and control facility design to be constructed that was prepared by Dr. Edward Chiang, P.E. dated 10/17/17 and submitted to the Board on 10/24/17.

They also submitted a letter from the owner of Embassy Trophy, Larry Scafidi, addressing the air vent at the rear of 86-88 Maple Street. Mr. Scafidi no longer uses this vent and will have it removed from the building.

Also per the request of the Board, they have determined that the City of Waltham owns the chain link fence which abuts the Chestnut Street parking lot. The petitioner has no jurisdiction over the fence.

The garage doors at the rear of the 86-88 Maple Street property building are to be covered over and/or removed.

All of these issues were addressed from the previous meeting and have been added to the revised Decision, along with the list of 81R Waivers as shown on Exhibit A.

Attorney Ranen asked to have this revised Decision handed out to the members.

All these items were discussed.

The Chairman then opened the meeting to the Board.

Mr. Duffy commented that there are sufficient enough problems with this site that cannot be remediated such as the distance between the two buildings would be impossible to bring up to the current zoning standards and would require a variance with the Zoning Board of Appeals.

Attorney Ranen said yes it would need a variance.

Mr. Duffy then said that the water flow across the sidewalk onto Maple Street needs to be addressed somehow, because the Engineering Department has pointed out that is not allowed from any property in the city now.

Also, as far as the 12-inch grate, the Engineering Department suggests that it may be flowing onto the property of abutters, and from the picture of the out flow pipe it heads under the parking lot on the site but where it goes from there nobody seems to know, and that too needs to be addressed. Mr. Duffy thought there were too many problems for this petition on this particular site and unless those things were addressed he could not support granting the petition.

Mr. Barrett agreed with Mr. Duffy, there are some things that cannot be changed. He asked if they had seen Wade Putnam's new comments dated October 31, 2017.

Attorney Ranen said yes, they received them at the end of the day on Tuesday.

Mr. Barrett asked if he had any answers or rebuttals to these new comments.

Attorney Ranen said they have, and they can go through them one at a time.

Mr. Barrett said he would like to clarify some things that cannot be changed, however he did want to go through them and you did respond positively that would be good.

Attorney Ranen said he had the six new comments and can respond at that time.

Mr. Barrett read comment #1.

**Drainage is shown for 86 Maple Street for the down spouts only; the building at the rear has pavement around it which runs off into the City of Waltham parking lot. The only address at the rear is 86 not 86-88 Maple Street.**

Mr. Barrett said there is relevance to the first part of this comment, the rear of the building has pavement around it which runs into the city parking lot. You don't have any intension of doing anything about that?

Attorney Ranen said they have every intension of capturing all water off the roof of the building there and controlling it on site. They did identify that there is a 4.7 foot side yard and a 4.5 foot rear yard that they are not controlling water on, and yes there is the parking lot that they are not controlling water on. But all water off the roof will be contained into the proposed wells on site.

Mr. Barrett read part of comment #2.

**The 12 by 12 grate at the right of 86 Maple Street.** We don't know where that goes?

Attorney Ranen said that is correct, they don't know where it goes.

Mr. Barrett ready comment #3.

**The garage doors at the rear of 86 Maple Street are proposed to be removed together with the vent.**

Attorney Ranen said that that has been added as a condition in the revised Decision that he had with him for the Boards review. This revised Decision received at the meeting was then handed out to the members. Condition #4 now states that "The garage doors at the rear of the 86-88 Maple Street building to be covered over and/or removed."

Mr. Barrett said for Attorney Ranen to save time and go over these conditions if they apply to the comments.

Attorney read that the section of the draft Decision which states that if the Petition is granted is subject to the following conditions.

Condition #1. Only the top floor of 86-88 Maple Street shall be converted to residential use.

Condition #2. The drainage control facility designed by Dr. Frank T.T. Chiang, P.E., dated October 17, 2017 to be constructed.

Condition #3. The air vent at the rear of the 86-88 Maple Street Building associated with the Embassy Trophy Company to be removed.

Condition #4. The garage doors at the rear of the 86-88 Maple Street Building to be covered over and/or removed.



Condition #5. The 81R Waivers of the Subdivision Control Requirements by the Petitioner as shown in Exhibit A hereto are hereby granted.

Mr. Barrett said okay, but you did not address Wade Putnam's comments #4, "the requested report from the Traffic Engineer in regard to parking, turning radius, has not been seen in regard to this proposal. Mr. Barrett said there aren't any?

Attorney Ranen said that is correct.

Mr. Barret then read Comment #5," the curb cuts shown have no existing permits and no curb rounds. Run off from the remainder of the lot sheet flows into the sidewalk and City street contrary to city ordinance.

He continued with comment #6, the designation of side yard and rear yard for 86 Maple Street should be verified with the Building Department.

Attorney Ranen replied that they could verify that with the Building Department when they appear before the ZBA. The reason why this has been identified as "rear" is because of the zoning ordinance identifies the rear building and the front of the rear building and requires 50% more setback than otherwise would be required. Everything they are trying to do here focusses on that fact.

Mr. Barrett said he wasn't concerned about that, he just wanted it discussed so that it was on record, and he doesn't have any argument or an opinion on that.

Ms. Tarallo asked to go back to comment #5 of Wade's comments dated October 10, 2017 regarding the runoff at Maple Street and flows over the walk and into the street.

Attorney Ranen commented that they a containing the runoff from the roofs with the new drainage well, not the lot runoff.

Ms. Tarallo responded that from Wade's comment they are seeking that the Petitioner take care of all runoff from the property not just the roofs run off.

Attorney Ranen replied that with the new drainage wells designed there would be a huge improvement to the site. They just have a use change, not doing any external changes.

Ms. Tarallo said the Laws have changed and this is now required.

Robert Bibbo of 10 Hammer Street came forward to address this issue.

He stated it was there understanding that at the previous meeting when the drainage was discussed, the Board asked for them to do something about the drainage from the roof, which they have done. He said the Board didn't ask them to do anything about the runoff from the driveway, just the building. He suggested getting a copy of the minutes and reading them.

They aren't doing any construction on the outside of the building, not digging up any pavement, this is all interior work only. Not changing the site. He commented that at the last meeting the Board said, we understand you are doing interior work only, but you need to give us something that will show good faith with some drainage updates.

The Chairman responded that he doesn't believe the Board said "don't worry about everything, He believes the Board said they would like to see some improvements made to the drainage and definitely the roof of the building, so we are not going to change words.

Mr. Bibbo disagreed and said it was discussed that the Board didn't want any run off from the building.

The Chairman said they weren't going to confuse what was said, we wanted drainage contained on property.

Mr. Bibbo said that is why we didn't design anything for the driveway at this time. City Ordinance states if you are ripping up an existing driveway you must submit drainage. We aren't making any changes to the lot.

The Chairman said we know you told us you weren't doing any construction to the site, but we told you that we wanted drainage improvements.

Ms. Tarallo said she is confused with something written in the drainage analysis under #II, A. - City of Waltham Requirements section. It states, "The land use, includes lot with existing building which shall be razed, shall be treated as open space (wooded or grass area) for drainage analysis. She didn't think a building was being razed so she wants clarification on that sentence.

Mr. Bibbo reviewed this and explained that Dr. Chiang was referencing was that if you raze a building then you would need to submit drainage for the site.

Ms. Tarallo asked then you are not razing a building?

Mr. Bibbo said no we are not.

Ms. Tarallo also referenced from the analysis that the run off volume is larger at long duration storm than at short duration storm, so with the storms we have been getting lately, that is a major concern, and however you said that you are doing the roof run off.

Ms. Tarallo was glad they would taking out the air vent.

The only other matter she had concerns with was the address. Wade states that it 86 Maple Street not 86-88 Maple Street. This needs to be rectified for 911 emergency purposes, if there was ever any emergency at that building. There shouldn't be any confusion.

Ralph Amelia of One Lisa Lane, Waltham came forward as the owner and petitioner. The reason it was called 86-88 Maple Street was because the Fire Department requested it through the Engineering Department. Our building address is 86 Maple Street, our fire panel is listed for 86-88 Maple Street, it goes directly to the Fire alarm company, the Fire Department has been there before, everything goes smooth since he did what the Fire department told him to do and got approved by the Engineering Department. All of the buildings there are all up to date with the fire alarm panels, we have our annual inspections, and report submitted to the fire department. We pay our annual fees, our inspections fees, they are all up to date.



Ms. Tarallo commented that that all doesn't matter, if someone is living in that building and needs an ambulance or fire department, they need to know where they are going.

Mr. Amelia again stated that this was requested by the fire department. They have it on record that if the fire department gets a call to that building it will show up as 86 Maple Street. The other building on the other side is considered # 88 Maple Street.

Mr. DeVito asked them to verify that the ten (10) down spouts that are on these buildings are going to have all of the run off from the roofs going into the drywells and are not going to leave the property onto Maple Street.

Attorney Ranen said that the downspouts for the Maple Street building are going to be controlled on site. The rear building whose use is at issue, which we have provided the Engineering Control Facility is going to be controlled, the roof run off will be controlled on site and will not go onto Maple Street.

Mr. DeVito commented that you are saying that all of the downspouts, all ten of them, all of the water is coming off of those roofs, are going to be contained on the lot?

Attorney Ranen replied, "Yes".

Mr. Bibbo said they are going to run a pipe with a small pitch all around the entire building into to two pits up to the front.

Mr. DeVito said that he noticed was that in the back of the old Henderson Hardware building, there is a downspout that comes right onto the property, is that water going to captured and contained on the lot?

Mr. Bibbo said it flows into the catch basin and somehow goes under ground, so yes it stays on the lot.

Mr. DeVito then said he really wants to know if all the run off will remain on site and not continue to run into Maple Street.

Mr. DeVito also commented that you have curb returns on Maple Street that were probably installed 60 years ago. Since we are going through this Special Permit request can we do something about those curb returns to make them comply with current City standards?

Mr. Amelia came forward to respond to that request. He said that if that is what would take to get the approval then yes, he would be willing to update the curb rounds on Maple Street. But he want to go on record, that he would be the only one on the street that has that update.

Mr. DeVito responded that he isn't concerned about the other neighbors or businesses in that area, they are not before the Board with a request that is helping you. He felt this is the opportune time to make this site comply with current city standards.

Mr. Amelia said then he would do it.

Mr. DeVito thanked Mr. Amelia for agreeing to bring the curb rounds on Maple Street up to current city standards.

Mr. Moroney commented on Wade Putnam's comment #2 from the comments dated October 31, 2017, "The 12" by 12" grate to the right of 86 Maple Street now indicates an outlet onto the property of another with no easement provided. Apparently ends up in the city parking lot. This is the grate with the PVC pipe that Mr. Bibbo said contains all the water on site.

Mr. Amelia responded that all those pipes there in that grate will now go into the new system that was designed and proposed. You're talking about the existing one that was there when He bought the building. Since then, we have patched up the parking area because there was a turnover of restaurants, and 30 yard dumpsters were parked there. The hot top got damaged and we repaired and patched that, we did notice the grate that you are talking about, and we blocked that and that does not go onto to the lot or the abutter. If you look at that 12" by 12" inch drain, you will see that there is another outlet on the opposite side, he has watched that himself, that drain is about 2-feet deep, as the water rises when it rains the water flows right into the 4-inch pipe and zero flows to the city property or the other abutters. The pipe faces towards his parking lot not the Chestnut Street area. It has been blocked and does not cause any problems to anyone.

Mr. Moroney asked where the pipe goes that come out of the 12" grate that you now say does not drain onto anyone else's property.

Mr. Amelia said that was before he bought the building and since then it goes about 8 to 10 feet, then there is a retaining wall, that separated his parking lot from Mr. Panojian's who owns the building next door and there was a hole with that pipe that the water used to go onto Mr. Panojians parking lot or then onto Chestnut Street. But that has been all blocked up and he doesn't have any drainage problems at all, there is another pipe in that grate.

Mr. Moroney said, we have drainage, we have a 12" grate, you said you blocked that pipe that leaves the other property, yet we have several down spouts that lead down water down right into the grate, so where does the water go?

Mr. Amelia responded, "Somewhere in my parking lot". Again, I bought the building in 1977, I did not build the building. The only thing I am 100% sure of is the new proposed drainage system for 86 Maple Street, which right now does not exist and if this proposal here before you gets approved we will be improving the drainage system, we will putting the curb stones into Maple Street, and if it doesn't get approved we don't have any drainage issues on that property.

Mr. Moroney then read a section the last paragraph from Dr. Chiang's report that He would like explained. "All downspouts have to be connected to the leaching galley system. Connection pipe, if above ground or with shallow cover shall have steep slope, so to avoid freeze."

Notes state that PVC pipes to be attached to the side of the building, but on Dr. Chiang's drawing, I see the pipe, if I am standing in the City of Waltham parking lock and I am looking towards the back of the building, I see the notation that the PVC pipe to the drain pipe to the right, I see the picture referenced to the PVC at the front of the building, the drain pipe that comes from the back left rear of the building, does not show a PVC pipe connection to anything. There is a note that says, "Possible downspout connection pipe".

Mr. Bibbo responded. Looking at the design we wanted to take the right side of the building at the corner and bring it to the front, or from the back and all the way around the building. During



the design to do the new gutters, we entertained which direction would work. To bring the flow to the front of the building into those pits.

Mr. Moroney said he doesn't see anywhere in writing that they would be installing new gutters.

Mr. Bibbo said they will install new gutters if they are need and to bring the run off to the front of the building. We do whatever we need to do.

Mr. Moroney asked what is going to be done to keep those pipes from freezing up.

Mr. Bibbo responded that is no different from any other building or house that have them, all gutters are outside. They discussed PVC verses metal. Gutters are only 3 ½ inches, the PVC is 6 inches, the flow would be better in the PVC. What we are prospering is adequate enough for this building.

Mr. Moroney said so then, when he drives by in the winter and sees these PVC pipes all exploded and frozen, he will pick up the phone can call you and you are going to get them fixed?

The owner will get them fixed, absolutely. It is our achievement to contain all of the run off from that building.

Mr. Moroney commented that Attorney Ronen made a comment about the fence.

Mr. Bibbo said he surveyed the property and has determined that the fence is on city property. The good side faces the abutting property. The reason why it is damaged is from the plow pushing the snow towards the fence.

Mr. Duffy had once more comment, the section of the property you refer to as rear yard is that the area where the water goes on to city property?

Mr. Bibbo said it's just an asphalt walkway and the amount of runoff is miniscule.

Mr. Barrett commented that he would love to get all of the water off the property and have it stay off and not into the City's streets, but realistically I don't think it's possible and where nothing is going to be done physically to the exterior of the property, I don't think we should ask in good faith any more than what we have right now in agreements to upgrades, so if you would add in the Decision under the conditions, and add #6 that the curb rounds on Maple Street would be brought up to current City standards, **I would make a motion to approve the Special Permit More Than One Principal Building on a Lot at 86-88 Maple Street.**

**The Chairman said there was a motion on the floor and asked if there was a second on the motion.**

Mr. Moroney asked if he could ask one more question. The Chairman said yes.

On the proposed Decision, #5 where they state the 81 R Waivers as shown, are hereby granted, relative to the drainage system and what and what has not been done, he is a little concerned that the rest of the ones are granted.



Attorney Ranen said they have been discussing is something they will honor and that these waivers would not change the conditions that they agreed upon if granted.

Mr. Moroney wasn't sure if they need to have a list of waivers provided as an attachment,

Attorney Ranen also mentioned that the waivers are listed on the Title Sheet of the plans.

Mr. Barrett said he is fine with the way the Decision is written with the addition of Condition #6.

**The Chairman again asked if there was a second on the motion.**

**Mr. Moroney seconded the motion.**

**The Chairman called for a Roll Call.**

### **ROLL CALL**

<b>Mr. Duffy</b>	<b>NO</b>
<b>Mr. Barrett</b>	<b>YES</b>
<b>Ms. Tarallo</b>	<b>NO</b>
<b>Mr. DeVito</b>	<b>NO</b>
<b>Mr. Moroney</b>	<b>YES</b>
<b>Chairman Creonte</b>	<b>YES</b>

**There being three votes yes and three votes no, the motion did not pass. Five yes votes are required for a Special Permit.**

The Acting Clerk read next item on the agenda which was for a Special Permit for modifications to existing curb cuts at 421 and 385 Trapelo Road. The petitioner being the City of Waltham Recreation Department.

Carolyn Cooney of Carolyn Cooney and Associates, 13 Elm Street, Milford, MA came forward to address the Board on this matter.

She explained that they are Landscape Architectural consultants to the City of Waltham for the project at Elsie Turner Field. They are seeking this special permit for curb cut enlargement and re-paving. The Existing gravel parking lot has been enlarged to provide 40 parking spaces with new entrance and exit drives. The proposed 20-foot wide entrance and exit drives are located at the previous curb cuts, one which serves the gravel lot and the other a residential lot which was acquired by the City. This parking lot will be used for softball games during which participating teams will arrive and depart in buses which require a turning radius of 30 feet. City and is now part of the park. Both parcels are zoned residential.

The Fire Department submitted comments stating that they have no objection and that fire apparatus can pass through the lot as proposed.

She next reviewed the Transportation Director, Mike Garvin's comments dated October 26, 2017 which he requested the crosswalks be modified to meet City standards at 10-feet. He also commented that the proposed One Way signs are not the correct type and asked them to use sign

R6-1, which is 36" wide and 12" high. The revised plans handed out, dated October 31, 2017, Exhibit #2, show that these items have been revised on the plans.

The Engineering Departments comments submitted by Wade Putnam and dated October 17, 2017 were reviewed next. All six comments were discussed and all were addressed to the Boards' satisfactions.

The Chairman then opened the hearing to the Board for questions.

Mr. Moroney commented that he feels the road is too narrow for school buses.

Ms. Cooney responded that the road is a one way and is wide enough for the buses to travel one.

Mr. Moroney asked where a 60-foot long bus would park while waiting.

Ms. Cooney said the buses would park in unused spaces.

Mr. Moroney asked about the sidewalks that go through both lots if they will be sidewalks with granite curb.

Ms. Cooney responded they are and that they are not improving but using existing sidewalks.

He then asked if they addressed Wade's comment regarding the striping.

Ms. Cooney said that was addressed and revised.

Other members had no questions. The Chairman suggested that maybe the buses could drop off the students, and then leave and park at the High School and return when needed. He also recommended signage directing the buses where to unload and load.

Ms. Cooney felt that the upper area of the lot would be a good place for the buses to park and wait.

Mr. Moroney suggested that parking spaces #11 through #27 would be good.

Ms. Cooney reviewed the onsite drainage and answered any questions the Board had. The Board was satisfied with the drainage.

Mr. Moroney then suggested that changing the direction of the one way may be a better design, reversing the loop, the buses will have a better route.

This was discussed and the petitioner and the Kim Scott from the Recreation Department said they would be happy to change the direction of the one way road.

There being no further comments from the Board, the Chairman asked if there was a motion.

**Mr. Barrett made a motion to approve the Special Permit for modifications to existing driveways at 421 and 385 Trapelo Road.**

**Mr. Moroney second this motion.**



**The Chairman called for a roll call.**

**ROLL CALL:**

<b>DUFFY</b>	<b>YES</b>
<b>BARRETT</b>	<b>YES</b>
<b>TARALLO</b>	<b>YES</b>
<b>DEVITO</b>	<b>YES</b>
<b>MOROENY</b>	<b>YES</b>
<b>CREONTE</b>	<b>YES</b>

**The motion passed.**

The Chairman then closed the Public hearing and opened the regular meeting.

The Acting Clerk read the first item on the agenda which was for an ANR Plan at 80-83 and 5 Upton Road

This matter was continued from the previous meeting

Brian Spencer of 82 Lowell Street, Waltham, Ma came forward as the representative of this plan. He reviewed that at the previous meeting the Board asked for the frontage dimensions be added to the lots on the plan.

There were brief discussions.

On the motion of Mr. Barrett, second by Mr. DeVito, the Board

**VOTED:       to approved the Approval Not Required plan for  
80-83 and 5 Upton Road with the revision date of  
October 5, 2017 and to allow the Clerk of the  
Board to endorse the plan.**

The Acting Clerk read the next item on the agenda which was for the As Built Plans for Rock Lane formally known as 305 Bacon Street.

The Petitioner Attorney Howard Rock of 465 Waverley Oaks Road, Waltham came forward to address the Board on this matter.

First reviewed were the review comments dated October 23, 2017 submitted by John Pizzi, Construction Inspector from the City Engineers office.

There were brief discussions on the manhole, catch basins and the granite curbing that is damaged. The Board would like to see the granite curbing replaced.

The Chairman asked if there was a motion.

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

**VOTED: To approved the As Built plan with the revised date of October 30, 2017 for the Rock Lane Subdivision.**

The Acting Clerk read the next item on the agenda which was for a request to release the \$10,000.00 cash bond being held for the Rock lane subdivision.

**Mr. Barrett made a motion to release \$7,500.00 of the \$10,000.00 and hold \$2,500.00 until the Petitioner replaces the damaged granite curbing.**

**This motion was seconded by Mr. Duffy. The Board voted all in favor for this motion.**

The Acting Clerk read the next item on the agenda which was for an Approval Not Required plan for 697 Lincoln Street, Waltham, MA.

Attorney Joseph Connors 404 Main Street, Waltham, MA came forward representing the Petitioner. He reviewed the plan as well as the comment from the Engineering Department stating that the ANR plan meets all requirements of the Board.

There were no questions from the Board, the Chairman asked for a motion.

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

**VOTED: to approve the Approval Not Required plan at 697 Lincoln Street as presented and to allow the Clerk of the Board to endorse the plan.**

The Acting Clerk read the next item on the agenda which was for an Approval Not Required plan at 95 & 97 Chestnut Street and 458-464 Moody Street.

Attorney Brett Francis of 10 Hammer Street, Waltham, MA came forward representing the petitioner, Paul Ursino. Also with him was Robert Bibbo of Bibbo Brother Associates, also at 10 Hammer Street, Waltham, MA.

Attorney Francis explained that they are filing tis under Chapter 41, Section 81L. They are through an ANR plan for the division of property on 458- 464 Moody Street and 95 & 97 Chestnut Street which is the official address. He stated that it is not a subdivision, it's an exception to the subdivision law, and it's actually a division of a tract of land. So the requirements subdivision don't have to be met in this case. There is no zoning determinations



being made, they are only there for the 81L that would come further down the road with the permitting process. They were before this Board for just the 81L and the division of the tractive land. We can answer any question the Board may have.

The Chairman asked if they had received a copy of the City Engineers comments dated October 31, 2017.

Attorney Francis said they did receive the comments on the 31<sup>st</sup> in the afternoon.

The Chairman said he would like to over these comments and see if they had a response to each and read the first one.

**Comment #1. The Lot shown as parcel 1A has two buildings on one lot, 95 Chestnut Street (the structure at the rear of 458-464 Moody Street) and 458-464 Moody Street.**

Attorney Francis responded that they agree with that comment that it is just a state of fact.

**Comment #2. 81L may be used to subdivide when two buildings are on a lot; however both lots it appears must have frontage on an approved way. Creating an easement or right of way as shown on the proposed plan does not create frontage under the Subdivision Control Law. This should be presented to the Law Department for an opinion to determine whether an easement or right of way by an ANR plan creates street frontage purposes. Without a definitive subdivision plan being brought before the Board of Survey and Planning.**

Attorney Francis states that he does not agree with Mr. Putnam's conclusion on this point, this petition is the exception to the subdivision law, if you read the subdivision law, 81L the last sentence clearly states that in this situation, when you are dividing a tract of land with two building on a lot that pre-exist the zoning or the Planning Board can be done so without the frontage. Mr. Bibbo does have with him tonight cases that have been approved by the Engineering Department as well as this Board. showing this same thing, that there isn't frontage, and also has handouts on the case law as well.

**Comment #3. The original plan recorded at the Registry of Deeds, shows parcel 1 in blue with frontage on Moody Street. Parcel 2 shown in orange which would own parcel 3 shown in orange providing frontage for parcel 2; parcel 3 also being an easement for parcel 4. Parcel 4 shown in green has frontage on Chestnut Street. All lots have frontage on an approved way as they now exist.**

Attorney Francis that this too is a statement of fact, he is not sure that parcel 2 owns parcel 3, but it is irrelevant to the parcels that we are discussing.

**Comment #4. There does not exist a recorded of Chestnut Park (so-called) being laid out as a street, way, etc.**

Attorney Francis responded that as far as Chestnut Park goes, whether it is a street or a way, it is irrelevant to our analysis, we are not looking for that, we do have an easement over that right of way that would be the egress. This has nothing to do with our request.

Mr. Barrett commented that he is concerned about Wade's comment #2. He said he isn't familiar enough with 81L to make a decision on that, even with a copy of the case law you have submitted, he would hate to have to send it the Law Department but that may be what we need to do.

Attorney Francis responded that the clear language in 81L states "*conveyances or other instruments adding to, taking away from, or changing the size and shape of, lots in such a manner as not to leave any lot so affected without frontage above set forth, or the division of a tract of land on which the land lies into separate lots each of which one such buildings remains standing, shall not constitute a subdivision*"

The word "OR" being the big factor is this case.

Mr. Barrett asked if both building were built prior to the law.

Attorney Francis said yes, one of them fronts Moody Street and the other one fronts Chestnut Street. Both pre-date around 1930, well before the subdivision control law.

Mr. Bibbo then asked if they could had out a copy of the 81L law (exhibit A) and copies of previously approved plans by this Board, (Exhibit B).

The Chairman said he could and called for a 2-minute recess to allow the Board a chance to read these handouts.

The Chairman reopened the meeting.

Mr. Duffy asked if Parcel 1A and the existing building on parcel 1B, are the dimensions between the two buildings accurate.

Mr. Bibbo said yes, they are creating that new line, under the 81L definition you have two buildings existing on a lot, you are allowed to cut it up by law. Case law states they can cut it up any which way they want to.

We are showing the distance between the two lot lines, not the two buildings.

Mr. Barrett commented that he would like a site view and a clearer explanation of the 81L.

Ms. Tarallo has concerns about the 81L law. She would like this sent to the Law Department as the Board members are laymen, not lawyers and felt they should refer this to the law Department, but it needs to be approved within the 21-days from the submittal date, so she has concerns about that as well. She didn't feel comfortable making a decision on this without an opinion from the Law Department.

Mr. Bibbo commented that the Board has approved four other cases just like this one.

Ms. Tarallo said she didn't care about those other four cases, she was concerned about what was in front of her now.

Attorney Francis said he understands that, but the plain language is pretty clear, that in a case where two buildings on a lot and those two buildings pre-date the zoning subdivision control law, that they can be divided without the frontage. They do have egress out, and this would



probably have to go to the ZBA and they will deal with any dimensional setback at that time. He does not think that this should go to the Law Department they just received these comments from yesterday afternoon, they haven't had time to respond to them, we provided cases that have been approved by this Board, as well as law on point surrounding this provision.

Mr. DeVito commented that the Board relies on Wade Putnam for advice and agrees with his colleague that we should send this to the Law Department and get their interpretation.

Mr. Moroney asked that #7 through #11 Chestnut Park, is that what is referred to as #95 Chestnut Street?

Attorney Francis replied, "Yes". He commented that the deed actually used to say Chestnut Park, but through history and insistences that had to be changed and is now on record as 95 Chestnut Street.

Mr. Moroney read what was submitted, Exhibits A and B and it talks about Lots, and into separate lots, and at looking at your case law and in every one of those things he sees a Lot A and a Lot B. What he saw on this proposed plan, is proposed driveway easements not lots. He also sees parcels and not lots. He didn't see a designation of what is Lot A or what is Lot B.

Attorney Francis said what is existing is one lot, but what will be after the fact will be Parcel A and Parcel B.

Mr. Moroney commented that your examples in your case laws, everything you are citing say Lots not parcels.

Attorney Francis said they are used interchangeably.

Mr. Moroney then commented that he agreed with his colleagues and would like this sent over to the Law Department.

Mr. Duffy asked if they had time to wait for an opinion.

Ms. Deveney informed them that the 21-day Time to Act on this was November 9, 2017.

The Chairman asked the petitioner if they would entertain to waive the Time to Act until the next meeting of December 6, 2017. He explained they would like to get some Council on this, or the other option would be that they vote on it then.

Attorney Francis asked if they did agree to continue this to the next hearing, and prior to sending to the Law Department, they would also like to be able to provide more information as they only had a day to prepare more information on 81 L to the Board, or is this a situation where it doesn't matter what he provides and you would still want to send to your Law Department.

The Chairman suggested that they bring any Waltham cases where this has been approved to the next meeting.

Attorney Francis said they just handed those out to the Board.

Ms. Tarallo said they should have given the Board this information with their original submission.

Mr. Moroney asked why the petitioner was doing this subdivision.

Attorney Francis replied, "For a sale". In order retain the Moody Street Building and sell the #95 Chestnut Street property they need to do this.

Mr. Moroney said that he still has concerns with the utility easements.

Attorney Francis said there is no frontage to the back lot. If there was frontage to the back lot, that's what they would be doing. Mr. Bibbo reviewed the parcels. He explained calling a parcel is interchangeable, it could be called a lot. He said this was done before, on School Ave which they handed out to the Board tonight as hand out. That lot doesn't not have frontage, the back piece, and they had created an easement along the front. And the other one was done at Summer Street, the same thing no frontage and a created easement to get to the parcel.

Mr. Moroney asked if any of those approvals had law Department documentation.

Mr. Bibbo said no, they did not need it, The plans had been reviewed by Mr. Putnam.

Mr. Moroney asked if they had those review comments to those approvals.

Mr. Bibbo said you are talking years ago.

Mr. Moroney replied, you are telling us Mr. Putnam reviewed and approved these previous plans, but you can show us that.

Attorney Francis replied that we just got these comments a day and half ago, we didn't have enough time.

Mr. Mooney then pointed out that Wade Putnam suggested in his comment that this needs to be sent to the Law Department, because he had concerns as well.

Attorney Francis replied that had they had more time, Mr. Bibbo would have met with Mr. Putnam to discuss 81L and ask him to rescind that comment.

The Chairman then interrupted and said that this wasn't go anywhere, and the Board needs to make a decision on how to proceed.

**Mr. DeVito made a motion to continue to the December 6, 2017 meeting and to agree with the petitioner to waive the Time to act until December 8, 2017. The application is to be sent to the City Law Department for an opinion.**

**Attorney Francis agreed, and Ms. Deveney and Attorney Francis put this agreement in writing.**

**Mr. Barrett second the motion, the Board**



**VOTED:** to continue to the December 6, 2017 meeting and to agree with the petitioner to waive the Time to act until December 8, 2017. The application is to be sent to the City Law Department for an opinion.

The Acting Clerk read the next item on the agenda which was for the approval of the minute of the October 4, 2017 meeting.

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

**VOTED:** to approve the minutes to the October 4, 2017 meeting as submitted.

There being no further business on the agenda, the Chairman asked if there was a motion to adjourn.

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

**VOTED:** to adjourn the meeting at 9:05 p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michael L.J. Caisson".

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