

CITY OF WALTHAM

BOARD OF SURVEY AND PLANNING

The following are minutes of the 7:00 p.m. September 7, 2016 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, 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 to speak before the Board.

The Chairman opened the public hearing.

The Clerk read the first item on the agenda which was for a Special Permit Curb Cut at 200 Smith Street.

Attorney Jack Mula of 40 Amelia Drive, Waltham, MA came forward to address the Board on behalf of the petitioner. They are requesting approval in accordance with Section 5.41 of the Zoning Ordinance for the construction of a curb cut in excess of 25-feet in width at 200 Smith Street. The proposed work includes the elimination of the existing curb cut and the installation of anew curb cut opening, located along a portion of the eastern border of the property. Attorney Mula reviewed this with the Board Members. He also mentioned that all abutters within 300-feet of this site have been mailed notices. Comments were included from the Engineering, Fire and Traffic Departments, which they had met prior to the final design.

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

Ms. Callahan asked what the width of the new curb cut would be.

Paul Finger, from Paul Finger Associates came forward to answer her question. Mr. Finger said that the throat of the curb cut will continue to have three lanes. The curb cut had to be measured on the property line, which is 137-feet and most of which along the turning lane coming in other right hand turn into Smith Street so the traffic is not backing up as much. The proposal was to add a sidewalk all the way up to the town line.

Ms. Callahan said, "So you will have a sidewalk installed?"

Mr. Finger said, "That is correct" and showed on the plan where the sidewalk will be installed.

Ms. Callahan then asked about the grass strip that is shown on the sidewalk and who would be in charge of maintaining it, and felt it was not necessary as it is too difficult to maintain.

Mr. Finger said he agreed, but that they were trying to mimic what's already there and that it would be on the other side if it is City standard.

Getting back to the actual curb cut, Ms. Callahan stated that it is already an existing right turn, left turn exit.

Mr. Finger said that is correct, a right turn left turn coming out, which provides more room for stacking in the site. Once you are inside the property it gets narrower. During our community meetings, one thing the Mayor had made very clear was that any stacking must occur in the site and not on the city streets. Another thing they are trying to do is an internal configuration where they are linking the south driveway to the north driveway so it will encourage traffic to go out to the south exit which will avoid vehicles coming out onto Smith Street which is something we worked on with the community.

Ms. Callahan commented that it all looks like it would be an improvement, especially if you have that right lane turning into the property, and she envisioned the proposal as a good thing.

No other members had questions, but Mr. Barrett commented that since this is a Special Permit he believes the Board can, as Ms. Callahan suggested, ask the developer to eliminate the grass strip at the sidewalk.

Mr. Finger said they would widen the sidewalk in place of the grass strip if that is what the Board would prefer.

Mr. Barrett said that he would add this as a condition at the time of the motion.

The Chairman then asked if there were any more questions, and being none he closed that part of the hearing.

He then opened the hearing to anyone that would like to speak in favor of this petition.

Mr. Robert Coleman of 249 Smith Street came forward. His house is directly opposite of the slip lane that they are looking to create on Smith Street as well as the entrance to this particular location. He has lived there for many years, raised a family and somehow survived the post office. With this new proposal before the Board, he would like to hear some of the commitments that the developers have suggested to the neighbors in hope that they will live up to these commitments. Prior to the new development there was a screening of very tall pine trees that have since been removed. The neighbors felt it is very important that the petitioner have a similar screening for sight and noise control. He then handed out before and after aerial pictures of the screening. He suggested the board have a site view to see the impact of not having proper screening would create. He also said he had concerns about the grading shown on sheet CC-2.0, the flow of the trucks in and out of the site and would like it reviewed again.

He would like the Board to make it a condition that the sight and sound barriers have a ten foot sound barrier fence installed, and to also have street frontage screening of plantings, some sort of berm to level it out, proper signage, and a cross walk be added.

There being no one else in favor of the petition, the Chairman closed that part of the hearing and opened it to anyone in opposition to the petition.

There being none, the Chairman closed that part of the hearing and reopened it to the Board.

Mr. Duffy asked, "In regards to the sound mitigation along Wyman Street, are there plans for that?"

Attorney Mula said they would be replacing the 10-foot barrier fence and a small portion near the driveway would come down and be replaced with plantings. Mr. Andrew Maher of Anchor Line Partners came forward to assist with the response. As it exists now the fence barrier would be replaced with a new fence of similar material and will remain 10- feet in height.

Mr. Duffy then asked if the pine trees at the north entrance would remain.

Mr. Finger responded that these trees have already been removed but will be replanted with evergreens such as pine, spruce and firs.

Mr. Duffy asked what the plans were for the remaining green area.

Mr. Finger said that anywhere that they can add evergreens that they would.

Mr. Barrett asked Mr. Mula if they had met with the neighbors and agreed to everything that Mr. Coleman asked to be included in the approval.

These items were discussed and guaranteed to be done. They will be written in the Decision. Mr. Finger guaranteed the wooded area would be cleaned up of dead trees and limbs as Smith Street is their front yard and wants it to provide a pleasing view for them and the neighbors.

Ms. Tarallo suggested pines and spruce trees be planted.

Mr. Finger agreed and said they would be of various sizes between 10-14 feet in height.

Next they discussed the interior signage which will direct vehicles through the site and where to exit.

The Chairman asked if they would put in a crosswalk.

Mr. Finger agreed that they would but did mention they would need to get approval from the Traffic Commission at a later date.

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

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

- VOTED:** **To approve the Special permit for the construction of a curb cut in excess of 25-feet in width on the property known as 200 Smith Street as submitted on 8/10/2016 with the following conditions.**
- 1. Eliminate the grass strip to increase the sidewalk width.**
 - 2. sound barrier rebuilt to no less than the current height with new materials including plantings with a minimum height of 10-feet where appropriate and as discussed at the neighborhood meeting to be scheduled.**
 - 3. Placement of elevated berms where appropriate and as per site plans on file as approved by the building department.**

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

The Clerk read the first item on the agenda which was for an A.N.R. plan for 131 Lincoln Street.

Attorney Philip B. McCourt Jr. came forward to address the Board on this petition. He was there representing Mr. Charles Mantenuto and Mary MacDonald the owner of 131 Lincoln Street. Both parties are involved with this ANR Plan. He informed the Board that they had just submitted a revised plan dated 9/6/2016 showing per the suggestion of both Wade Putnam of the City Engineering Department and William Forte, the Building Commissioner that the lot for 133 Lincoln Street, "Lot A" be marked "Garage to be raised" shown on the plan. They made this revision and it was the only revision made.

Mr. McCourt reviewed the ANR plan showing Mrs. McDonalds Lot "B", 131 Lincoln Street is to be subdivide into (3) Lots with 2 being buildable lots and one being an unbuildable lot. The unbuildable lot will be conveyed to the people at 133 Lincoln Street, which is shown as Lot "A" on the ANR Plan. This lot belongs to the Roach's. This lot had existed prior to any zone changes. It never had frontage. It's a legal non-conforming lot. They will be conveying these lots no merging the lots. The garage was hoped to be kept, but as both the Building Inspector and the City Engineer said, being deemed a Non Buildable Lot, the garage will be razed. Mrs. Roach could go before the Zoning Board of Appeals and ask to keep the garage, but that has nothing to do with this Board.

The other three (3) lots, are single residential lots that conform to the area requirements. They would like to abandon the right of way onto Lincoln Street. It's been in existence for many years by deed, and provided access to the Roaches property, It could also be used by Mary McDonald to use as a right of way. However, for many years, since Glen Circle was extended up

to the cul-de-sac giving Mrs. McDonald frontage on it and the rights to it, she started using the Glen Circle access since 1976.

Mr. Mantenuto would like to build three (3) single family homes. Mrs. MacDonald house would be razed. Two of these lots have adequate frontage on Lincoln Street, the other one has frontage on Glen Circle. Access to the frontage of the two lots on Lincoln Street is very dangerous. At the stop sign the grade of Lincoln Street starts to move upward, making it very dangerous to have access from the two lots. They could do it, it is legally permissible, but they just felt that it just not safe. We are asking to raze Mrs. MacDonald's house. We are asking in this ANR plan to be allowed to access the lots from Glen Circle. They wanted to go over Mr. Putnam's responses.

Comment 1.

You cannot create an unbuildable lot with a building upon it. The structure on the so-called unbuildable lot must be removed before the plan may be filed. The building is not shown as being razed/demolished.

Response: They accepted that finding and we have submitted a new plan shows that the building would be coming down.

Comment 2.

Mr. Putnam talks about the original Glen Road cul-de-sac plan shows a temporary cul-de-sac not a full permanent cul-de-sac.

Response:

The 1958 plan does show a temporary cul-de-sac. However, the controlling plan is the 1977 plan was signed by Edward Delaney and recorded with the Registry of Deeds. (Mr. Putnam does not comment on this plan. This plan extended the cul-de-sac and is shown on all current City plans. He showed the current configuration of then Glen Circle in the City records, the water & sewer tie cards that show that 131 Lincoln Street and 133 Lincolns had rights to Glen Circle since they tied into the water and sewer services. He showed the copy of the City's 1988 Atlas that shows the cul-de-sac. So all these records show that the Glen Circle cul-de-sac is permanent and thus provides Mary MacDonald frontage on Glen Circle.

Comment 3.

It is not known whether the end of Glen Circle actually provides access for the property being subdivided; i.e. who actually has rights to the extended end of Glen Circle.

Response:

The 131 Lincoln Street lot does have frontage onto Glen Circle shown on the 1977 plan, Mr. McCourt didn't know why Mr. Putnam does not comment on this 1977 plan. 131 and 133 have rights and have for 50 years. Mary MacDonald as we clearly see has 80-feet of frontage onto Glen Circle. This is how we can build the access road through the three lots onto Glen Circle.

Comment 4.

The two lots on Lincoln Street as shown on the proposed plan have no problem as their frontage is totally on Lincoln Street.

Response: We agree.

Comment 5.

A Plan on file in Engineering appears to indicate that the land locked parcel at 133 Lincoln Street has a Right of Way by necessity over the now City owned land to the west of Lincoln Street, to the west called Sanderson Heights.

Response:

133 Lincoln Street may have a right of way over City land but it clearly does not have access over the MacDonald land. However, it currently uses Glen Circle for access as does 131 Lincoln Street.

Comment 6.

The deed provided provides rights for water and a right of way which apparently is the right of way shown on the plan to be abandoned. These easements were granted before even the first Board of Survey and Planning approval of Glen Circle and apparently they do not pertain to any Glen Circle rights.

Response:

This is not true. 131 Lincoln Street and 133 Lincoln Street do have rights to water and sewer from Glen Circle. Mr. McCourt showed the water and sewer tie cards on record with the City.

Comment 7.

It is assumed that the water and sewer connections to 133 Lincoln Street are within the easement shown on the plans over the lot at 131 Lincoln Street; no plan was or has been filed showing the exact location providing rights to water and sewer in Glen Circle nor the disposal of the septic tank or cesspool.

Response: Same answer as #6 -

This is not true. 131 Lincoln Street and 133 Lincoln Street do have rights to water and sewer from Glen Circle. Again Mr. McCourt showed the water and sewer tie cards on record with the City.

Comment # 8.

The combination of the unbuildable lot and the existing Lot A would not constitute a legal lot with the required frontage. Residence A2 requires 80 feet of frontage and proposed lot B-4 would only have 13.41 feet of frontage by itself; and also when combined with existing Lot A at 133 Lincoln Street would still have only 13.41 feet of frontage.

Response:

This is correct as to a combination. There is no combination planned. The unbuildable lot will only be conveyed to the owners of the lot at 133 Lincoln Street. The original 133 Lincoln Street lot will remain as it currently exists.

It's really an A.N.R. Plan, utilizing our rights and our frontage on Glen Circle and using the common driveway for all three houses to exit onto Glen Circle which makes sense for safety reasons. There were brief discussions.

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

Mr. Duffy asked if Lot B-1 would need a driveway to be right off Lincoln Street.

Attorney McCourt said, "No.," we would propose a common driveway using the frontage to access Glen Circle.

Mr. Duffy asked why the common driveway was not shown on the plan.

Attorney McCourt said they didn't have to show it. It is an agreement with all three lot owners of the land.

Mr. Duffy asked if the common driveway also goes over Lot B-2 and B-3 onto Glen Circle.

Attorney McCourt said, "That is correct." Access is for safety purposes.

Mr. Duffy said that is kind of unusual.

Mr. McCourt said, no, it occurs in many places.

Mr. Duffy asked him to name one place it occurred.

Attorney McCourt said Pigeon Hill has had some, the Robert Treat Paine Drive has frontage on Beaver Street, Gentleman's Way is all built with a common driveway, and Melody Lane has three house at the end of the lot with a common driveway.

Mr. Barrett asked, "Regarding Lot B-1, there would be no entrance or exit onto Lincoln Street?"

Attorney McCourt said, "It is our intent to have all the houses enter and exit onto Glen Circle. We could have one onto Lincoln Street but again that is not our intent due to safety reasons with the stop sign and telephone pole being there."

Ms. Callahan asked what the address would be for the two houses on Lincoln Street if they are using Glen Circle as access.

Attorney McCourt said that decision would be up to both the Engineering and Fire Departments, but we would ask if they could be Glen Circle Addresses.

Ms. Tarallo commented that Mr. McCourt had mentioned that there is no easement on the Vincula property or whatever they call that land.

Attorney McCourt said they do not believe there is one now, but many years ago there could have been.

Ms. Tarallo asked what the frontage is for Lot B-4 which is to be conveyed to Lot A.

Attorney McCourt said, "It is only 13-feet, that's why it's unbuildable."

Ms. Tarallo asked what the frontage was for Lot A.

Attorney McCourt said, "Lot A has no frontage, and never had frontage. It was done prior to any Board's. That Lot is going to remain the same."

Ms. Tarallo asked how they enter their property now.

Attorney McCourt said they use then Circle.

Mr. DeVito asked for clarification of the 20-foot right of way that is to be abandoned. He wanted to know how access is going to be gained if there is ledge, and access from Lincoln Street onto Lott B-1.

Attorney McCourt reviewed this with the Board.

Chairman Creonte said that there seemed to be a lot of interest from the neighbors and would open the meeting up to hear what they had to say, but first had some comments himself. Currently, there are two homeowners up there now that access through Glen Circle.

Attorney McCourt said, "That is correct. 131 and 133 Lincoln Street access through Glen Circle. Mrs. McDonald has frontage on Glen Circle."

The Chairman commented that with this ANR plan, you are asking for three buildable Lots and one non-buildable lot with the garage to be razed, as our Building Inspector has asked.

Attorney McCourt said, "That is correct."

The Chairman then commented that in his opinion, Lincoln Street is the most dangerous Street in the City of Waltham, and he would not want to see driveways on Lincoln Street. This being an ANR plan, you have to show the Board the frontage on a street, need the required area, and three of the lots are buildable lots.

Attorney McCourt said this correct, "They meet the Board's requirements."

The Chairman then said he was satisfied with the information and is going to open it up to the public at this point.

Attorney McCourt wanted to make a statement, that even though it's the Board's decision to do that, this is a public meeting not a public hearing.

The Chairman said he understands that, but is extending his generosity to the nice people that are here. He then asked if anyone would like to come forward to speak in favor of this petition.

Tom Thibaut of 10 Glen Circle came forward. He had one concern which is that Glen Circle is a private way. The street is a mess and is barely drivable now and if you add more traffic that is going to destroy the street even more. If the Board could have the petitioner agree to pave the road he wouldn't care what they built up there. Also he would be concerned when they do begin construction where would they be parking all the equipment and hoped it would not be on Glen Circle to their property.

The Chairman commented that the Board can only ask for conditions on Special Permits that are before the Board not on an ANR plan.

Margaret Quinn of 26 Glenn Circle came forward. She is concerned that with the couple of houses up there on Lincoln Street lots as they had tried to get a petition to have the street repaved as you can barely drive up and down it. The petition to repave goes by frontage, so some people had a ton of frontage and some had a small amount. Now if these new houses don't have frontage on Glen Circle, but will be using Glen Circle, if they ever try to petition to have the street repaved these houses would not have to pay and that is not fair if they would be using Glen Circle for access.

Richard Blustein of 46 Glen Circle came forward. His land directly abuts this property. He felt the plan is not complete, it doesn't show homes, it doesn't show driveways, but if you look at the property, it is a nice wooded piece of land with a lot of ledge in there and if one were to build there, there would almost definitely need to level that land. All the trees would have to go, there would be a lot of digging and they would need to blast. It all changes the whole character of the area, at least where he is located. There would be no more natural woods, now and his view from his back yard will be new homes.

Next to speak was City Councilor Bill Fowler, who was there as a neighbor as well as the Ward Two Councilor. Mr. Fowler read aloud his comments which he handed out a copy to the board's Secretary for the record and read as follows:

I realize that this property will eventually be subdivided and most likely it will be into three lots. He objects to this subdivision being created without a proper vetting of all the issues. If the Board accepts this ANR plan as submitted, the developer will be before the ZBA looking for all kinds of variances. He believes any hardship that they use for an excuse will be of their own doing and should be rejected if this ANR plan is approved. He felt the plan should be rejected for numerous reasons. On page 8 of section 2, it states power shall be exercised with due regard for the provision of adequate access to all lots of the subdivision. Where is the access? Will it be onto Lincoln Street? This is the same dangerous area that stopped the development of Sanderson Heights. Will the three lots enter onto Glen Circle? Would the access road change the size of the lots and potentially make them non-conforming? On Section 2.2.1 under submission and notice of your rules and regulations it clearly states, "such person shall advise the Board as to the particular provision of the law under which he believes that his plan does not

require approval and shall submit evidence of such immunity satisfactory to the Board on form A-1. I asked for a copy of the A-1 form and was told none was submitted. He was told by the Engineering Department that no utility plans were submitted with the application as required. How will the water and sewer lines be brought in? Will an easement be needed to bring them across the proposed Glen Circle lots? There is no agreement with the owners of 133 Lincoln Street about removing the current easement through the property that basically cuts the lot in half. One of these lot is all ledge which would make the building extremely difficult and expensive. Under Section 2.3.4 criteria for Board actions states, in approving subdivisions, the land shall be suitable for building without danger to health, safety and welfare and that the layout of proposed streets and walkways shall compose of a convenient system. The topography of the lots and safety risks that we all know will be adding driveways to Lincoln Street should be explored before this proposal moves forward. Lastly the so called non buildable lot currently has a garage on it, which by itself is reason enough for a denial. It is his opinion that a Definitive Subdivision would address all of these questions. All City Departments would have input on the plan and help make the best layout it could be. He urged the Board to deny the ANR plan.

He then added that he felt the plan should be reviewed by the Law Department.

Next to come forward was Attorney Barry Gaiman of Belmont, Ma assisting the resident of 111 Lincoln Street. He asked the developer in regard to Lot B-1 it has 140 square feet over the minimum and it also is sited to build a residence pretty close to the lot line and is asking why he did it that way and is there some flexibility how you site the house.

Mr. Charles Mantenuto commented that right now they are just laying out the bare lots. When we do something we want to do it right for everybody. That's very important to us. We have test holes. We know where the rock is and how much has to come down, which is as much as everyone thinks. We want to make something attractive to the neighborhood, and certainly maneuvering the houses so it pleases everyone. We have no problem doing that. We come from Waltham, we want to do everything right for Waltham. Laying out the actual houses on the Lots is further done the line, after we get other approvals. We are willing to show the neighbors the plan and get their input. He hates cutting down trees, but some need to come down and most are just shrub brush and dead trees full of ants. Any tree he can preserve he will. They don't want to come off of Lincoln Street because they don't want to kill people because it's so dangerous, but he can and does have the right to do that but would prefer not to. If a neighbor on the lot line needs a fence or shrubs we will do that.

There being no one else coming forward to speak the Chairman closed that part of the hearing and reopened it to the Board.

Mr. DeVito commented that there are too many unanswered questions and felt this requires a site view and suggested that the petitioner withdraw to allow time to hold a site view.

Ms. Tarallo said they have 20 days to approve it.

Attorney McCourt commented that they would prefer not to withdraw it as there are sales pending waiting to see if this approval goes through.

The Chairman asked the Secretary when they needed to act by.

Ms. Deveney said the time to act on this ANR Plan would be September 20, 2016.

The Board discussed having a site view the following week and a special meeting to vote on the petition before the deadline.

The Chairman then polled the Board to see if they would like a site view and special meeting.

John Duffy	YES
Just Barrett	YES
Kathleen Callahan	YES
Mila Tarallo	YES
Anthony DeVito	YES
Chairman	YES

Mr. DeVito asked that the site be clearly marked out showing the lineage and both easements as show on the plan.

The Board then chose dates for both, and the Chairman asked for a motion.

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

VOTED: to have a site visit at the 131 Lincoln Street site, meeting on Glen Circle on Tuesday, September 13, 2016 at 5:00p.m. and to hold a Special Meeting on Monday, September 19, 2016 at 5:00p.m., location to be determined and posted.

The Clerk read the next item on the agenda which was for the approval of the minutes of the June 1, 2016 meeting.

The Chairman asked if there was a motion.

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

VOTED: to approve the June 1, 2016 minutes as submitted.

The Clerk read the next item on the agenda which was for the approval of the minutes of the special meeting June 22, 2016 meeting.

The Chairman asked if there was a motion.

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

VOTED: to approve the minutes to the Special Meeting of June 22, 2016 as submitted.

The Clerk read the next item on the agenda which was for the approval of the minutes to the special meeting of August 17, 2016.

The Chairman asked if there was a motion.

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

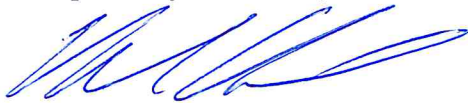
VOTED: to approve the minutes of the special meeting of August 17, 2016.

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

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

VOTED: to adjourn the meeting at 9:21 p.m.

Respectfully submitted,



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