

**MINUTES OF THE PROCEEDINGS OF THE
ZONING BOARD OF APPEALS OF THE CITY OF WORCESTER**

April 6, 2009

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: David George, Chair
Leonard Ciuffredo
Lawrence Abramoff
Andrew Freilich
William Bilotta

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Ruth Gentile, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services
John Nordberg, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair George called the meeting to order at 5:30 PM.

1. **400 Park Avenue (ZB-2009-021) – Variances:** Todd Brodeur, representative for CVS Caremark, Corp., requested a continuance to April 27, 2009 to allow the applicant time to address the items in the memo from DPRS. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the applicant's request for continuance to April 27, 2009.
2. **33 Green Hill Avenue (ZB-2009-019) – Special Permit:** Steven Favulli, owner for the property is seeking a Special Permit for the Expansion or change for a pre-existing non-conforming structure. Mr. Favulli stated that he wanted to enclose his existing deck and make a three season room that would be 16' x 14' for a total of 224 sq. feet. He said that gutters and downspouts would be used and water collected into rain barrels. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the following:

SPECIAL PERMIT: Expansion or Change of a pre-existing non-conforming structure

The Special Permit was approved with the following conditions:

- **That the approval be tied to the submitted rendering.**

3. **153 West Street (ZB-2008-110) – Administrative Appeal:** The Board considered items #3 (153 West Street), #4 (17 Elbridge Street), #5 (30 Wachusett Street) contemporaneously. Attorney Gary Brackett represented the petitioners, Collis and Curran, Inc, Paul & Mary Zamarro and Carole Arthur and Arthur Resca, owners of the properties. Atty. Brackett said the petitions were filed to appeal the cease and desist orders relative to operation of illegal lodging houses in an RG-5 zone, but refuted the orders contending that all of the properties represented a dwelling unit as defined in the Zoning Ordinance. He then went on to recite the definition of dwelling unit and compared it with the definition of lodging house. He noting that the definition of a lodging house is more restrictive and it is where sleeping facilities are let. He emphasized that a dwelling unit was a single unit which provides living, sleeping, cooking and sanitation facilities and that these properties are dwellings not lodging houses.

Atty. Brackett indicated that Inspectional Services issued the cease and desist orders incorrectly and maintained that if four unrelated people are in a dwelling unit, then a proper order would be to indicate that there were more than three unrelated people living in the dwelling and require one person to vacate to come into compliance. He then went on to contend that that mere fact that you have more than three unrelated people living together does not mean that a lodging house has been created. Atty Brackett stated that each property was occupied by more than three people prior to the 2007 amendment to the Zoning Ordinance and therefore they are legal pre-existing non-conforming uses. Atty. Brackett then referenced the Zoning Ordinance's protections for legal, pre-existing, non-conforming uses and indicated that these protections remain unless the use ceases to operate for two years. Mr. George stated that the petitioner must demonstrate to the Board that legal protected non-conforming status and noted that lodging houses were a by-right use in 1993 in RG-5 zones. Mr. George indicated that the petitioners' position is that these are dwelling units occupied by more than three unrelated people and therefore not lodging houses. Mr. George asked Mr. Nordberg if he considered non-conforming status when conducting his inspections. Mr. Nordberg said that he did not consider non-conformities. He said after he collected information from his inspection the owners were issued the orders. Mr. Brackett contended that the owners did not receive proper notification from which to resolve these issues contending that his clients should not have to go to Land Court to resolve this issue.

Mr. Freilich questioned how many people are allowed in each unit under the sanitary building code. Mr. Kelly indicated the requirements are 150 square feet for the first person and 100 square feet for each additional person. Mr. Freilich asked Atty. Brackett if his clients were willing to accept three people per dwelling unit or get a Special Permit for a lodging house. Atty. Brackett said that his clients do not want to run a lodging house and therefore would not apply for a special permit for that use because it would be admitting that they are lodging houses, which they are not. They are multi-family dwellings with more than three unrelated people in a unit, he asserted, not a lodging houses. He said that the issue is how the City interprets the definition of a lodging house. Mr. Fontane stated that the Board must consider the definitions according to the Zoning Ordinance and if the enforcement action is proper based on the Zoning Ordinance.

Mr. Freilich asked how many more buildings are in this situation? Mr. Nordberg answered that the survey of the city was not completed and he did not know how many more there are. Mr. George said that the extent of the issue is not known, but that the Board has had six administrative appeals before it. He also noted that the previous cases before the Board were

similar and that the Board upheld the cease and desist orders with the provision that they take effect when the current leases expire. Mr. Bilotta questioned if notices were sent out to announce the neighborhood sweep and if these properties had prior violations. Mr. Nordberg indicated that notices were not sent out prior and that these properties are all good properties with not many, if any, complaints. Mr. Cuiffredo said that if the City Manager requested that the area be surveyed, there must be a good reason. Atty. Brackett said that his clients should have been contacted after Mr. Nordberg finished his inspections in order to allow them the opportunity of a response. Atty. Brackett said that after the a meeting with Mr. Kelly, Mr. Fontane, Ms. Valade, he was told by Mr. Kelly that on advice of the Law Department, they could not meet again. Mr. Kelly stated that, in the opinion of the Law Department, the issue was in front of the Board for a decision. He further stated that he would request the Law Department's advice again based on any new information submitted.

Mr. Abramoff noted changes to the Zoning Ordinance over time and asked if these uses existed prior to 1980. Mr. Brackett responded that he had not reviewed it as to the 1980 Zoning Ordinance but noted the change regarding kitchen facilities. Mr. Freilich inquired whether the uses would be grandfathered if they existed prior to the 2007 Zoning Ordinance amendment. Mr. Ciuffredo stated applicants have a way to resolve this issue. They can reduce the number of tenants in each unit or apply for a special permit for a lodging house. Mr. John Girourard stated that he wants to rent apartments, not run a lodging house. He stating that a lodging house requires an on-site manager and related fire safety upgrades that cost tens of thousands of dollars. He also stated that he purchased the properties with certain expectations and that this issue has caused him to reduce the number of people he is renting to and that this reduces his property's value. He further cautioned the Board that if counting names on mailboxes is how enforcement is carried out, then the City runs the risk of pushing this issue underground, which would result in safety issues. Paul Zamarro stated that he previously lived at his property that is now considered a lodging house and that he visits his properties twice a week. He also stated that he met with Mr. Kelly and Mr. Nordberg and was told that the area sweep was an educational process. Mr. Resca said that he agreed with the comments of the other owners who spoke. He stated that he has reduced the number of people he will rent to in each unit and that this has greatly reduced interest in renting his units. David MacGilloway stated that he received a cease and desist order and that he did not receive a phone call or notification, and that his is the property manager. He further indicated that he maintains his properties well. He further stated that this issue is going to keep coming up all over the city. Mary Broggi said that she was very disappointed with the City categorically ignoring her argument that her properties are legal, pre-existing, non-conforming uses. She stated her phone calls to the City had not been returned and that is why she hired an attorney. She further stated that the City's Law Department did not address the constitutionality issue and the nonconformity protections. Mr. Fontane indicated that the Law Department advised that the constitutionality issue was not within the scope of the Board's review and the legal opinion from City Atty. Beaton provides the legal framework for determining the status as a pre-existing, non-conforming use.

Atty. Brackett stated that he wanted the Board to consider this issue further. He asserted that there is a benefit to an administrative review. He further stated that when he was City Solicitor for the City of Worcester that he assigned a Law Department representative to attend the Zoning Board of Appeals meetings and stated the Board would benefit from a member of the Law Department attending the meeting.

Mr. Abramoff asked if the earlier discussion about a meeting between the Inspectional Services, Law Department and the applicants would still be considered. Mr. Kelly responded that he would need to discuss that with the Law Department if the item is continued. Mr. Abramoff and Mr. Freilich both stated that they would like to have the Law Department attend the next meeting and to continue the hearing until then. Mr. Bilotta agreed. Mr. Ciuffredo stated that he was prepared to vote, but he would like a continuance to the next meeting for further review. Mr. Freilich requested that a member of the Law Department attend the next meeting and indicated that there should be more ongoing dialog. Mr. Freilich indicated that he does not want to be anti multi-family housing and would like to continue the hearing. Mr. George stated that the Board had the following specific questions and requests:

- 1) How does the Inspectional Services determine that these structures are lodging houses?
- 2) How long have leases on these properties been in effect?
- 3) That Mr. Kelly, on the advice of the Law Department, meet with the petitioners between now and the next meeting,
- 4) That a member of the Law Department be present at the next public hearing.

Mr. Fontane then stated that an extension of time was required, if the Board was going to continue the hearings. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to continue the hearing to April 27, 2009 and approve the applicant's request for an extension of constructive grant deadline to May 28, 2009.

4. **17 Elbridge Street (ZB-2009-005) – Administrative Appeal:** See #3. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to continue the hearing to April 27, 2009 and approve the applicant's request for an extension of constructive grant deadline to May 28, 2009
5. **30 Wachusett Street (ZB-2009-006) – Administrative Appeal:** See #3. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to continue the hearing to April 27, 2009 and approve the applicant's request for an extension of constructive grant deadline to May 28, 2009.
6. **453 Pleasant Street (AKA 455 Pleasant Street (ZB-2009-022) – Variance:** Don O'Neil, representative for the petitioner, Maccattack, LLC, is seeking a Variance for 73 parking spaces from the off-street parking requirement. Mr. O'Neil stated that after meeting with the Fire Department, it was determined that the maximum occupancy of the building needed to be reduced to 135 as a result of new fire code regulations. Therefore, the parking requirement would be reduced but that the property would still need a variance for 44 parking spaces. He further stated that Maccattack, LLC and the medical office across the street have an agreement to allow the club to use their parking lot at night since the peak hours of operation of the two businesses do not overlap with each other. Mr. Fontane said that the agreement was not binding and that the medical offices needed to provide the

required parking as well as the applicant requiring relief from the off-street parking requirement. Mr. Bilotta asked if the applicant was willing to correct problems that he inherited. Mr. Ciuffredo and Mr. George expressed concerns regarding outdoor café seating. Ms. Gentile said that there is a residential high-rise on one side and a single-family dwelling to the rear of the property. Mr. Abramoff said that only outdoor seating should be allowed on the Pleasant Street side, away from residential areas and only until 10:00 PM. Other Board members disagreed and thought that no outdoor seating should be included. The Board discussed the noise associated with the use of open air seating. Mr. Ciuffredo asked if staff would be parking off-site and that they indicate, by way of a sign, that parking is available across the street. The applicant answered yes. Mr. Ciuffredo asked if the applicant would agree to conditions regarding no outdoor seating and that planters be installed at the entrances to the parking lot. The applicant asked if the Board would allow large open windows. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the following:

VARIANCE: 44 parking spaces from the off-street parking requirement

The Variance was approved with the following conditions:

- **That if retractable windows are installed for open air seating within the building, they may be open from 11:00 AM to 9:00 PM only.**
- **No outdoor café seating is allowed.**
- **Provide planters at the entrances to the parking lot on Pleasant Street and Hudson Street.**
- **Dumpster must be screened.**
- **Signage for additional parking in the parking lot across the street must be displayed on the premises.**

OTHER BUSINESS

Approval of Minutes: Upon a motion by Leonard Ciuffredo and seconded by William Bilotta, it was voted 5-0 by David George, Leonard Ciuffredo and Andrew Freilich, Lawrence Abramoff and William Bilotta to approve the minutes from the March 23, 2009 meeting. Consideration of the March 9, 2009 minutes was postponed until the next meeting.

Lodging House Discussion: The Board discussed lodging houses and multi-family buildings. The following questions were raised by the Board as part of that discussion:

- What triggers the installation of sprinklers and other fire safety equipment in buildings?
- Explain how the Zoning Ordinance definition of a lodging house is interpreted and applied to these properties.
- Further explain the pre-existing nonconforming use determination.
- What are the requirements and/or credentials of the on-site lodging house manager?
- What is the difference between a lodging house and a multi-family dwelling with respect to taxes?
- What is the cost of a lodging house permit?
- How many times per year do lodging houses and multi-family dwellings get inspected?

Mr. Fontane stated that the Board's consideration is not about how John Kelly manages his Division, but rather the zoning issue before the board. And that some of the concerns expressed should be directed to the appropriate City office for resolution, if needed. Mr. George acknowledged that some of testimony and the questions raised are not relevant to the matter before the board.

ADJOURNMENT

Chair George adjourned the meeting at 8:15 P.M.