



CITY OF WALTHAM
BOARD OF SURVEY AND PLANNING

The following are minutes of the 7:00 p.m. September 4, 2019 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, Callahan, DeVito, and Tarallo.

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

The clerk read the first item on the agenda for a Definitive Subdivision and the Extension of Caldwell Road. This matter was continued from the previous meeting.

Attorney Philip B. McCourt Jr. of 15 Church Street, Waltham, MA came forward to address the board. Since there wasn't a full body of members, he requested that this matter be continued to the board's next meeting of October 2, 2019 and to extend the time to act on the petition until December 13, 2019.

The chairman asked if there was a motion.

On the motion of Ms. Callahan, seconded by Mr. Barrett, the board

**VOTED: to table the petition to their next meeting of
October 2, 2019 and to extend the time to act until
December 13, 2019.**

Then, the chairman closed the public hearing and opened the regular meeting.

The clerk read the first item on the agenda for an Approval Not Required Plan for Caldwell Road and 1122 & 1124 – 1128 & 1130 Main Street.

Attorney McCourt came forward representing the petitioner.

He explained that there are two (2) lots on Main Street that have multifamily dwellings and this piece of land that is in front of you for consideration in relation to the subdivision is a piece that was added to the back and after discussions with the board and the engineers we decided to cut off that piece and deal with that; so, this is an ANR Plan that separates the pieces. Mr. Putnam reviewed the plan and found that it met all the requirements for an ANR Plan. Mr. Putnam did have some other comments to be addressed regarding some zoning issues, but the plan itself meets the criteria. He did ask that we add the addresses to the houses and we did that and turned that in this evening.

The chairman then commented that we have an ANR Plan in front of us, and according to Mr. Wade Putnam all requirements have been met, and the one (1) issue regarding the plan has been taken care of and he asked if anyone had any questions.

There being none he then asked if there was a motion.

Ms. Tarallo said she had some concerns that it didn't qualify as an ANR Plan. She asked Mr. McCourt what the frontage requirement was.

Mr. McCourt said he believed that it was eighty (80) feet, but was not sure. The frontage we are talking about is on Main Street.

Ms. Tarallo said yes, she was aware that it is on Main Street, but looking at what you want for an ANR on Lot A in the back, what is that frontage going to be?

Mr. McCourt said it doesn't and that is why it is marked unbuildable.

Ms. Tarallo insisted that the lot had to have frontage to be able to be an ANR Plan.

Mr. McCourt disagreed. He said that it doesn't have to have frontage if it is marked as an unbuildable lot, as Mr. Putnam has noted many times.

Ms. Tarallo said she understands what Mr. Putnam said, but that she has looked at this herself and it read that each lot has to show frontage on the plan. Does it provide adequate access? That really isn't frontage, it is really a side yard, and a side yard is not frontage. There isn't adequate access for that lot. I know you keep saying that it is not buildable, but I still feel that it doesn't qualify as an ANR.

Mr. McCourt responded that we do, the engineers do and Mr. Putnam feels that it does meet all the requirements as long as it was marked non buildable.

Ms. Tarallo said that she traveled in that area and knows how difficult that area is as far as elevation and everything else and does not look at this as having good access, and she walked the area and does not feel that it qualifies as an ANR Plan.

Mr. McCourt said it doesn't have the frontage, but it does have adequate access.

Ms. Tarallo said it is at the end of a street, it doesn't have frontage and there is no cul-de-sac there giving it frontage. So, in her opinion she felt it didn't meet the requirements.

Mr. McCourt said he respectfully disagrees.

Ms. Tarallo said she respectfully disagrees with him.

The chairman then called for a five (5) minute recess to review the ANR Plans, Rules and Regulations.

He then reopened the meeting to the board for questions.

Mr. Barret had no questions.

Ms. Callahan commented that she understands Ms. Tarallo's concerns which are hers as well, but if you are looking as if Caldwell Road wasn't there, and just looking at the plan it does meet the requirements for an ANR Plan since they have indicated that Lot A is a non-buildable lot. They are covering themselves for now for what they are doing and what they have to do. And according to the law, they do meet the requirements.

Ms. Tarallo said from what she got off the internet the approval not required under the subdivision control law and in that instance the board is to make sure the plan meets three (3) standards. The lots shown on the plan must have frontage in one (1) of three (3) ways, as specified in Chapter 41, Section 81 of the Massachusetts General Laws. The lots shown on the plan must meet the minimum frontage requirement as specified in chapter 41, Section 81 MGL and the planning board's determination that it has vital access to the lot as indicated by Chapter 41, Section 81 MGL otherwise exist. After reading that she felt that it did not meet the frontage.

Ms. Callahan said that it is Lots one (1) and two (2) that he is subdividing into one (1) and two (2) and just taking the back lot and saying that is non buildable. So it's really just for Lots one (1) and two (2) which have frontage on Main Street.

Ms. Tarallo said, "So you are saying that the ANR is off Main Street and not Caldwell Road?"

Ms. Callahan said yes that it is off Main Street.

The chairman commented that an ANR Plan must comply with three (3) requirements. It needs frontage, has to be on a public or private way and it needs area and utilities. Lots one (1) and two (2) both have that. Lot A is a non-buildable lot at this time and has nothing to do with Caldwell Road. We have done this many times when they subdivide land and they have a tiny slice of a lot and they will write on the plan that that lot is non-buildable.

Ms. Tarallo said the other thing is there is a variance with this. Does this ANR Plan violate the variance? We do not have a response on that.

The chairman said he did not know that answer.

Mr. McCourt commented that he did not think it did because back when the ZBA granted this, plans were not part of this requirement or added to it. However, that is a question that even Mr. Putnam raised so that is an issue that we will try to resolve. But that doesn't stop it from being divided.

Ms. Tarallo said she is still concerned about that, and how the variance could be affected by doing an ANR or even with the sub-division which she brought it up when we had the site view.

Mr. McCourt said it is an old case with the ZBA and there is an argument that could be made that even today he could build the fourth building because when it was granted there weren't all the criteria of building within two (2) years.

Ms. Tarallo said that with that variance he could still build a fourth building and that he does not have a deadline. Which means that variance is still in effect or active.

Mr. McCourt said that it doesn't tie into where the buildings are. So in today's world we have to file a plan to get a variance at ZBA to get granted subject to the plan, and to whatever is on the plan, they didn't do that back in the fifty's when this was granted.

There were further discussions on this variance concern.

There being no further questions, the chairman asked if there was a motion.

Mr. Barrett made a motion to accept the ANR Plan as presented.

Ms. Callahan seconded the motion.

The chairman asked the clerk to poll the Board.

Justin Barrett	YES
Kathleen Callahan	YES
Mila Tarallo	NO
S. Anthony DeVito	NO
William M. Creonte, Jr.	YES

There being three (3) yes votes and two (2) no votes, the majority rules and the motion passes.

Ms. Tarallo asked to address the board. She said she that she was concerned that now there is a variance and we just approved an ANR Plan and she would like this to go to the city's law

department and find out if this approval violates the variance. We need to have an answer either way as this could be an issue for us in the future.

Mr. McCourt commented that they could review that themselves and get back to the board.

Ms. Tarallo said she would like our law department to do that as well as we should know that fact.

The chairman then commented that she is asking that anytime an ANR plan comes in, if one (1) of the lots does not meet the requirements, can the petitioner put on that plan "not a buildable lot". Because if the answer is no, then this would have to be rescinded at some point.

The board then asked to send a second letter to the law department asking that question.

The clerk read the next item on the agenda for an update on the permitting at 225 Waverley Oaks Road.

The chairman said that a letter was submitted to the board that day from the attorney would be read into the record by Ms. Callahan.

The letter was from Attorney William J. Proia dated September 4, 2019.
To the Members of the Board, please recall that this office and the undersigned represent the landowner regarding the captioned matter, (project), and that we were scheduled to appear before the board at its September 4, 2019 Public Hearing to provide the board with a project update. We understand that additional information regarding the project may soon become available after the Board's September 4 Hearing, and so we respectfully request to appear at the Board's October 2, 2019 Public Hearing rather than its September 4th Hearing in order to provide the board with the most current and complete information possible. Thank you for your consideration and we look forward to appearing before the board in this regard on October 2, 2019. Very truly yours, William J. Proia.

The chairman said that this matter would be heard at the October 2, 2019 Meeting.

The clerk read the next item on the agenda which was for the minutes of the June 5, 2019 Meeting.

The Chairman asked if there was a motion.

Ms. Callahan wanted to mention that these minutes were exceptional, and told Ms. Deveney that she outdid herself and that must have been a lot of work and they were great and thank you so much for her hard work. However, she did, find just two (2) tiny typo's which she corrected and told Ms. Deveney about which were corrected and sent back to her and that all was fine.

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

**VOTED: to accept the minutes to the June 5, 2019 Meeting
as submitted.**
On the motion of Mr. Barrett, seconded by Mr. DeVito, the board

VOTED: to adjourn at 7:23 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael L.J. Chiasson', with a stylized, flowing script.

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