

**MINUTES OF THE PROCEEDINGS OF THE
PLANNING BOARD OF THE CITY OF WORCESTER**

September 4, 2013

WORCESTER CITY HALL – LEVI LINCOLN ROOM

Planning Board Members Present: Stephen Rolle, Vice Chair
Satya Mitra, Clerk
Robert Ochoa-Schutz
John Vigliotti

Planning Board Members Absent: Andrew Truman, Chair

Staff Present: Joel Fontane, Division of Planning & Regulatory Services (DPRS)
Abigail McCabe, Division of Planning & Regulatory Services
Marlyn Feliciano, Division of Planning & Regulatory Services
Katie Donovan, Department of Inspectional Services
K. Russ Adams, Department of Public Works & Parks
Michael Traynor, Law Department
Alexandra Haralambous, Law Department

BOARD SITE VISITS

REGULAR MEETING (5:30 PM)

CALL TO ORDER

The meeting was called to order by Vice Chair Rolle at 5:38 p.m. Mr. Rolle thanked Mr. Fontane for his 10 years of service as Director for the Division of Planning & Regulatory Services with the City and also Ms. McCabe for her time as Chief Planner. Both will be missed.

APPROVAL OF THE MINUTES – Mr. Rolle requested a change on page 13 under Item #9 for the June 26, 2013 minutes. Upon a motion by Mr. Mitra and seconded by Mr. Vigliotti, the Board voted 4-0 to approve the minutes for 6/26/13 with the requested edit and the minutes for 5/15/15 and 8/28/13.

**REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS,
WITHDRAWALS**

1. 690 Grafton St – Parking Plan Approval (PB-2013-033)

Ms. McCabe stated that the applicant requested a postponement to the September 18, 2013 meeting. Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Mitra, the Board voted 4-0 to approve the item be postponed to September 18, 2013.

List of Exhibits

- Exhibit A: Parking Plan Application; prepared by Skaff Auto Inc.; received July 16, 2013.
- Exhibit B: Proposed Site Plan & Parking Plan; dated prepared by Summit Engineering & Survey, Inc.; dated July 16, 2013, revised July 24, 2013 and received July 25, 2013.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 690 Grafton Street – Parking Plan Approval; dated August 21, 2013.
- Exhibit D: Memorandum from the City of Worcester Department of Public Works & Parks to the Planning Board; re: 690 Grafton Street, Parking Plan – PB-2013-033; dated August 20, 2013.
- Exhibit E: Letter from Renfrew St. Residents to the Zoning Board; re: 690 Grafton Street; dated August 7, 2013 and received August 9, 2013.

2. 525 (aka 525-545) Lincoln Street (Lincoln Plaza) – Special Permit for Comprehensive Sign Plan Approval (PB-2013-007)

Ms. McCabe stated that the applicant has requested a Leave to Withdraw Without Prejudice for the Comprehensive Sign Special Permit. Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Vigliotti, the Board voted 4-0 to grant the Leave to Withdraw Without prejudice.

List of Exhibits.

- Exhibit A: Special Permit for Comprehensive Sign Plan Approval; received February 13, 2013; prepared by Trustees of Clark University.
- Exhibit B: Partial Site Plan – Existing Tenant Locations, Lincoln Plaza, Worcester, MA; dated February 12, 2013; prepared by Dana F. Perkins, Inc.
- Exhibit C: Photographs of existing permanent signage in site with dimensions (application packet).
- Exhibit D: Building Key Plan (Exhibit A of the application packet).
- Exhibit E: Summary of wall sign and freestanding sign dimensions (application packet)
- Exhibit F: Application requirement waiver request; submitted by Michael Maurello; e-mail dated March 14, 2013.
- Exhibit G: Summary of freestanding sign dimensions compiled by staff.
- Exhibit H: Building Key Plan marked up by staff summarizing tenants and freestanding sign location and size.
- Exhibit I: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Planning Board; re: 525 (aka 525-545) Lincoln Street (Lincoln Plaza) - Special Permit for Comprehensive Sign Plan Approval (PB-2013-007); March 15, 2013.

- Exhibit J: Memorandum from the City of Worcester Department of Public Works & Parks to the Planning Board; re: 525 LINCOLN STREET; Special Permit – PB-2013-007; dated March 14, 2013.
- Exhibit K: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 525 (aka 525-545) Lincoln Street (ZB-2012-049); dated August 24, 2012, last revised January 23, 2013.
- Exhibit L: Request for postponement and extension of the public hearing deadline to June 5, 2013; dated April 1, 2013; received April; 3, 2013.
- Exhibit M: Request for Leave to Withdraw Without prejudice dated August 28, 2013; received August 28, 2013.

NEW BUSINESS

Public Meeting

3. 110, 112, 120 Gold Star Blvd & 33 Millbrook St – Amendment to Definitive Site Plan Approval (PB-2013-025)

Attorney Robert Longden, representing EJR Real Estate Trust, who owns HARR Motors, stated that the purpose for the proposal is to demolish an existing 9,700 SF building and reconfigure the area into an additional automobile sales display for 54 spaces. He also stated that additional landscaping will be installed in the same location as the existing digital sign and also a 5 ft. buffer along Millbrook Street.

Mr. Longden also stated that they are requesting to have the condition removed from their original Definitive Site Plan approval to plant shade trees at 20 ft. intervals along Millbrook Street. He stated that he believed the proposed landscape buffer would suffice. The applicant has submitted revised plans addressing staff comments. Mr. Longden stated that the additional conditions of approval in staff's memo are amenable to the applicant.

Mr. Adams stated that DPW&P had issued a memo requesting the applicant show the existing drainage information on the plans but upon a site visit found that the site had no drainage and therefore he asked the Board to disregard DPW&P comments.

Ms. McCabe stated that if approved, staff recommends the following:

- Label the empty space between the 5-ft landscape buffer and 7 parking spaces as snow storage (along Millbrook Street near N/F Massachusetts Electric Company right-of-way easement).

Ms. Donovan stated that the digital sign is not in compliance with current regulations and asked that the sign be operated according to the operational standards of digital signs. Mr. Longden stated that the sign was modified a week ago to conform with the operational requirements of the Zoning Ordinance.

Scott Ricker, Worcester resident and handicapped access advocate, asked if there was an office onsite. The applicant responded that it was only for additional display of cars.

Mr. Vigliotti asked if the 32" caliper oak tree that was onsite was removed and if so, if it had Planning staff's approval. Mr. Fontane stated that the tree was removed and it is noted in the final revised plans.

Mr. Rolle asked if there was a walkway on Millbrook Street or on Gold Star Boulevard. He stated his concern with businesses not providing a pedestrian way on Gold Star Boulevard. Mr. Longden stated that there is a pedestrian walkway along Gold Star Boulevard and up to the main entrance of HARR Toyota and one along Millbrook Street. They are connected but the landscaping in the corner would cut out some of that width.

Mr. Fontane stated that staff would like to see landscaping since the area is completely paved now.

Mr. Mitra asked Inspectional Services to verify that the digital sign has been brought into compliance.

Upon a motion by Mr. Mitra and seconded by Mr. Ochoa-Schutz, the Board voted to approve the Amendment to the Definitive Site Plan with only condition #1 in the memo and that Inspectional Service verifies that the digital sign is in compliance.

List of Exhibits.

Exhibit A: Amendment to Definitive Site Plan Application; received May 23, 2013; prepared by EJR Real Estate Trust.

Exhibit B: Amendment to Definitive Site Plan; prepared by American Survey and Engineering, Inc.; dated May 23, 2013, revised 8/16/13.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Planning Board; re: 110, 112, 120 Gold Star Boulevard & 33 Millbrook Street – Amendment to Definitive Site Plan Approval (PB-2013-025); dated June 25, 2013, updated 7/12/13, 8/7/13 and 8/22/13.

Exhibit D: Memorandum from the City of Worcester Department of Public Works & Parks to the Planning Board; re: 110, 112, 120 GOLD STAR BOULEVARD; Definitive Site Plan Amendment– PB-2013- 025; dated June 20, 2013.

Exhibit E: Request to postpone from June 26, 2013 to 7/17/13; and 8/7/13 to 8/28/13.

OTHER BUSINESS

4. Brookside Avenue – Street Petition Convert to Public (ST-2013-020)

Mr. Adams stated that DPW&P recommends a Priority #1 designation for the conversion of this street. Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Mitra, the Board voted 4-0 to recommend approval of the street conversion as priority #1.

5. Hilma Street – Street Petition Convert to Public (ST-2013-021)

Mr. Adams stated that DPW&P recommends a Priority #1 designation for the conversion of this street. Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Mitra, the Board voted 4-0 to recommend approval of the street conversion as priority #1.

6. Carriage House Lane Subdivision Bond Reduction Request

Mr. Adams stated that because of the work already completed, DPW&P is recommending that the bond is reduced to \$35,000 and that the revised completion date is set to November 1, 2013.

Upon a motion by Mr. Vigliotti and seconded by Mr. Mitra, the Board voted 4-0 to reduce the bond from \$85,000 to \$35,000. Upon a motion by Mr. Mitra and seconded by Mr. Ochoa-Schutz, the Board voted 4-0 to approve the recommended completion date of November 1, 2013.

7. **CMRPC (Central Massachusetts Regional Planning Commission) Board Appointments**

Staff requested that this item be postponed to September 18, 2013. The Board consented.

8. **Approval Not Required (ANR) Plans**

a. **1 Leyton Road/ 5 Spring Valley Road (AN-2013-039)**

Ms. McCabe stated that the proposal is to convey parcel A&B to the abutter at 1 Leyton Road. Both lots still meet frontage requirements. Upon a motion by Mr. Mitra and seconded by Mr. Vigliotti, the Board voted 4-0 to endorse the ANR.

b. **9 Maplewood Road (AN-2013-040)**

Ms. McCabe stated that Parcel A that is on Tahanto Road is to be combined with 7 Maplewood Road (Lot 183) and there is a note on the plan that it is not to be considered a separate building lot. 7 Maplewood Road has 74 ft of Frontage on Maplewood, 9 Maplewood has 74 ft of Frontage on Maplewood and the rear portion of 9 Maplewood has 48 ft on Tahanto Road in the RS7 zone that requires 65 ft of frontage. Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Mitra, the Board voted 4-0 to endorse the ANR.

NEW BUSINESS CONTINUED

Public Hearing

9. **Zoning Ordinance Amendment – Registered Marijuana Dispensaries**

Mr. Fontane presented the proposed Zoning Ordinance Related to Registered Dispensaries for the Humanitarian Medical Use of Marijuana. This is the administration's proposal based on the new laws passed by the state. He stated that:

- On Nov. 6th, 2012 Ballot Question 3, "An Initiative Petition for a Law for Humanitarian Medical Use of Marijuana" passed with a 63.3% vote and won the majority of votes in 349 of the State's 351 communities.
- On May 8th, 2013 the state Public Health Council unanimously approved regulations for the medicinal use of marijuana, which became effective on May 24th, 2013.
- On Aug. 22nd, 2013 the State began accepting applications (Phase I consideration) for dispensaries.
- Given the medical nature of this use, safety concerns related to hardship cultivation, and to be in compliance with State Law, it is important that the City adopt a zoning amendment to allow for dispensaries and cultivation at certain locations.

Mr. Fontane stated that Registered Medical Marijuana Dispensaries (a.k.a RMD) is defined by the state as "a not-for-profit entity registered under 105 CMR 725.100, to be known as a

registered marijuana dispensary (RMD), that acquires, cultivates, possesses, processes (including development of related products such as edible MIPs, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. Unless otherwise specified, RMD refers to the site(s) of dispensing, cultivation, and preparation of marijuana.”

Mr. Fontane stated that the individuals that can use medicinal marijuana are qualifying patients which have to be Massachusetts residents 18 years of age or older who have been diagnosed by a Massachusetts licensed certifying physician as having a debilitating medical condition that is also a life-limiting illness, subject to 105CMR 725.010(J). A debilitating Medical Condition is defined as cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis (ALS), Crohn’s disease, Parkinson’s disease, and multiple sclerosis (MS) when such diseases are debilitating, and other debilitating conditions as determined in writing by a qualifying patient’s certifying physician.

Mr. Fontane stated that the state regulations that were released in May allowed for some local controls to be put in place to regulate this use. The first course is to make provisions for it in the Zoning Ordinance. He stated that the State has imposed a quota on the number of dispensaries at 35 Statewide and not more than five (5) per county – municipalities cannot further limit the number of facilities. The Law empowers the State to increase the number of RMDs in the future based on its assessment of whether there are a sufficient number to meet patient needs. The State Department of Public Health will score applications using, among other criteria, “[...] desired geographical distribution of dispensaries (i.e. convenience for and proximity to Massachusetts Residents, and avoidance of clustering of dispensaries on one area), [and] local support for the RMD application [...]”. At the municipal level the distribution of dispensaries can be regulated through required buffers between RMDs.

Mr. Fontane stated that from a land use perspective, dispensaries and cultivation are distinct uses. Our understanding is that medical marijuana dispensaries and marijuana cultivation can occur at one location or at separate locations and still be considered one license for the purposes of State licensing quotas. This is why the attached proposal defines and regulates these uses separately. Based on City Council sentiment, the characteristics of RMD uses, and the City’s land use policy, the proposed ordinance allows RMDs in all Business General, Manufacturing General, and Institutional-Hospital Zones with additional land use buffers.

The State’s regulations provide a number of controls that will help ensure the proper operation of these facilities and limit the use of dispensaries to those who have a debilitating health problem or their caregivers – both are required to register with the State. The State’s regulations also call for security measures for these facilities and the handling of medical marijuana in general. Within this context the City must develop a zoning ordinance amendment that avoids creating what is referred to as an effective ban. This is why a proposal to limit these uses to Institutional Hospital Zones, while logical because these dispensaries are for “medical” purposes, may constitute an effective ban since there are only a few such zoning districts with few unique property owners.

Mr. Fontane stated that buffers may be a prudent first step until the uncertainty associated with the proper implementation and enforcement of these new regulations has been demonstrated. Buffering was included in the regulations adopted by the State presumably for similar reasons. The State’s regulations include a provision for buffering dispensaries from facilities in which children commonly congregate as follows:

CMR 725.110(A)(14) – Security Requirements for Registered Marijuana Dispensaries states:
“A RMD shall comply with all local requirements regarding siting, provided however that if no local requirements exist, a RMD shall not be sited within a radius of five hundred feet of a school, daycare center, or any facility in which children commonly congregate. The 500 foot distance under this section is measured in a straight line from the nearest point of the facility in question to the nearest point of the proposed RMD.”

Staff conducted an analysis of the geographic effect of this buffer in combination with various local requirements to ensure that an effective ban is not inadvertently imposed by either the State regulations, local regulations, or both. Whether it is incumbent on municipalities to adopt local requirements to correct an effective ban created by this State regulation is unclear, but given the City’s intent to allow these uses we analyzed the geographic impact of the above State regulation in combination with additional proposed local regulations.

Any analysis of this regulation is frustrated by the lack of specificity of the phrase “any facility in which children commonly congregate” included in the above regulation. This phrase implies libraries, parks and playgrounds, and perhaps, other facilities and establishments such as churches, roller / ice skating rinks, gyms, clubs, Chucky E Cheese, a school bus stop, etc. How this vague provision is interpreted could have a substantial effect on the locations available. However, the City is unable to analyze this geographic effect given the State regulations’ lack of specificity and absence of the data needed to identify all establishments in which children commonly congregate.

To overcome this challenge, staff further specified the “any facility in which children commonly congregate” clause of the State regulations to include public and private, primary and secondary schools, licensed daycare centers, public libraries, public parks and playgrounds.

As of July 5, 2013 there were 300 licensed (by Mass Dept. of Early Educ. & Care) daycare facilities in the City of Worcester. All parks and 13 playgrounds were included.

Mr. Fontane stated that the proposed ordinance provides control through a special permit (from ZBA) process for RMDs within 300’ of a residential zoning district. It requires that RMDs be no closer than 300’ from one another and requires a 300’ buffer from a well-defined set of places where children commonly congregate. It also establishes a buffer distance consistent with the State’s Drug Free School zones of 300’.

Public Comment

Steve Goodman, board member for Compassion Health Centers, recommended that RMD use also be allowed in the manufacturing limited zone districts. He also stated that it is safer to have cultivation and dispensing together on one site and believes that the 300 ft. setback from residential districts would create an additional burden for patients trying to access RMDs and would force them to cultivate at home.

Mr. Fontane stated that dispensaries are still allowed by special permit within 300 ft. of residential districts. He also stated that administration did not include any of the manufacturing limited zones because of their proximity to residential zones.

Attorney Steven Cottons stated he has clients who are interested in applying in Worcester. He stated that the state is mandating that the RMDs provide a courier service because an RMD operator might have one cultivation center and several dispensaries. He was concerned with the term “children congregating” because that could be deemed to mean any street.

Jim Dupree from Kelleher and Sadowski, stated that this use is perfect for ML zones because they are accessible and invisible to neighbors but have good retail access.

Jo Hart, Worcester resident, stated that the dispensaries should be allowed in the same zones as prescription drugs are.

Mr. Ochoa-Schutz stated that the proposed ordinance is good but he is concerned with security once an individual goes home with the product.

Mr. Mitra stated he believed ML zones should be included.

Mr. Fontane stated that the Board can recommend the proposal to City Council with or without conditions. He also suggested that once the state’s enforcement is fully developed and if RMDs are operated properly and in compliance with all state regulations then additional zones can be added at that time.

Mr. Rolle stated that he also believed that this should be allowed by right in ML zones.

Mr. Ochoa-Schutz stated that he didn’t see the need for ML zones to be included now. There is a limit of only 5 RMDs per county so he does not see the need for additional zoning districts now. He also asked for clarification on what would need to appear before a regulatory board for a special permit for a RMD.

Mr. Fontane stated that as proposed, the dispensaries and cultivation facilities in BG and MG zones, not within 300 ft. of a residential district, are allowed by right. That means that they are not required to ask for any special permit through the Zoning Board of Appeals, they would go through Inspectional Services and there is no public hearing. The dispensaries in those zones within 300 ft. of a residential district need a special permit; cultivation centers are not allowed within 300 ft.

Mr. Vigliotti stated that ML zones are in highly dense areas and those areas would not look kindly to having a RMD in their backyard, especially if there is no public hearing where they can air their concerns.

Jo Hart, Worcester resident, asked what the operating hours are for RMDs and how large these facilities would be. Mr. Fontane stated that he couldn’t remember the hours but that would need to be itemized to the state in their application. Mr. Goodman stated that considering the other facilities his company runs in other states, he expects that a cultivation facility and dispensary in Worcester would be anywhere between 35,000 SF and 50,000 SF, depending on the additional services they might offer.

Jim Umphrey, Kelleher & Sadowsky, recommended that ML zones are allowed by special permit.

Mr. Ochoa-Schutz asked what the licensing process looks like.

Mr. Fontane stated that the state does the licensing for RMDs. There are two phases to the application process. The first one requires everyone involved to pass a background check, etc. The second phase deals with the location and lease particulars.

Bob Barrison, Patriot Care Corporation, stated that his company has RMDs in Arizona and Washington DC. He stated that one can have three dispensary licenses under the same entity and supply them with just one cultivation center. That scenario is considered one license. In Arizona, they have three dispensaries that are anywhere from 1,000 to 4,000 SF and the cultivation center is approximately 15,000 SF.

Mr. Rolle and Mr. Mira stated that they are strongly in favor of allowing the use in ML zones, even if by special permit.

Mr. Ochoa-Schutz stated that it is a new program and he does not see the need to add any additional zones at this time.

Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Vigliotti, the public hearing was closed.

Upon a motion by Mr. Ochoa-Schutz and seconded by Mr. Mitra, voted unanimously (Andy Truman not present) to recommend approval of the petition of the City Manager to amend the City of Worcester Zoning Ordinance by inserting the definition for Registered Marijuana Dispensaries, amending the Business Use table to include the zones where this use will be allowed, and inserting a note regarding required buffers, with members Robert Ochoa-Schutz and John Vigliotti voting to recommend approval of the petition as proposed by the administration, and members Stephen Rolle and Satya Mitra voting to recommend that the proposal be modified by additionally allowing registered marijuana dispensaries in Manufacturing Limited zoning districts by-right and by Special Permit as follows:

SECTION 2. The City of Worcester Zoning Ordinance is hereby amended by inserting in Article IV, Section 2, Table 4.1 – Business Uses, the following new line 30. Registered Marijuana Dispensary:

30. Registered Marijuana Dispensary (provided, not within 300 feet of a residential district in BG and MG districts. See, Notes to Table 4.1, Note 13.)

RS 10	RS 7	RL 7	RG 5	BO 1	BO 2	BL 1	BG 2	BG 3	BG 4	BG 6	ML 0.5	ML 1.0	ML 2.0	MG 0.5	MG 1.0	MG 2.0	IP .33	IN S	IN H	A 1
N	N	N	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	N

SECTION 3. The City of Worcester Zoning Ordinance is hereby amended by inserting in Article IV, Section 2, Table 4.1 – Business Uses, the following new line 31. Registered Marijuana Dispensary, without cultivation operations:

31. Registered Marijuana Dispensary, without cultivation operations and within 300’ of a residential district (See, Notes to Table 4.1, Note 13.)

RS 10	RS 7	RL 7	RG 5	BO 1	BO 2	BL 1	BG 2	BG 3	BG 4	BG 6	ML 0.5	ML 1.0	ML 2.0	MG 0.5	MG 1.0	MG 2.0	IP .33	IN S	IN H	A 1
N	N	N	N	N	N	N	SP	SP	SP	SP	SP	SP	SP	SP	SP	SP	N	N	Y	N

The Board members that recommended the proposal as written indicated that:

- There are too many unknown factors (i.e. potential security issues) to allow them in ML zones which often abut densely populated areas.

The Board members that recommended modifications indicated that:

- The RMD locations in ML districts proposed in Section 2. Table 4.1, Use # 30 would be appropriately buffered from the residential districts via required 300’ buffer.
- The RMD locations in ML districts proposed in Section 2. Table 4.1, Use # 31, would only be allowed by a discretionary permit granted by the Zoning Board of Approvals and would be consistent with the original proposal for the BG and MG districts.

List of Exhibits.

- Exhibit A: City Council Transmittal - City Manager's Recommendation; prepared by City Manager Michael V. O’Brien; dated August 20, 2013.
- Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Planning Board; re: Proposed Zoning Ordinance Amendment Related to Registered Dispensaries for the Humanitarian Medical Use of Marijuana; dated August 29, 2013.
- Exhibit C: Policy Analysis Map – Proposed Potential Locations for Medical Marijuana Dispensaries and Cultivation Facilities; dated July 31, 2013, prepared by Luba Zhaurova.
- Exhibit D: State Regulations re: 105 CMR 725 .000: Implementation of an Act for the Humanitarian Medical Use of Marijuana; last revised May 8, 2013.
- Exhibit E: FAQ Regarding the Medical Use of Marijuana in Massachusetts; Last Updated May 24, 2013.

- 10. **Signing of Decisions from prior meetings** – Zone Amendment 631 Sunderland Rd, Aurilla Street Removal, 3 Faraday St (PPA), 7-11-15 Lancaster St (PPA), Malden Woods Lot Release, LaChappelle Subdivision

ADJOURNMENT

Upon a motion by Mr. Vigliotti and seconded by Mr. Mitra, the Board voted 4-0 to adjourn the meeting at 7:48 p.m.