



CITY OF WALTHAM

BOARD OF SURVEY AND PLANNING

The following are minutes of the 7:00 p.m. April 3, 2019 public hearing 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, Duffy and Moroney.

The chairman opened the public hearing at 7:00pm and informed the public that the meeting was being recorded by the local Waltham Cable Access Channel and if anyone were to speak that they should please come forward and sign in.

The chairman opened and immediately closed the public hearing and opened the regular meeting.

The clerk read the first item on the agenda which was for an Approval Required Plan at 111 & 103 College Farm Road.

Robert Bibbo, Land Surveyor at Bibbo Brothers and Associates of 10 Hammer Street, Waltham, MA came forward representing the petitioner Mark Roger Development, Inc. of 15 Francis Street.

Mr. Bibbo reviewed the ANR Plan and then handed out a contour plan that was requested by Ms. Tarallo for ANR Plans (Exhibit A). During development the petitioner had hit ledge and had to adjust the lot to fix this change of building height difference. The only way to do that was through the ANR Process. He said that Wade Putnam of the engineering department commented that the plan met all the boards' requirements.

After brief discussions the chairwoman asked if there was a motion.

On the motion of Mr. Barrett, seconded by Mr. DeVito, the board

**VOTED: to approve the Approval Not Required Plan for
111 and 103 College Farm Road as submitted
and to allow the clerk of the board to endorse
said plan.**

The clerk read the next item on the agenda which was for an approval of the minutes of the March 6, 2019 Meeting and the March 13, 2019 Special Meeting.

Ms. Callahan pointed out that she had contacted Ms. Deveney because there was a date error in the March 6, 2019 Minutes which should have stated April 14, 2019 not April 15, 2019, and that on the March 13, 2019 Minutes that Mr. Moroney was not in attendance.

Ms. Deveney stated that the corrections were made.

The Chairman then asked if there was a motion.

On the motion of Mr. DeVito, seconded by Ms. Callahan, the Board

VOTED: to approve the minutes of the March 6, 2019 Meeting and the special meeting of March 13, 2019 as revised.

The chairman then closed the regular meeting and opened the public hearing.

The clerk read the first item on the agenda for a special permit curb cut opening greater than 25-feet located at 300 Third Ave.

Attorney Michael R. Connors of 6 Lexington Street, Waltham, MA came forward to address the board. He represented L.P.C. Northeast, L.L.C. for a section 5.41 Special Permit for a driveway exceeding 25-feet. It was for the property known as 300 Third Ave. This petition was before the city council for a special permit for the new building as proposed. There was a public hearing on February 11, 2019, and then it went to the Ordinance and Rules Committee and then sent to the law department with questions.

We appeared before the board at your March Meeting, but there were only five (5) members present and we would need five (5) votes in favor for a the special permit so we asked for a continuance to this meeting of April 3, 2019 and were granted an extension of time and that was filed with the city clerk. Since that time, there has been a minor revision to the plans and that the cul-de-sac had a planter proposed in the middle of it. Since then, it has been removed from the plan and pavers have been added instead for public safety for automobiles as well as trucks serving the buildings in this area. One of the requirements for this proposed building is to have a loading area of 75 by 25 feet. With the proposed 25-foot width loading area proposed in the cul-de-sac was the reason they were before the board which increases the curb cut larger than 25-feet which is what is allowed by right.

They had received comments from the engineering department on the previous day and just before the meeting provided answers to those comments from Paul Finger from Paul Fingers Associates who was present to answer any questions.

The chairman then opened the floor to the board for questions.

Mr. Barrett asked if the driveway opening was shrinking from 85.7 feet to a total 50.5 feet.

Mr. Connors said that was correct.

Ms. Callahan commented that she did a site view and knew that this road was approved in 1988 and was wondering while going up to the Thermal Fisher Site which has beautiful sidewalks that suddenly stopped. "Do you have future plans for sidewalks and crosswalks you could put in?"

Mr. Connors explained that they did not have any authority with doing this as it was not part of their property. This was a mitigation improvement by a request of the fire department after they had lost an engine.

Mr. Finger explained the plan and the land rights that they have and didn't have. He reviewed all the sidewalks on the site that they could install.

Mr. Connors commented that the meeting with Mike Chiasson were prepared and submitted to the board including how the road would be built at the cul-de-sac and where the sidewalks would and can be.

There were further discussions on this matter.

Mr. DeVito stated that a part of Wade Putnam's Comments stated that the curbing in front of the area labeled entry plaza is shown as a bump out. The requirement for a curb in a cul-de-sac is for the curb to be ten (10) feet from the street line with the back of the walk to be at the street line and that your response states there is no impediment and he feels that Wade has not had a chance to rebut that statement and that he would like to hear your explanation.

Mr. Finger said that this comment came to his attention just the previous day. This has been reviewed three (3) times by the engineering department, so this is a new comment. He reviewed the small section of sidewalk that Wade was referring to. So the plans before the City Council and the Board of Survey and Planning and the subsequent plans that have been filed all have that little short bump out area. It's not exactly centered in the middle of the cul-de-sac and the radius follows it around. They could pull this section back ever so slightly. It doesn't add anything to the circulation or maintenance. It works as proposed. the fire department is fine with it. We would like to move forward with this little bump out.

Mr. DeVito was concerned that since the board received that comment back from Wade that the board needed to address it.

Mr. Finger said that if the board is asking that they remove this little section, they could easily do that. If you want to make that a condition of the approval, they would agree to it. The sidewalk could function there and we could pull it back.

Mr. DeVito would like to make sure that Wade Putnam would be in agreement with it.

Mr. Moroney asked if the vertical transitions in the curb would be granite.

Mr. Finger said, “Yes, it would be granite”.

Mr. Moroney asked for the square footage of the building coming down.

Mr. Connors said it was approximately 21,000 square feet.

Mr. Moroney asked how big the new building would be.

Mr. Connors said it would be 132,000 square feet.

Mr. Moroney said that you would be gaining revenue on approximately 100,000 square feet of new office space.

Mr. Connors commented that his client did not own the property, they are currently under a purchase and sales agreement subject to permitting and that the FAR Special Permit is currently before the City Council.

Mr. Moroney said you have made it a point of explaining how much your client is spending to improve the right of way with the sidewalks and the cul-de-sac. He just wants to make sure that it's a good investment for him to do that because your client would be gaining at least 100,000 square footage of rental space.

Again, Mr. Connors said that his client does not own the property and that this mitigation came about when the design and the development prospectus got passed around to all of the departments and at that time during the process the Fire Department asked if we could do this.

Mr. Moroney then asked if there was ever a cul-de-sac.

Mr. Connors said, “No”.

Mr. Moroney said, “Then okay, this makes sense since the Fire Department can now turn around and not have to back up”.

Mr. Moroney asked, “If this a private way owned by both 230 Third Avenue and Mass Highway, then how do you get to use it if it is a private way”.

Mr. Connors said that there are rights to pass and re-pass in the easement. Boston Properties owns it not Mass Highway.

The chairman commented that he didn't want to hold this up, but getting back to what Mr. Devito said, that small area that's not paved, she asked Mr. Devito if he would be satisfied if the petitioner would agreed to installing asphalt in that area. Mr. DeVito said, “Yes”.

Mr. Finger said that they would revise the plans so that the cul-de-sac is pulled back ten (10) feet as to comply with Mr. Putnam's comment.

Mr. Barrett wanted to make sure that wouldn't diminish the sidewalk.

Mr. Finger said it would not diminish the sidewalk at all.

The board members were finished with their questions.

Then the Chairman closed that part of the hearing and opened the hearing to anyone that would like to speak or stand in favor of the petition. There being none, he closed that part of the hearing and opened it to anyone that would like to speak or stand in opposition. There being no one, he closed that part of the hearing.

The chairman then asked if there was a motion.

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

VOTED: to approve the Special Permit Driveway Opening at 300 Third Avenue based on comments received from the engineering department dated April 2, 2019 the petitioner agreed to remove the “bump-out” in front of the entry plaza. The curb will be placed ten (10) feet from the street line and the sidewalk extended to the street line.

ROLL CALL:

JOHN DUFFY	YES
M. JUSTIN BARRETT, JR.	YES
KATHLEEN CALLAHAN	YES
S. ANTHONY DEVITO	YES
BRIAN MORONEY	YES

There being five favorable votes the motion passed.

The clerk read the next item on the agenda which was for a Special Permit More Than One Principal Building on a Lot at 86-88 Maple Street aka 469-489 Moody Street based on an agreed-to-remand in Middlesex Superior Court Civil Case No. 1781 CV03485.

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

They were back before the board for this special permit under section 4.215 of the zoning ordinance and rule 1.4 of the Board’s Rules and Regulations for More Than One Principal Building on a Lot for dwelling purposes and also seeking waivers under subdivision control laws which would be applicable to the proposal. They were presenting a revision to a petition that was

originally filed in May of 2017 and which was ultimately rejected by the Board of Survey and Planning in November of 2017 after the review process. The petition has made substantial changes to the petition which they believed addressed the board's primary concerns which led to the petition being rejected and at this meeting he wanted to review in summary what the petition was asking for which was to review how they got to this point in the process and to review and explain why they feel they have addressed the board's concerns and request the board approve the petition as being presented.

The locus is 86-88 Maple Street also known as 469-489 Moody Street. The petitioner has owned the locus for almost forty (40) Years. Its current shape is due to an ANR Plan that this board approved in 1993. The two (2) buildings that are on the locus have always been on one (1) lot. What the ANR Plan did in 1993 was to collapse a lot line that allowed enough parking to be part of this lot to serve both buildings. The locus is located in a Business C District. The buildings are very old and have been there since at least 1920. Both buildings are legal and non-conforming. The Moody Street Building was entirely commercial initially and currently the top floor is residential and the bottom floor is commercial. The building behind it, which is the Maple Street Building, is entirely commercial. It is that building which is what their proposal centers around. The petitioner has struggled to rent the top floor and what they were requesting or seeking approval for is to turn just the top floor of the Maple Street Building into one (1) single residential unit and leave the first floor commercial. Due to the way the building is situated, they needed to get a special permit from the board and then further relief from the ZBA in order to allow the petitioner to do that. It was important that the board recognized that they are not proposing to make any exterior changes to the Maple Street Building. They were not proposing in any way to increase the buildable space or to change the foot print. Basically, all the changes would be internal to allow it to be a residential single four (4) bedroom, two bathroom unit. The change that they are proposing is permissible under the zoning through a special permit by the ZBA and it's the policy behind a Business C District to promote this type of mixed use. What they were proposing was entirely consistent with the policy behind the zoning ordinances and with the nature of the neighborhood which in that area of Moody Street has multiple mixed usage buildings. There would be plenty of parking and plenty of access to the locus. It was consistent with the zoning.

He then reviewed the history of the petition, which was filed first in May of 2017, there was a hearing in June, 2017 and went through a review process and made multiple changes after receiving feedback from this board and from Wade Putnam on behalf of the city's engineering department. The petitioner ended up revising the proposal as initially presented because they were not making any changes to the exterior of either building. As initially presented, they did not have any water mitigation that the board was concerned about so they presented from that feedback. Essentially, a gutter system installed to capture all the run off from the roof of the 86-88 Maple Street Building. The roof of the Moody Street Building was already capturing and controlling water. They also agreed after discussions with the board to address a gray vent that was used by the trophy shop and to remove that from the building. We agreed after that discussion with the board to remove the cover of the garage door which was on the back of the Maple Street Building which faces the Chestnut Street Municipal Parking Lot. They are not garage doors. They don't go up and down and there are air vents that show them to be inoperable. The board was seeking to have those covered and we had agreed to do that and we

continue to agree now as a condition of the approval to have those doors covered. But he guesses they did not go far enough to meet the boards liking. The final hearing had questions about water that was flowing from the parking lot onto Maple Street and questions about this drain of unknown origin and unknown determination as to where it led. The drain between the Maple Street and the Moody Street Buildings is located on the site plan dated June 7, 2018 showing the Moody Street Building and the Maple Street Building. At the end of that hearing the board voted to deny the petition and in its decision, it cited two (2) specific reasons for the denial. 1. Not containing all water (drainage) on the lot and 2. The run-off that exits from an existing catch basin at the rear of the property is unknown.

So at the end of the day, the board's concerns with this catch basin and the board's concerns with water flowing onto Maple Street were simply too much and they were denied.

The petitioner took an appeal pursuant to 40A to superior court, after it was taken it was decided not to fight and to address the board's concern and we worked with Dr. Chiang to create an entirely new control facility design that was engineered to address essentially all of the runoff that was previously coming from across the parking lot and onto Maple Street. After that was designed the superior court remanded this case, out of court and back to the Board where then they filed the petition now before the board. They are asking the board to consider the new and or again their request for a special permit and our request to waive certain subdivision control law requirements with respect to what they are proposing. Again, so the board understood what they were proposing, the Moody Street Building currently has water from the roof that is drained. Currently, there was no control for the water that is running off the Maple Street Building and what they were proposing to do is put in a gutter system that goes around the entire roof. They were also proposing to put in grates to capture the water that would flow towards Moody Street and towards the side. There is an existing drain that is in the corner between the Maple Street and Moody Street Buildings, which is the drain that caused concern because the board didn't know where it went and the petitioner wasn't able to give a satisfactory answer as to where it went. This drain as it was being proposed, the grate and all the water from the roof as well as additional grates that would capture all of the water that would be flowing off the parking lot onto Maple Street. All of this is proposed to be funneled into a series of sixteen (16) catch basins that would be in the center of which is now the parking lot, which according to the engineer, is what they need to capture and control all this water. They are controlling almost all the water that they is reasonably able to be controlled from the site that the petitioner owns. The only thing that is not controlled is a few feet of space on the ground that would be around the Maple Street Building. There really is no effective way to control that, but controlling it as far as the gutter goes. The drainage pit where they did not know where it goes, when they did it up they will tie it into this drainage system, so now we all will know where this water goes.

The Chairman asked if it would eliminate to where it goes now and capped off.

Mr. Schechner said, "Yes", if it's connected to a sewer or some other place it will be disconnected and capped off and re-routed into the new system, the new drywells. We view this new proposal as a win-win. This is good proposal for a mixed use district and they are containing 98% of the water on site which is a great improvement". This concluded his presentation.

Before the chairman turned the meeting over to the board, he wanted to make sure that since the previous hearings in 2017, then going to court, that all of the issues that the board had now have been addressed in the new proposal.

Mr. Schechner said, "That is correct".

The chairman then opened the meeting up to the board.

Mr. Duffy said that we are still dealing with the waivers for this proposal and this is part of the problem we are having with this petition. He had issues with the petitioner asking for things as long as we give him an approval. In his opinion, that is not the way to do things. He should fix the problems then come in for the approval he needs. He then said that the drainage between the buildings, no one knows where it goes.

Mr. Schechner re-reviewed the drainage improvements for Mr. Duffy.

Mr. Duffy asked who designed it.

Mr. Schechner said it was Dr. Chiang who did the drainage calculations and the design and were prepared for a 200 Year Storm.

Mr. Barrett asked if the board had agreed to the waivers last time.

Mr. Schechner said they had reviewed and approved the waivers and they have not changed.

Ms. Callahan commented that this is a great improvement to the proposal and wanted to compliment the petitioner on addressing all of these concerns.

Mr. DeVito commented that there still seems to be some concern about the address where Wade Putnam has shown that there is no 88 Maple Street.

Mr. Ralph Amelia came forward to address that comment. He said that quite a few years ago that the property that is known as 469-489 Moody Street and there were also businesses in the back of the building where you have to enter from Maple Street, those building in the back used to be called "rear" 469-489 Moody Street and one (1) day the fire department said if there was ever an emergency on the Maple Street Side the address comes up at 911 as 469-489 Moody Street so they told him to go to the engineering department and fill out the forms, which Ms. Deveney is familiar with and put down what the purpose is for the address change, which was for public safety reasons. So this was done and all the businesses in the back of the building became known as 86-88 Maple Street. All of the alarm panels were updated at that time.

Mr. Moroney asked for an explanation of the dates of the drainage calculations.

Mr. Schechner reviewed that with the Board.

Mr. Moroney then said he was looking at a typical curb cut opening detail for twenty (20) feet on sheet three (3) of three (3). He said he did not see the granite curb corners being installed on the inlet side of the parking area. They should be installing these granite curb rounds.

Mr. Bibbo said that they would do that.

Mr. Moroney was very pleased.

Mr. Moroney asked if the sewer connection is shown on the plan that is referenced in Wade Putnam's comments.

Mr. Bibbo said it was and showed them on the plan.

There being no further questions from the board, the Chairman closed that part of the hearing. He asked if there was anyone present that would like to speak or stand in favor of the petition. There being none he closed that part of the hearing and asked if there was anyone present that would like to stand or speak in opposition to the petition. Being none he closed that part of the hearing.

He then asked if there was a motion.

Mr. Barrett made a motion to approve the Special Permit More Than One (1) Principal Building on a Lot at 86-88 Maple Street aka 469-489 Moody Street as revised and submitted on February 8, 2019 with the added condition to have the petitioner install granite curb rounds at the inlet of the driveway opening on Maple Street.

The motion was seconded by Mr. Moroney.

The Chairman asked for a roll call:

Roll Call:

John Duffy	NO
M. Justin Barrett, Jr.	YES
Kathleen Callahan	YES
S. Anthony DeVito	YES
Brian E. Moroney	YES
Chairman, William M. Creonte, Jr.	YES

There being five (5) votes yes and one (1) vote no, the motion passed and the special permit was approved.

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

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

VOTED: to adjourn the meeting at 7:50p.m.

Respectfully submitted,

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