



CITY OF WALTHAM
BOARD OF SURVEY AND PLANNING

The following are minutes of the September 19, 2016 Special Meeting held in the Public Meeting Room of the Arthur Clark Government Center located at 119 School Street, Waltham, MA. at 5:00 p.m. In attendance were Chairman Creonte and members Barrett, Callahan DeVito, Duffy and Tarallo.

The Chairman mentioned that the hearing was being taped by WCAC, Waltham's local channel and asked the public to sign in if they were coming forward to speak before the Board.

The Chairman opened the public hearing. There being no items on the agenda, he opened the regular meeting. He reminded everyone present that a regular meeting is not a public hearing, but will allow the public to come forward and speak for one minute per person and if only it is new information. The Board held a site visit at 131 Lincoln Street on September 13, 2016.

The Clerk read the first item on the agenda which was for an ANR pan for at 131 Lincoln Street. This petition was continued from the September 7, 2016 meeting.

Attorney Philip B. McCourt came forward to answer any questions.

We don't have anything new actually accept information from the Board's ANR Handbook that explains what is required in an ANR Plan. Attorney McCourt handed this out to the Board.

On the 2nd page 2nd paragraph it tells what the three requirements are of an ANR plan the Board has to determine.

1. All lots abut a qualified way; which would be a regular public way like Lincoln Street or a private way that has been accepted by the City which would be Glen Circle.
2. All lots have adequate frontage; and 3. Vital access exists to each lot.

This plan needs to be endorsed as it meets all these requirements of application and approval. The neighbors would not lose any rights and the petitioner would continue to work with them during the permitting and building process.

The Chairman then opened the meeting to the Board for questions or comments.

Mr. Barrett commented that in Section 81M it requires the Board to endorse the plan if it has adequate access of all of the lots in the subdivision by ways that will be safe and convenient for travel; for lessening congestion in such ways and in adjacent public ways; for reducing danger to

life and limb in the operation of motor vehicles. So in his opinion, if the developer has the right to build on three lots, he has access to two lots on Lincoln Street, and one lot on Glen Circle, with the frontage on Lincoln Street and he decides to build a common way onto Glen Circle, it is allowable. As a matter of fact, this was contested up on Beaver Street, which Attorney McCourt had made comment on previously, which is now Gentleman's Way and Robert Treat Paine Drive. At that time the Board denied the endorsement, the petitioner sued and won not only in Land Court but also in Superior Court. It reversed the decision of the Board. That petitioner had frontage on Beaver Street, made access out onto Gentleman's Way. Actually, in your neighborhood, Lincoln Street, heading out of Glen Circle heading towards Lexington Street, there are four houses on a common driveway that goes out onto Lincoln Street.

In Section 81-M it states, it is the intent of the subdivision control law that any subdivision plan filed with such board shall receive the approval of the such board if said plan conforms to the recommendations of the board of health and to the reasonable rules and regulations of the planning board pertaining to subdivision of land, which this plan does meet in all aspects. He would be voting in favor of this ANR plan based on the Board's rules and regulations.

Ms. Callahan commented that she has been on the Board for many years and there have been a lot of petitions that she has denied, but if this petition meets the requirements, and she understands the neighbors hate to see the wooded area removed but the plan has adequate frontage, it has access to the public way or an approved way, and access to utilities, there is no loop hole there, the developer meets the requirements. As a Board member she cannot deny this petition as it legally meets the three requirements.

Ms. Tarallo commented that she found this be a very tough case to look at, however it does meet the Board's ANR requirements, but as far as how things get built on it are other requirements of other boards or City Departments, but it is not our Board's regulations so we are not looking at that just the ANR plan itself and it does meet the requirements even though it may be something we don't want to approve.

The Chairman wanted to add he felt the same way, it may not be so good for the neighborhood, he isn't a pro-development guy, one of the neighbors there tonight asked him to do the right thing and told him he is going to the right thing. He spent over four hours on Thursday at the Planning Board office with the Board's Secretary and the Clerk and was back down there today for about two and half hours trying to see if there was a way to say yes, you can do this but you can't go out to Glen Circle, but we found nothing. We researched for probably five hours, but the petitioner does meet all of the requirements. He personally spoke to lawyers on this case, but did not get an actual legal opinion, but they told him the exact same thing, that after it's approved by the Board it then becomes a private matter between the developer and the residents of Glen Circle, the road the neighbors don't want them to access.

Mr. Duffy commented that the Board labored a great deal since the site view on this matter. The closest thing that he could find, and not to dispute Mr. McCourt, but the Beaver Street is not the ideal example because Gentleman's Way is a public way. The initial case that the Board turned down was a common drive off Worcester Lane, which indeed was a private way. As far as he could tell, the Courts have ruled in favor of the petitioner in each case that the Board had denied if they had met the Board's requirements.

Mr. Devito asked through the Chairman to ask the Secretary of the Board a question. He said there was a petition that was put together by all of the residents of Glen Circle which was submitted to Mayor McCarthy. He wanted to know if there was any response from the Mayor regarding their concerns.

Ms. Deveney said no there was no response from the Mayor to the Board's office that she was aware of.

Mr. DeVito then commented that with all that has been discussed and reviewed regarding this ANR Plan the Board must follow their rules and regulations, even though the neighbors may not like it, but the Board has their own responsibility to the City of Waltham in which we must adhere to.

Mr. Barrett commented that as far as the private way goes, it is a private way with public access. Public access gives the residents the services of the city. If it were a true private way; the city would not have to plow or would not have to pick up rubbish. For instance Bishops Forest started as a private way, and the city never picked up rubbish or plow. That's a true definition of a private way. So because Glen Circle has public access, you can't deny anyone driving up and down it.

The Chairman then opened the meeting up to the public but with only something new to add to the record and to please keep it to one minute per speaker.

Thomas Thibaut of 10 Glen Circle came forward. He had previously asked the Board to send this petition to the legal department for an opinion before they made their decision. This was not done. If you do approve this tonight he would like it noted that he is challenging the Board's vote. The ANR plan should not show driveways, or houses or anything shown on the plan, so you must approve a plan that shows only the subdivision lines otherwise he challenges that as well.

Attorney McCourt that is the plan the Board has before them.

The Chairman asked Attorney McCourt to show exactly the plan that will be voted on.

Attorney McCourt showed everyone the plan that was dated August 6, 2016 and revised on September 6, 2016. The revision was to show on lot B-1 that the garage was going to be razed. Mr. McCourt showed the public this plan at the request of the Chairman.

The next person to come forward was Attorney Kenneth Gould of 88 Falcon Street, Boston, MA. He was recently hired by the residents of 111 Lincoln Street who is out of the country, and Richard Bluestein of 40 Glen Circle. He was recently hired so he was not at the previous meeting or the site visit so he apologizes if he is repeating himself on anything. They have a couple of concerns the first one being the plan does show a driveway at the easement for 133 Lincoln Street, which should be left of the approved plan. As a title matter, the lot in questions at 133 Lincoln Street was never part of the original subdivision and in fact, never had legal rights over Glen Circle. All the other deeds refer to show the rights to use the private way in the 1958 subdivision plan, that is nowhere in the title for 133 Lincoln Street. So to the extent that it is a private way, they don't have the right to use it and they don't have the right to use it as frontage. The second concern is to the extent that they are considering putting in a common driveway for four lots, there are questions even though there is a fifty year gap, as to whether that is truly a

common driveway, or is it an extension of an existing subdivision way. And if it's the latter, than it does need approval not as an ANR. His opinion was that you can't approve this and then they come back and propose a common driveway without coming back to you.

The Chairman asked if anyone wanted to comment on Attorney Gould's comments.

Mr. Barrett said it was his understanding that Lot B-4 Would give 133 access to Glen Circle.

Attorney McCourt commented that 131 Lincoln Street never had frontage because it was built before it was a requirement. It does have a 20-foot right of way that goes out to Lincoln Street but for the past fifty years they have always gone out through Glen Circle. Mary McDonald is willing to grant that easement for this purpose in the deed to 133. This was discussed until understood.

Richard Bluestein of 46 Glen Circle came forward in opposition. He doesn't think there has been an agreement made between 131 and 133 Lincoln Street and the developer to abandon that 20-foot easement in exchange for adding an addition on to the drive there. And if that doesn't exist than this plan as presented is inaccurate, because it shows those things right on the plan. Secondly he doesn't think its 131's right to give 133 and easement because 131 has no legal right to use Glen Circle as well. It's been searched back in all the deeds, there is nothing in there saying it had been granted an easement there. They should always have used that easement to go out through Lincoln Street. The other thing he is concerned about is that you are saying the frontage. The Chairman stated he feels all lots have proper frontage.

The Chairman stopped him and said they have already gone over that and in the Rules and Regulations for this Board we have to make sure they have frontage which they do have.

Mr. Thibault came forward again and said this should be sent to the City Lawyer for an opinion.

Mr. Duffy responded to that comment saying they are under time restraints and need to act on this now.

The Chairman then closed that part of the hearing.

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

On the motion of Mr. Barrett, second by Ms. Tarallo, who want it added to the motion about the non-buildable lot about the garage being razed but they plan on going before the ZBA for approval for it, if they don't get approval for it the garage still needs to come down.

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

VOTED: to allow the Clerk of the Board to endorse the ANR Plan for 131 Lincoln Street dated August 6, 2016 and revised date of September 6, 2016. Members Duffy, Barrett, Callahan, Tarallo, DeVito and Creonte all voted yes.

There being no further business the Chairman asked for a motion to adjourn.

On the motion of Mr. Barrett, second by Ms. Callahan, the Board

VOTED: to adjourn the meeting at 6:00 p.m.

Respectfully submitted,



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