



CITY OF WALTHAM

BOARD OF SURVEY AND PLANNING

The following are minutes of the 7:00 p.m. June 3, 2020 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 Callahan, Barret, DeVito, and Moroney.

The Chairman opened the public hearing at 7:00 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 need to sign in when they come forward. There being no business in the public hearing the chairman closed that part of the meeting and opened the regular meeting. He also mentioned that with these crazy times he thanked everyone for wearing masks and staying six 6) feet apart, and that the room, chairs and microphones have all been sanitized.

The Chairman had a moment of silence for the passing of former board member John Duffy, and spoke about John for a few minutes.

The Clerk read the 1st item on the agenda for modifications of a Definitive Subdivision at Third Ave. Prospect Hill Lane.

Attorney Philip B. McCourt of 15 Church Street, Waltham, Ma came forward to address the board representing Boston Properties. With him was James Ward of Boston Properties, Keir Evans of V.H. B., Rob Nagi of V.H. B. and Nick Scoli of Boston Properties. This will be a huge traffic improvement and Rob will come forward and review the plan.

Rob Nagi from V.H. B. came forward. He is the traffic engineer and project manager for Boston Properties for the project. They were there with this petition to seek some traffic easements over two (2) pieces of private property to support a larger transportation project that actually just started recently. The project starts around Third Avenue a new interchange project that has been going through the design review process with Mass DOT and with the city. They received initial permits to start construction on the project around two (2) weeks ago, and there has been some land and tree clearing going on in advance of the real construction which is slated to begin in the next month or so. They met with the city's traffic commission and they reviewed the final plans and have obtained that approval at their last hearing.

The project will allow for a new section onto Third Avenue along the frontage road bordering Route 128. In the Third Avenue Area there is an off ramp with a button hook which allows you

to get into the Third Avenue Executive Park. The new proposal would create a shorter off ramp that comes to a signal at the intersection of Prospect Hill Lane and the Third Avenue off ramp, but also allows a new link for traffic that want to come from the project area directly onto the Route 128 northbound frontage road. In doing so there is a significant amount of traffic that will end coming off of city streets as a result of that.

Rob Nagi can answer any questions you may have on the design, but they are really here for the granting of the two (2) easements, one (1) located at 75 Third Avenue, two (2) small land takings required there, one (1) to accommodate the off ramp connection onto Third Avenue, a 1375 feet square foot area and a second area would actually allow for some improvements into the driveway and drainage connections to be made in the public area that is a small 117 square foot area. The other piece is the 500 Totten Pond Road Wolverine Building which is a 265 square foot easement located along Third Avenue, which will allow pedestrians and bikers on the sidewalk that exists there.

The Chairman asked if there were three (3) or two (2) easements.

Mr. Nagi said that there were three (3) but on two (2) parcels. The state and the city mandated that they create a ten (10) foot sidewalk to allow bicyclists to come into the area. They were happy to do it.

He mentioned that there have been a few comments from the CPW Director that have been addressed as well as Wade Putnam's Comments.

The Chairman asked the board if they had any questions.

Mr. Moroney asked that at Prospect Hill Lane where it comes down the hill, he saw a straight lane onto the new ramp and a right turn lane. Is that other side traffic heading up the hill, because there are two (2) arrows right at the light pointing in the opposite direction? He asked if Prospect Hill Lane was becoming a one (1) way or remaining a two (2) way.

Mr. Nagi said that it would remain a two (2) way, one (1) lane will go straight across and get onto the new northbound off ramp or make a left turn at the intersection, and then a right turn. The arrows facing the other way are actually the signal heads for people coming off the ramp.

Mr. Moroney asked if there were any changes taking place where you were forced to go down and come back up Wyman Street or is that staying the same?

Mr. Nagi said there would be no other changes to traffic patterns outside of the project area, other than the one significant change and reviewed this with the board.

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

Ms. Callahan stated she was concerned that Mr. Putnam had not responded to the petitioner's responses that were submitted on June 2, 2020. She suggested that they table the petition until

Wade had a chance to review them. The matter was discussed. It was agreed to add to the motion that the approval also included Wade's reviewing the responses and making sure everything was in order.

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

**VOTED: to approve the Modifications of
Definitive Subdivision and Alteration of
Roadway Layout at Third Ave. and Prospect
Hill Lane with revised dates of March 27, 2020
and with confirmation that the plans have been
revised as requested by the Engineering
Department's June 2, 2020 email.**

The Chairman closed the Public Hearing and opened the Regular Meeting.

The Clerk read the first item on the agenda of the Regular Meeting which was for a Preliminary Subdivision at 225 Waverley Oaks Road.

Attorney William J. Proia of F. Riemer Braunstein, 700 District Ave., Burlington, MA. came forward to update the board on this preliminary plan to freeze the zoning only. There isn't a lot to talk about, but was willing to answer any questions. As the board is aware there is ongoing litigation on this site and they hope it is completed by the time it comes to file the definitive subdivision plan, which was seven (7) months from March 6, 2020 making it October 6, 2020. They would have to file the Definitive Subdivision Plan. They are not involved in the day to day litigation, but they were making some progress, so this is a formality that hopefully gets settled before the definitive subdivision must be filed.

The Chairman opened the meeting up to the board for questions.

Mr. Moroney asked if the zoning boundary is along Waverley Oaks Road.

Mr. Proia said they are not talking about the zoning district. The change to the zoning ordinance had to do with the way parking spaces are defined. So the zoning line wasn't an issue. Strictly as to how parking spaces at gas pumps were being defined. The zoning changed the law the way spaces that had fueling spots were now considered parking spaces, but the city didn't like that and they changed the ordinance to state they expressly are not parking spaces any more. You have to make up the parking spaces by elsewhere on the lot without counting those fueling positions.

The Chairman said that made sense.

Mr. Moroney said that if this goes through then this would mean you would be different from the rest of city because you would still be able to count the number of spaces at the pumps as parking spaces.

Mr. Proia said that was correct. If we file a definitive plan, we would be filing a complaint plan. Hopefully, there will be a settlement in this lawsuit by then. If the settlement doesn't go through then we just won't file a definitive plan. The other point, if we don't protect ourselves against that ordinance change, then that would create a non-conforming lot. It would be lawful and they could still operate, but they would be subject to an additional zoning process that they aren't now. When you alter a non-conforming situation, you would need to go to the Zoning Board of Appeals.

Mr. Moroney asked what would be non-conforming about the lot.

Mr. Proia said they wouldn't be able to count the parking spaces at the fueling positions and that would make them deficient in parking.

Mr. Moroney said then your convenience store requires a certain amount of parking spaces and you don't have the real estate to add more?

Mr. Proia said that is correct. We don't want our lot to be converted or changed into a non-conforming lot.

Mr. Moroney commented that then you are asking this board to approve something that basically goes against what the city wants.

He asked if this zoning change for not counting the parking spots at the fueling positions was just the City of Waltham's Requirement or was it a statewide requirement.

Mr. Proia said the City of Waltham's new ordinance states that the land court ruled that they should be counted as spaces because that's how they function. But it is up to each city to adopt what they want. Zoning should be about how things actually work and its real impact.

Ms. Callahan stated that you said that this expires on October 6, 2020.

Mr. Proia said the statute states that if someone files a preliminary subdivision by seven (7) months of a definitive plan, then the zoning that was in place at the time the preliminary plan was filed applies to the land on the plan. That's what the rule is. Section six (6) of Zoning Act: If they don't file the definitive subdivision plan on time then the zoning bylaw change that he described will apply to them as well.

Ms. Callahan asked, "When do you think you will have your definitive subdivision plan"?

Mr. Proia said, "October 6th, 2020". Hopefully, they can file for the November Hearing.

The Chairman asked how many parking spaces they were missing with the zoning change. Mr. Proia said, "Approximately ten (10) or so", but didn't have the exact number.

The Chairman asked how long the gas station with the store had been operating.

Mr. Proia said, "More than twenty (20) years".

The Chairman asked, "And now the city wants to take it away?"

Mr. Proia said, "If they don't win in court, then they can just continue to operate, decide if they want to file a definitive plan or not, to at least protect the parking and then maybe apply for some other use or re-apply for the convenience store with a different layout potentially, so there are options". The point here is to preserve as many options.

The Chairman then asked for a motion.

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

**VOTED: to continue the preliminary
subdivision at the boards meeting
of September 2, 2020.**

The Clerk read the next item which was for a Preliminary Subdivision at 46 Lincoln Street.

Attorney Philip B. McCourt, Jr. of 15 Church Street, Waltham, Ma came forward representing the petitioners Matthew and Susan Sotir of 46 Lincoln Street, Waltham, MA.

Mr. Barret had to recuse himself as he lives within 300 feet of this property.

Mr. McCourt said that this was a preliminary subdivision, but had nothing to do with freezing the zoning like the previous discussions. They were here to create three (3) single family lots. Currently, there is a 1941 subdivision plan on the property that has six (6) small lots on Livermore Road that could run below the hill on the property out to Lincoln Street. But, it didn't make a lot of sense to do it that way. Our proposal is to put a small road off of Lincoln Street and create three (3) basically legitimate size lots there and build three (3) single family homes there. With the preliminary they wanted to discuss with the board what may or not work. They received some comments from Wade Putnam and they responded to them. Basically, they were just factual presentations. He reviewed the responses. They didn't agree to the water main comment due to the topography issues. At a neighborhood meeting it was agreed that this would be best as presented and also the width of the road. At one time they had made an error on the plan and that will be revised as a thirty-five (35) foot wide road which is adequate for what they propose. They will adjust their water main to a ten (10) inch line on Lincoln Street if that is what is currently there. They will revise the plan. All the utilities are underground as shown and are as required on all new subdivision plans. They're also putting in a five (5) inch vertical curbing not slope curbing. That was an error to be revised as well and remove it from our requested waivers.

Wade asked if they would build the sidewalk and curbing around that side of Lincoln Street, but if you go up there and look at the layout it's physically impossible to do that. It would have to be completely altered; in fact there isn't the opportunity to put in a sidewalk on Lincoln Street. It would have to be on our property. Also, Wade suggested that if this petition were approved that they should abandon the 1941 plan and of course they would.

Mr. Robert Bibbo came forward to answer any questions regarding the plan and the layout. They felt this layout would be attractive to the neighborhood. When they did have a neighborhood meeting, they agreed to do it this way with three (3) buildable lots instead of six (6) small lots.

The Chairman opened up the discussions to the Board.

Ms. Callahan stated that Mr. McCourt had said they originally wanted to put in six (6) small lots?

Mr. McCourt said, Yes, the original 1941 subdivision had it as six (6) lots”.

Ms. Callahan asked out of curiosity, “How would they have done six (6) lots with that road there”?

Mr. McCourt said that they would have to come in straight and build two (2) of the houses in the back on a downward slope and that wouldn't make any sense.

Ms. Callahan said that if you have Lot #1 which is a non-buildable lot, but for conveyance only, why wouldn't you be able to put a sidewalk there?

Mr. McCourt said that it made no sense to connect that lot to any other and it was the best layout as shown. They really hadn't figured out what to do with that lot. They could convey it to an abutting owner or they could leave it there and give the rights to it to one of those who would have to care for it.

You could never build on it because of its shape and size.

Ms. Callahan asked if the road they were proposing had a sidewalk all the way to the end.

Mr. Bibbo said, “The sidewalk starts at the easterly corner of Lincoln Street and goes up to the left side and up and around all the way to the right and stops”.

Ms. Callahan asked why they didn't have the sidewalk on the other side.

Mr. Bibbo said they designed it the same way they did Rock lane. With only three (3) house lots they didn't see the need to have two (2) sidewalks.

Ms. Callahan said sidewalks on both sides of a street are a safer option.

Mr. Bibbo said that they would take that under advisement.

Ms. Callahan said she wanted to read out loud the fire department's letter regarding their review of the preliminary plan.

Letter dated May 22, 2020 and received by the board on May 27, 2020.

Dear Mr. Chiasson and Members of the Board,

I am writing to you regarding the Lincoln Lane subdivision lot layout plan. The drawings depict a three lot subdivision with a new dead end fire access road of at least 237 feet. I would recommend to the board that providing a satisfactory means of turnaround for the fire apparatus be a condition of your approval to this proposed subdivision. This may be accomplished by submitting a swept path analysis. This shows the City of Waltham's largest emergency vehicles ability to ingress and egress the site safely. Thank you for your consideration. Deputy Chief Richard Grant.

Mr. McCourt said they didn't receive that letter. It would be a small street and they wouldn't have a turn around, but they could back up. They most likely wouldn't even go on the street to fight a fire. They would probably park right on Lincoln Street. They will meet with Deputy Chief Grant and discuss it with him.

Ms. Callahan said that would be great. She also went over some of the letters Mr. McCourt sent, and this is just a little housekeeping matter. He had written a letter to the Superintendent of Schools with the locus subdivision and your first line reads Caldwell Road Extension subdivision not 46 Lincoln Street. Also, it was like that on Mr. Garvin's letter as well. She just wanted to bring that to Mr. McCourt's attention.

Mr. McCourt thanked her and said he would re-issue corrected letters.

Mr. Devito said on the notes from Wade Putnam dated May 14, 2020, item number eight (8), **"The proposed roadway as shown at 35.00 feet wide could very easily be made the required 50.00 foot width or even 40.00 foot width as shown on the original subdivision plan"**.

Mr. DeVito asked Mr. McCourt or Mr. Bibbo to comment on that.

Mr. McCourt said that a smaller road that is clearly not going to have a connection to anything, are not built to the requirement of the 50.00 feet or for that matter even the 40.00 feet. Could they do the 40.00 feet, he guessed they could, but he honestly didn't think you would want to create a large road in there if there are only three (3) lots. It won't be a heavily traveled road.

Mr. DeVito didn't agree with that. If you take two (2) cars that are going to try and pass each other at the same time at 35.00 feet you are going to have to be a professional driver to be able to do that. That's not an easy task.

Mr. Bibbo said that if you notice on the plan, even though the road proposed is 35.00 feet wide, the pavement curb to curb will be 25.00 feet wide, and the average width of roads in the city are

24.00 feet wide paved. 25.00 feet paved is suitable enough for two passing vehicles. A standard parking spot is 9 feet by 18 feet. You could have three (3) vehicles pass with that same width.

Mr. DeVito said he still felt that is a limited width for two (2) vehicles passing at one time. He felt one (1) vehicle would have to stop to allow the other vehicle to pass. He still had a problem with the width of thirty (30) feet.

Mr. Bibbo said that 25.00 allows for 12.50 feet for each travel lane which he considered sufficient. Most secondary roads are 24-feet paved. State standard states as long as you construct a road that fits the neighborhood, it's allowed. Primary roads are 40.00 or 50.00 feet wide and commercial roads are 60 to 70 feet wide. Residential roads are usually 40.00 feet wide from property line to property line, minus 15 feet for double sidewalks, double curbing and double grass strips and 24.00 to 25.00 feet for pavement.

Mr. Moroney said he doesn't see what the big deal is to take more footage from Lot 1 and make the road 30.00 feet. It's non buildable anyway.

Mr. Bibbo said they would take that into advisement. They were trying to keep the area rustic looking.

Mr. Moroney said that Rock Lane is a disaster and really hopes to never see another Rock Lane design.

Mr. Bibbo said he's sorry you feel that way, but he disagrees.

Mr. Moroney said that there is a comment from Wade, #10 that the Waiver calls for a 20.00 foot width of pavement but the plans shows 25.00 feet. The 25.00 foot width is the minimum that it should be allowed.

Mr. Bibbo said that the plan will be revised.

Mr. Moroney then said he would like to talk about drainage. There is no updated profile in comparison to you completely turning this stuff 90 degrees from what it used to be. The only profile in the package is the original profile. The land at the Lincoln Street entrance is higher than the land at Livermore Road.

Mr. Bibbo said that is correct.

Mr. Moroney asked what they were going to do for those three (3) lots that all that water is going to stay on the lots.

Mr. Bibbo said that they were going to follow Waltham's Zoning Code with the Engineering Department's design with onsite drainage for each lot. That is to put down impervious material, collect all the water and discharge it back into the ground. Actually, there will be less water going over to those people than there is now.

Mr. Moroney asked what they would be putting in the back of the property to catch all that water before it dumps into the neighbor's property below.

Mr. Bibbo said the existing grade would remain the same. They are not changing the grade and all the water on the lots to be built will have self-contained drainage.

Mr. Moroney said that he would like to see a profile plan for Livermore Lane back onto Lincoln Street.

Mr. Bibbo said they are not designing Livermore Lane. They are going to abandon that and design a new road.

Mr. Moroney said he wanted to see an updated profile to what is shown on the drawing that has been submitted.

They discussed drainage further. Each lot would have a separate drainage design during the building application process and get engineering approval at that time.

Mr. Moroney said if you want his approval, you are going to have to show drainage for the back of that property as you are changing the lot and altering the road so it's your responsibility to address the drainage across the entire lot.

The Chairman then commented that he looked at this plan and had a problem that there was no cul-de-sac and has a problem with the whole roadway as proposed. Looking at the original subdivision plan that was created in the 1940's, you would now have access to Livermore Road, he asked.

Mr. McCourt said, "Yes, if we build it".

The Chairman said you already have access to a road, so if you chose not to put that road in, he doesn't think the board should vote in favor of a subdivision that the fire department has an issue with and that the board's rules and regulations states that you need a cul-de-sac. He has an issue with this as proposed.

Mr. McCourt said the neighbors preferred it that way. You should talk to the neighbors and have a site view and see this property.

The board thought that was a good idea.

The Chairman asked for a motion.

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

VOTED: to continue the petition of the Preliminary Subdivision for 46 Lincoln Street at their meeting of September 2, 2020, and to have site view for site view within the last two weeks of August prior to the September meeting.

Mr. Moroney asked if they should add to the motion the fire department request.

They discussed this and decided to wait until the after the site visit of August 12th and also allow the petitioners to meet with Deputy Chief Grant and discuss the recommendations.

The Clerk read the next item on the agenda for clarification of house numbers for Glen Circle.

Attorney Philip McCourt came forward. This matter was related to the three (3) lots that were approved back in 2016 to build three (3) single family homes. At that time, the board made a comment because of the dangers of Lincoln Street. It wouldn't make sense to come onto Lincoln Street, but that isn't what happens in an A.N.R. Plan Review and isn't a decision that gets made during this review.

An ANR Plan approval had no appeal attached to the plan. Mr. Mantanuto proceeded to get approval and building permits for the lots. He applied for the permits with vital access onto Glen Circle because no one wanted to come onto Lincoln Street. They applied to the Engineering Department and every plan showed #48 and # 52 Glen Circle. The other house hasn't been built yet and the original house and the other lot all have had access onto Glen Circle. They received all permitting and signs for Glen Circle. They built the houses and all of a sudden, for no apparent reason, Mr. Casazza, the city engineer, changed the numbers to Lincoln Street. Obviously, there is no access to Lincoln Street and at the time the fire department and the police department were disappointed because if you make a call to the fire department, obviously they couldn't get up the hill there, so it was suggested when they filed this with the board this evening that it needed to be resolved once and for all. As suggested, we wrote to the board and showed the original subdivision plan.

Subsequent to that, in 2019 they put out a plan that showed the water connection which does go into Lincoln Street, but it is just a right of way for sewer and water that services those two houses. We showed an area of easement where the driveways would be and then again they were asked to show the specific driveways that were up there. The first house has been sold and is occupied and the second house is on the market. Clearly these houses should be numbered #48 and #52 Glen Circle not 131 and 133 Lincoln Street.

So, in the usual turn of events, we sent a request to the police and fire departments and the engineering department and with all the comments he intended to make, Mr. Putnam said the numbers are up to Mr. Casazza and we still haven't received anything from him. In your packets you will see that both the police department and the fire department state that for public safety the houses should be numbered #48 and #52 Glen Circle which is the only access to the property. If anyone had to call 911 for an emergency, they would go to Glen Circle.

What they are asking the board for is to write a letter to all the departments stating that the board agrees that they ought to be numbered #48 and #52 Glen Circle. That would be all that is needed to put this to rest.

The Chairman commented and read the letter from the fire department that states exactly what Mr. McCourt said. All the original building permit sign offs were Glen Circle. Then, they were changed to Lincoln Street addresses citing an error by the engineering department. Deputy Chief Grant had completed a site visit with city engineer Casazza and Lt. Scott Perry. His recommendation was that whatever address is given, it should be the side the driveway is on thus avoiding any confusion during an emergency response. His opinion remains that the houses should be numbered as Glen Circle addresses as previously permitted.

He asked Mr. McCourt which side the driveway was on.

Mr. McCourt said on the Glen Circle side. He also commented that the police chief wrote a similar letter.

The chairman said he had no issues with this and thought this whole thing was crazy from day one (1).

Mr. Barrett said they should have been Glen Circle addresses from the start.

Ms. Callahan commented that she remembered that this subject came before the board last October and the board had asked Ms. Deveney to provide Steve Casazza the October 7, 2019 minutes to the meeting. The letter was given to the City Engineer Steve Casazza. The board pointed out that the Lincoln Street access would be particularly dangerous and was a public safety issue. Access through Glen Circle for these homes as originally permitted would be a much safer option for all involved.

She asked Ms. Deveney if they ever received a response from the engineer.

Ms. Deveney said they had not.

Ms. Callahan said that they brought this to them and thought that it would be settled. Someone is digging their heels in the sand and is not playing nice in the sandbox. This is a safety issue, so let's put our differences aside and think about whom is going to be living in those houses and God forbid that if there ever was a fire there you would want everyone to have the same correct addresses. Then, she asked the address of where the new homeowners' mail is going.

Mr. McCourt said it is going to numbers 48 Glen Circle and 52 Glen Circle.

Ms. Callahan said the Titles and Deeds have it listed as Glen Circle. She was at a loss; the board has already sent a letter.

The Chairman said that they should confirm it in a vote.

Mr. DeVito wanted final clarification for the record. The houses are now numbered with both addresses. It is necessary to delete one of those addresses on file so that the fire and police department can do their job when and if it's necessary. It is confirmed to be Glen Circle. This is the time to eliminate or delete the 131 and 133 Lincoln Street addresses.

Mr. Moroney asked if the driveway is owned by #53 Glen Circle.

Mr. McCourt said, "Yes. All three (3) houses use the same driveway.

Mr. Moroney asked if this was an easement for all three (3) houses to use this access.

Mr. McCourt said, "Yes".

The Clerk of the Board, Mike Chiasson made a statement on what the board needed to do. One of the concerns was that the board members had never seen the total number of easements that Mr. Moroney had pointed out which were at the back of the packet received because it showed that each of the properties in the common driveways so the addresses had been issued so that this can be seen by the board and noted that we had seen it.

The Chairman thanked him and asked for a motion.

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

**VOTED: that the addresses in contention be
permanently assigned as #48 and
#52 Glen Circle.**

The Clerk read the next item on the agenda for the approval of the minutes of the March 4, 2020 meeting.

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

**VOTED: to approve the minutes of the
March 4, 2020 meeting as
submitted.**

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

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

VOTED: to adjourn the meeting at 8:10p.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'M. Chiasson', with a stylized flourish at the end.

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