



CITY OF WALTHAM

BOARD OF SURVEY AND PLANNING

The following are minutes of the January 7, 2015 public hearing held in the Auditorium of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. at 7:00 p.m. In attendance were Chairman Creonte and members Callahan, DeVito, Duffy, Moroney and Tarallo.

The Chairman opened the meeting at 7:00 p.m. and informed the public that the meeting was being video taped by the local WCAC channel.

The Clerk read the 1st item on the agenda which was for a Special permit Driveway Opening located at 1100-AFT Winter Street, Waltham, MA.

Attorney Joseph Connors of Beaver Street, Waltham, MA came forward to represent the petitioner on this special permit.

The Chairman commented that at this time the Board had not received comments from the Engineering Department on their review of the plan which are vital to the board's deliberation process and decision so he would recommend that the Petitioner request to table this matter to the next meeting of February 4, 2015.

Attorney Connors understood and requested that this petition be tabled to the February 4, 2015 meeting.

The Chairman asked if there was a motion.

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

VOTED: to continue the petition of a Special Permit Driveway Opening at 1100-AFT Winter Street, Waltham, MA at their next meeting of February 4, 2015.

There being no further business in the public hearing the Chairman opened the regular meeting.

The Clerk read the first item on the agenda which was for an ANR Plan located at 141-143 Calvary Street submitted by Frank Valentino of 144 Vernon Street, Waltham, MA.

Robert Bibbo of Bibbo Brothers Land Surveyors of 10 Hammer Street, Waltham, MA came forward representing the Petitioner. He said that Lot 1 was created in 1960 and now proposing to create it into two lots Lot 1A and Lot 1B. The ANR Plan meets the Board's three requirements for an ANR Plan, is a public way, and has required frontage and vital access. The new lots will require a variance from the Zoning Board of Appeals which the petitioner is scheduled to attend soon. The ZBA want to see the ANR Plan approved first. If the ZBA denies the requested variances the ANR Plan will not be recorded and will be destroyed.

He also pointed out that the Board had approved a similar ANR Plan last year on Curve and Lexington Streets.

The Chairman then opened the meeting to the members for questions.

Mr. Duffy asked what hardship relief they would be going to the ZBA for.

Mr. Bibbo said he could not answer that at this time, the Attorney for the petitioner will have that information for the ZBA.

Mr. Duffy commented that the obvious reasons to go for relief from the ZBA is just financial, and nothing else.

Mr. Bibbo again commented he can't respond to that at this time.

Ms. Callahan commented that looking at the original plan that was submitted with the existing house and there is a shed shown to be raised and this is currently one lot of land, what is intended to be put on the other Lot.

Mr. Bibbo said that it is A-4 Zoning and that the plan is to erect a single family home.

Ms. Callahan asked if they would be raising the existing house.

Mr. Bibbo said that the existing house is going to remain and the new 2nd Lot would have the new structure.

Ms. Callahan asked if the current house conforms to the frontage requirements.

Mr. Bibbo commented that the Lot itself is conforming but that it is a non-conforming structure.

Ms. Callahan then commented that it appears that the current lot is non-conforming and the new lot would also be non-conforming so that is why you are going before the ZBA.

Mr. Bibbo responded that that is why they would need to go before the ZBA to correct the deficiencies.

Ms. Tarallo pointed out that Flood Street is not a public way and that the petitioner was comparing this plan to the Curve Street and Lincoln Street plan that was approved, but that plan happened to be two public ways. So there was a difference between these two plans.

Mr. Bibbo commented that he was showing under-sized area lots with adequate frontage that are entitled to an ANR endorsement, and that private ways meet qualifications of ways under state stature.

Ms. Tarallo asked if within this area it is zoned for 60-foot frontage for a Lot.

Mr. Bibbo said that is correct.

Mr. Devito asked if the frontage of the new lot would be on Flood Street.

Mr. Bibbo said yes, the current house has frontage on Calvary Street and the new lot would have frontage on Flood Street.

Mr. DeVito then asked if they now the required square footage for each lot and all of the side yard line requirements and are the front and rear yard requirements in compliance.

Mr. Bibbo said that the plans meet the requirements of the Board of Survey and Planning requirements for 60-foot frontage, vital access and on an adequate way. That is why they will be going before the ZBA.

Mr. Devito then asked if the current house would be on Lot 1B and Lot 1A would be for the new structure.

Mr. Bibbo said that is correct and reviewed it again. He said that if the ZBA does not approve the variances, then the ANR Plan would be no good and it would be destroyed.

The Chairman asked Mr. Bibbo if the current house would be raised on Lot 1B.

Mr. Bibbo said not at this time.

The chairman commented that that is what the Board would be approving, the unknown, and that the Board does not like to endorse plans that don't make sense.

Ms. Callahan also commented that as a Board when making decisions we want to make the right decisions for the residents, not for the builders and again with this plan we are going from non-conforming to "more" non-conforming and she felt the city wouldn't benefit from it, but the developer would benefit. She understood with the current status of the economy that people are trying to make a quick buck but at what expense and at what point do we say it's just not right for the neighborhood. She didn't see how a new house would benefit the Calvary Street neighborhood.

Mr. Bibbo commented that the ZBA approved two lots here in 1963, and that the variances are battle with the ZBA and that all abutters would be notified. He asked Ms. Callahan if she or the Board could prove that this ANR Plan does not meet the BOSP requirements.

Ms. Callahan asked if the front door of the existing house was on Calvary Street or Flood Street.

Mr. Bibbo said that the front door of the existing house is on Flood Street.

Ms. Callahan commented again that this is non-conforming and will be more non –conforming!

Mr. Bibbo said that he is not disagreeing with that and that is why they were going to the ZBA. He again asked Ms. Callahan if she could show him that this ANR Plan did not meet the Board's three requirements and that if it didn't get approved any Judge would just shut it down.

Ms. Callahan said "Okay."

Mr. Duffy commented that Mr. Bibbo made reference to something that happened in 1963, what was it again you were talking about?

Mr. Bibbo said in 1963 the original lot was created.

Mr. Duffy asked if it was subject to any variances at that time.

Mr. Bibbo said no, after it was created they went back and re-subdivided the Lot like he was doing now.

Mr. Duffy said so this Lot was previously subdivided then why are they doing it again.

Mr. Bibbo said that it was never recorded.

Mr. Duffy said he had a problem with this entire petition, it's the hardship he had a problem with and the Developer only wants to make a buck. He said let the Judge decide and then moved for a Denial of this petition.

Ms. Tarallo pointed out that Mr. Bibbo referred to the Court Case Smalley v. Planning Board of Harwich which was included in the Board's packages. She read the following out loud:

If a variance has been granted by the Board of Appeals, what can a Planning Board do to make it clear that a proposed lot may not be a building lot? A prospective purchaser of a lot may assume that the Planning Board's endorsement is an approval of zoning matters even though such endorsement gives the lots shown on the plan no zoning matters even though such endorsement gives the lots shown on the plan no standing under the applicable zoning bylaw. If an applicant is unwilling to note on the plan those lots which are in noncompliance with the zoning bylaw, we would suggest that the Planning Board place the following type of statement on the plan:

1. The above endorsement is not a determination of conformance with zoning regulations.
2. No determination of compliance with zoning requirements has been made or intended by this endorsement.

3. Planning Board endorsement under the Subdivision Control Law should not be construed as either an endorsement or approval of zoning lot area requirements.

She then said these three points are very descriptive and should be added to the plan.

Mr. Bibbo commented that these are just points of opinion.

Ms. Tarallo commented that she knew that, but you are the one who brought this text to us, and now after looking at it I wouldn't feel comfortable approving this ANR Plan unless this was added to the plan. She commented that she was trying to help him out here too. Adding this language to the plan makes a huge difference of understanding the approval.

Mr. Bibbo then said that okay, he would add the comments to the plan.

Mr. Moroney asked if the address of the existing house is 141-143 Calvary Street.

Mr. Bibbo said that is correct.

Mr. Moroney said therefore he had a problem with the frontage of property. If the front door is on Flood Street then it shouldn't be on the plan as Calvary Street and have a Calvary Street address. He also commented that what you are planning to do here will now require two separate requests from the Board for curb cuts that are less than 100-feet from an intersection.

Mr. Bibbo said that is not true. Curb cuts required to go before the Board of Survey and Planning have to have more than five cars, if it is five or less it would go before the Public Works Department.

The Clerk of the Board, Michael Chiasson, who is also the CPW Director, confirmed that was true.

Mr. Moroney then said that he did some math on the A-4 zoning requirements and it appeared that all that was left was a maximum house size of 20 feet by 40 feet with no driveway.

Mr. Bibbo said that there would be a 15-foot side yard which is large enough for stack parking two vehicles which was allowed with a single family dwelling.

Mr. Moroney then commented that he agreed with his colleague, Ms. Callahan that it is making an already non-conforming Lot into a more non-conforming Lot.

Mr. Bibbo agreed and said it was up to the ZBA to decide not the Board of Survey and Planning.

Mr. Moroney said he was done with his questioning.

With that being said the Chairman said Mr. Duffy had a motion on the floor for denial and asked if there was a second to the motion.

Ms. Callahan seconded the motion to deny.

The Chairman polled the Board and reminded the Board that a yes vote was for denial.

Mr. Duffy	Yes
Ms. Callahan	Yes

Ms. Tarallo asked what the reason for denial would be.

Mr. Duffy said as he previously stated, it is a non- conforming lot and will be making it more non -conforming and that the frontage is on Calvary Street as is the mailing address.

Ms. Tarallo	NO
Mr. DeVito	NO
Mr. Moroney	YES
Chairman	NO

There being a tie vote of three to three, the motion did not pass.

Mr. Duffy then made a motion to reconsider the previous motion.

Ms. Callahan seconded the motion.

The Chairman then explained that the previous motion and vote had been rescinded.

Mr. Duffy then made a motion to approve the ANR Plan for 141-143 Calvary Street.

Mr. DeVito seconded the motion.

The Chairman polled the Board, now telling them a yes vote is for approval of the ANR Plan.

Mr. Duffy	NO
Ms. Callahan	NO
Ms. Tarallo	YES
Mr. DeVito	YES
Mr. Moroney	NO
Chairman Creonte	YES

There being a three to three tie vote the motion did not pass, it was not denied and it was not approved. It did not pass.

The Clerk read the last item on the agenda which was for the approval of the minutes to the Boards special meeting of December 22, 2014

On the motion of Mr. DeVito, seconded by Mr. Moroney, the Board's special meeting of December 22, 2014.

VOTED: to approve the minutes to the December 22, 2014 special 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. DeVito, seconded by Mr. Moroney the Board

VOTED: to adjourn at 7:43p.m.

Respectfully submitted,



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