

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

**November 8, 2010
WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

Zoning Board Members Present:

David George, Chair
Lawrence Abramoff
Andrew Freilich
William Bilotta
Vadim Michajlow
Timothy Loew
Kola Akindele

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Ruth Gentile, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

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

- 1. 1 Kelly Square (ZB-2010-027) – Special Permit: To allow a non-accessory sign in a BG-3.0 zone.** Ms. Gentile presented a letter from the applicant requesting a continuance to November 29, 2010. Upon a motion by Lawrence Abramoff and seconded by Vadim Michajlow, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to grant the continuance to November 29, 2010.

Exhibits:

Exhibit A– Special Permit Application received 5/14/10
Exhibit B – DPRS Staff Memo to Zoning Board of Appeals dated 7/8/2010 (Updated 7/29/10)
Exhibit X – Worcester Sign Company received 7/12/10
Exhibit C – E-mail requesting a continuance by Atty. Edward McCormick dated November 8, 2010

2. **379 Main Street (ZB-2010-031) – Special Permit: To allow a non-accessory sign in a BG-6.0 zone.** Ms. Gentile presented a letter from the applicant requesting a continuance to November 29, 2010. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to grant the continuance to November 29, 2010.

Exhibits:

- Exhibit A – Special permit Application with plan received 7/7/10
- Exhibit B – DPRS Staff Memo to Zoning Board of Appeals dated 8/2/2010.
- Exhibit X – Worcester Sign Company received 7/12/10
- Exhibit C – E-mail requesting a continuance by Atty. Edward McCormick dated November 8, 2010

3. **1051 Main Street (ZB-2010-033) – Special Permit: To allow a non-accessory sign in a BG-2.0 zone.** Ms. Gentile presented a letter from the applicant requesting a continuance to November 29, 2010. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to grant the continuance to November 29, 2010.

Exhibits:

- Exhibit A – Special Permit Application – submitted by B&B Leasing, dated May 26, 2010.
- Exhibit B – submitted 8/23/2010 by email from Damien Jacob:
 - a. Memorandum in Regard to Size of Back to Back and V Type Non-Accessory Signs
 - b. Exhibit Picture of Freestanding Billboard on 1049 Main Street
 - c. Abandoned Billboard in Webster Square
 - d. Additional Findings of Fact in Regard to ZB-2010-033
 - e. Letter from Robert Anderson, B&B Leasing, August 23, 2010
 - f. Memorandum in Support of ZB-2010-033
 - g. Memorandum in Regard to spacing of Petitioner’s Non-accessory sign structure with the rooftop billboard on Bicycle Alley in Webster Square.
 - h. Potential type of Freestanding Non-accessory Sign which can be placed on 1049 Main Street
 - i. Potential Solutions for Non-Accessory signs on the Petitioner’s property
- Exhibit C - Letter requesting a continuance by Damien Jacob dated November 8, 2010

4. **805 West Boylston Street (ZB-2010-038) Special Permit: To allow an Automobile Refueling Station in an ML-0.5 zone.** Todd Brodeur, representative, requested Leave to Withdraw without Prejudice. He stated that the applicant wants to look at the site further, based on neighborhood concerns. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to close the public hearing. Upon a motion by William Bilotta and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to grant Leave to Withdraw without Prejudice for the Special Permit to allow an automobile refueling station in an ML-0.5 zone.

Exhibits:

- Exhibit A: Special Permit Application (ZB-2010-038); received July 27, 2010.
- Exhibit B: Special Permits Plan, prepared by VHB; dated July 26, 2010, received July 27, 2010; revised October 5, 2010, received October 7, 2010 (with cover letter).
- Exhibit C: Letter, September 13, 2010, from Jennifer H. Beaton, Assistant City Solicitor; Re: 805 West Boylston Street – Multiple Special Permitted Uses on a Single Lot.
- Exhibit D: Letter, September 15, 2010, from Ali R. Khorasani, P.E., Assistant Director of Engineering, City of Worcester; dated September 15, 2010 re: “West Boylston Street Redevelopment,” revised October 12, 2010 re: “re: “West Boylston Street Redevelopment – revised plans.”
- Exhibit E: E-mail and Plan of Proposed Tanks, August 30, 2010, from Attorney Brodeur, re: the “typical” sheet for the undergrounds storage tanks proposed as part of the above project.
- Exhibit F Supplemental Special Permit findings of fact and narrative prepared by Atty. Brodeur, dated Oct. 13, 2010, submitted October 14, 2010.
- Exhibit G – Letter requesting Leave to Withdraw by Atty. Todd Brodeur dated November 8, 2010.

- 5. 805 West Boylston Street (ZB-2010-038A) Special Permit: To allow a bank/credit union with a drive-through and Special Permit: To modify the parking/loading requirements to allow the drive-through length of 110 feet for a bank/credit union (180 feet required).** Todd Brodeur, representative, requested Leave to Withdraw without Prejudice. He stated that the applicant wants to look at the site further, based on neighborhood concerns. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Frielich, William Bilotta and Vadim Michajlow to close the public hearing. Upon a motion by William Bilotta and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to grant Leave to Withdraw without Prejudice.

Exhibits:

- Exhibit A: Special Permit Application (ZB-2010-038A); received July 27, 2010.
- Exhibit B: Special Permits Plan, prepared by VHB; dated July 26, 2010, received July 27, 2010; revised October 5, 2010, received October 7, 2010 (with cover letter).
- Exhibit C: Letter, September 13, 2010, from Jennifer H. Beaton, Assistant City Solicitor; Re: 805 West Boylston Street – Multiple Special Permitted Uses on a Single Lot.
- Exhibit D: Letter, September 15, 2010, from Ali R. Khorasani, P.E., Assistant Director of Engineering, City of Worcester; dated September 15, 2010 re: “West Boylston Street Redevelopment,” revised October 12, 2010 re: “re: “West Boylston Street Redevelopment – revised plans.”

Exhibit E: E-mail and Plan of Proposed Tanks, August 30, 2010, from Attorney Brodeur, re: the “typical” sheet for the undergrounds storage tanks proposed as part of the above project.

Exhibit G Supplemental Special Permit findings of fact and narrative prepared by Atty. Brodeur, dated Oct. 13, 2010, submitted October 14, 2010.

Exhibit H – Letter requesting Leave to Withdraw by Atty. Todd Brodeur dated November 8, 2010.

- 6. 29 Katahdin Street (ZB-2010-047)- Special Permit for Expansion or change of a pre-existing non-conforming structure, Variances for relief of 1 foot from the side yard setback requirement and relief of 10 feet from the front yard setback requirement.** Don O’Neil, representative, presented the plan. He said that the applicant is adding an attached garage on the north side of the existing house. He said that there is a side door and bulk head entrance that will be inside the new addition. Mr. O’Neil stated that there are topography issues on the other side and in the rear of the house. He said that the existing house is 10 feet from the street and that the new garage will be stepped back. He said that other houses in the area do not meet the front yard setback requirements. He further stated that the garage will be 19 feet high. Mr. Freilich questioned that if the bulkhead is inside the garage meets Code requirements. Mr. Kelly stated that a fire rated door and that a handrail would be required. Mr. Freilich asked if the garage could be decreased in size so that the variance would not be required. Mr. O’Neil stated that that bulkhead is inside that garage, requiring the extra size and that the next door neighbor has no objection. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, William Bilotta and Vadim Michajlow to approve the Special Permit for Expansion or change of a pre-existing non-conforming structure, Variances for relief of 1 foot from the side yard setback requirement and relief of 10 feet from the front yard setback requirement with the following conditions: 1) Future paving on the property to provide *additional* off-street parking area (does not refer to repairs of existing pavement) is not permitted without an Amendment to this Special Permit/Variance, and 2) The structure is be constructed in substantial accordance with plot plan dated October 5, 2010, submitted by G.E. Smith Land Surveying, prepared by James P. Smith and submitted November 3, 2010.

Exhibits:

Exhibit A Variance and Special Permit application, submitted by Donald J. O’Neil on behalf of Sharlene Martin, property owner, received October 7, 2010.

Exhibit B Plot Plan, prepared by James Patrick Smith – G.E. Smith Land Surveying dated October 5, 2010, submitted October 7, 2010.

Exhibit C Revised Plot Plan shown to scale, prepared by James Patrick Smith – G.E. Smith Land Surveying dated October 5, 2010, submitted November 3, 2010.

Exhibit D Google Maps, 29 Katahdin Street, accessed 11/3/2010.

Source:

<http://maps.google.com/maps?hl=en&q=29+Katahdin+Street+worchester+ma&ie=UTF8&hq=&hnear=29+Katahdin+St,+Worcester,+Massachusetts+01606&gl=us&ei=17nRTLSfBYsGlaFazNmGDQ&ved=0CBcQ8gEw>

AA&ll=42.333931,-
71.790526&spn=0,0.013711&t=h&z=16&cbll=42.334014,-
71.790487&panoid=XHeqHwN_M6-
NcrG6Bb5nbQ&cbp=12,264.59,,0,1.24&pw=2

7. **266 Chandler Street (ZB-2010-046) - Special Permits: 1) To allow a bank/credit union with a drive-through, 2) To modify parking and landscaping with respect to a) drive-through length and width, b) escape lane requirements, c) landscaping requirements.** John Shea, Jeff Howland, Chris Snell and Joe Retavanek, representatives, presented the plan. Mr. Shea stated that they are seeking a special permit for a reduction in the three drive-through lengths from the required 180 ft, where lane 1 will be 120 feet, lane 2, 148 feet and lane 3 153 feet. He said that lane 3 is to be considered an escape lane for the distance up to the Abbott Street exit. He said that there are two 46 foot long drive-through lanes at the current bank location. He said that the transactions at the bank have decreased by 32%. He said they are also requesting relief of two trees from the landscaping requirement.

Mr. Retavanek stated that the drive-up convenience is important to the customers of the bank and that the three lanes will expedite transactions. He said that three transactions can be done at one time and that lane 1 will be used for an ATM only. Mr. Michaud said that the focus of the traffic study was on the drive-through function. He said that traffic activity and vehicle counts were done from the bank at nearby locations. He said that they have provided standard engineering techniques and have completed a queuing analysis of the three lane scenario. He said that lane 1, the ATM, is at the 95% percentile and will be able to stack 3 vehicles, which will meet the standards of functionality and have sufficient capacity. He said that the driveway location on Chandler Street is appropriate and that the traffic on Abbott Street can make a left turn. Mr. Freilich was concerned about traffic backing up Abbott Street. Mr. Michaud stated that it would not, as this part of lane 3 is a bypass lane. Mr. Freilich further asked if lane 3 should be the ATM lane. Mr. Retavanek stated that ATM's need wider aisles and that more employees would be needed to service it, if it was remote from the structure.

Mr. Bilotta stated that he was concerned with the three lanes and about future development of the site. Mr. Shea stated that the plan does allow for future development of the site, but that there are no immediate plans for development of the site. Mr. Michaud stated that DPW&P's policy is to look for the potential full build out and that this analysis accounts for that development. Mr. Abramoff stated that he believes this is a good use of the property with no negative impact, that the traffic plan seems adequate for getting vehicles in and out of the site. Mr. Freilich reiterated that he believes this a good plan and did not believe that there would be difficulty regarding the combination of lane 3 and the escape lane. Mr. Michaud said there is flexibility in this plan by using Abbott Street as an egress from the site and lane 3 as a queue lane or a bypass lane. Mr. Howland stated that the plan was designed to be as far away from the existing house as possible.

Mr. George said that the ordinance is not realistic for the length of bank drive-throughs and that he has requested that staff look at changing the ordinance as to what is realistic for the typical number of vehicles. He further said that relief has been given at two other locations, Providence Street and Lincoln Street, but that this situation is unique in that this is one lot with the potential to be subdivided and that all of the proposed plan can be done according to

the ordinance. He said he did not have an issue with the length of the drive-through but that he does not believe there is a need for three drive-through lanes. He said that the standard is two drive-throughs and that he thinks that this site should have a dedicated escape lane, instead of a third drive-through lane. He further stated that this is a good plan and that he had read the traffic report and believes that the site will work for the use.

Mr. Shea stated that the proposal is providing an escape lane and that the ordinance is being upheld. Mr. Abramoff stated that he values the investment that Webster Five has made and that he believes that the relief should be granted to allow the bank to remain competitive. Mr. George stated that he believes that the petition will be approved and that this is the highest and best use of the property and that the Board's review is for the special permit criteria and the best use of the property. Mr. Freilich clarified the amount of cars per hour to be 20 cars which translates to approximately 7 cars per lane. Mr. Michaud reiterated that the outer lane will be used as the bypass lane and that this is the best traffic circulation for the site. Mr. Freilich asked if the other part of the site were to be developed with an office building with parking for 70 vehicles would the site still perform. Mr. Michaud confirmed that it would.

Recess 6:35

Reconvene 6:42

Mr. Shea stated that the comments from the Board appear that two drive-throughs are acceptable even though TD Bank on Park Avenue has 3 or 4 drive-throughs, and offered a condition that if the lanes were all stacked up that lane 3 would be shut down and used as an escape lane. Mr. Freilich offered that the site be allowed to operate with lane 3 closed for the one year and then after that be allowed to be used as a drive-through lane. Mr. Fontane stated that the Board would have to make a finding to that affect and also that there are more by-right uses that have greater intensity and more required parking spaces than what is proposed. Mr. Akindele stated that this is a good use for the property. Mr. Loew said that he likes the use and understands the other board member concerns with lane 3 not being a dedicated escape lane but did not think it would be a problem for the development. Mr. Shea stated that they would accept as a condition that lane 3 be a dedicated escape lane. Mr. Freilich stated that his vote was affirmative to approve the plan.

Mr. Freilich left the meeting at 7:00PM

Upon a motion by William Bilotta seconded by Timothy Loew, it was voted 4-0 by David George, William Bilotta, Kola Akindele and Timothy Loew to close the public hearing. Upon a motion by Timothy Loew and seconded by William Bilotta, it was voted 5-0 by David George, Andrew Freilich, William Bilotta, Kola Akindele and Timothy Loew to approve the requested Special Permits: 1) To allow a bank/credit union with a drive-through, 2) To modify parking and landscaping with respect to a) drive-through length and width, b) escape lane requirements, c) landscaping requirements with the following conditions: 1) that a six-month maintenance plan for landscaping be established, 2) that the parking plan be modified to show that lane 3 is an escape lane, and provided it is in accordance with the final approved parking plan and in substantial accordance with the rendering submitted on file with the City of Worcester.

Exhibits:

- Exhibit A: Special Permits Application and plan received September 14, 2010.
- Exhibit B: Revised Special Permit Plan with cover letter received October 8, 2010.
- Exhibit C: Memorandum from Division of Planning and Regulatory Services to the Zoning Board of Appeals, dated October 14, 2010 (revised November 2, 2010).
- Exhibit D: Memorandum from Jeffrey Howland of JH Engineering Group to the Division of Planning and Regulatory Services, dated October 7, 2010, received October 8, 2010.
- Exhibit E: MDM Transportation Consultants. Traffic Impact Assessment to Jeffrey Howland of JH Engineering Group for 266 Chandler Street; dated October 28, 2010, received November 1, 2010.

Other Business:

Amendment to Rules and Regulations Related to Consultants: Mr. Fontane stated that the Board will be able to hire third party peer review for plans at an the applicant's expense. He stated that an amendment to the Board's Rules and Regulations, which is in accordance with Mass General Laws enables the Board to require these services as needed. Mr. Fontane cited the Law Department and a memo and explained the change. He said that this provision should be used sparingly and only when the city did not have the in-house expertise to advise the Board on a particular matter, as an example being able to determine coverage gap for wireless communications.

Mr. Michajlow stated that he believes that there will be times the board may need to hire an outside consultant and asked if the petitioner was required to give his permission and what happens if they do not. Mr. Fontane stated that if an applicant believes that they are aggrieved there is an appeal process and if they do not want to pay for a consultant, then the Board can deny the application. Mr. Bilotta inquired as to how the consultant would be selected. Mr. Fontane stated that the applicant would not select the consultant, rather the City would go through the RFP process, with a separate account to pay invoices for the services. Mr. Loew was concerned about the amount of time that process would take. Mr. Fontane stated that the process was would utilize already existing procurement systems. Mr. George stated that there is a similar process in the town where he works and that he is comfortable with the change and that it would only be used sparingly. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 6-0 by David George, Lawrence Abramoff, William Bilotta, Vadim Michajlow, Kola Akindele and Timothy Loew to amend the Board's Rules and Regulations, Section 5 of Article II, related to consultant fees.

Exhibits

- Exhibit A – DPRS Staff memo to Zoning Board of Appeals dated 10/19/10
- Exhibit B – Rules and Regulations of Zoning Board of Appeals – Amendment dated 10/19/10.
- Exhibit C – Law Department Legal Opinion dated 3/6/10.
- Exhibit D – Law Department Legal Opinion dated 12/31/09.
- Exhibit E – Federal Communications Decision dated 11/19/09.

Fee Waiver for Florica Frigiou: Mr. Frigiou stated that he had received a variance for five feet of relief from the side yard setback requirement at the Board's May 3, 2010 meeting. He further stated that he had also sought a Special Permit for expansion or change of a non-conforming structure. He said that during the plan review and discussion at the board's meeting, it was determined that the special permit was not needed as the entire structure was being demolished and that the board had granted Leave to Withdraw. He said that because he did not need the special permit, he was requesting a fee waiver for the special permit. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 3-0 to grant a fee waiver in the amount of \$225.00.

Exhibits

Exhibit A – DPRS Staff memo to Zoning Board of Appeals dated 11/3/10

Exhibit B – Letter, October 13, 2010, from Florica Frigiou, Submitted October 13, 2010.

Exhibit C – Minutes of May 3, 2010 Zoning Board of Appeals Meeting

Open Meeting Law Mr. Fontane informed the Board that the new Open Meeting Law has been implemented and that the Attorney General's office has issued the guidance document and related rules that that staff has provided the Board .

Lodging House Rules: Mr. Fontane stated that this item was initiated from questions that members of the board had regarding the 3 Forestdale consideration and information that staff provided. Mr. George stated that it was discovered that some of the rules that the board had crafted during their consideration for Claremont Street were duplicative to the License Commission rules. Mr. Kelly stated that each case is different and that the board should only use the rules from the Claremont decision as a guide. Mr. Abramoff said that when they were reviewing the lodging house considerations, it was easy to understand the use and adopt the rules from previous considerations. Mr. George said that he thinks this is a policy issue and whether or not the board should have redundant conditions. Mr. Fontane stated that we do not want redundancy and that when board member Freilich asked if these were all of the conditions as in the Claremont decision, he was remembering both the applicant's rules and the License Commission rules. He stated that in staff's memo, it is noted that not all of the rules from the Claremont decision are applicable to all lodging house considerations, especially those having to do with smoking and alcohol. He said we are seeking comments from the board and to create a list from which we can advise the board for future considerations. Mr. Loew and Mr. Michajlow stated that we should create a list and then use the list as a guide. He then said that staff could make recommendations as appropriate. The Board agreed that the rules should consider smoking, alcohol, security cameras and contact information being posted on the exterior of the structure.

Exhibits

Exhibit A – DPRS Staff Memo to Zoning Board of Appeals dated 9/3/2010.

Exhibit B – Copy of Zoning Board of Appeals Decision for 5 Claremont Street.

Minutes:

Upon a motion by Lawrence Abramoff and seconded by Kola Akindele, it was voted 5-0 to approve the minutes of 8/30/10.

Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 to approve the minutes of 9/20/10.

Upon a motion by Lawrence Abramoff and seconded by Timothy Loew, it was voted 4-0 to approve the minutes of 10/21/10

Election of Officers:

Mr. George stated that his term will end when a member is appointed. Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, it was voted 4-0 that the officers remain the same until Mr. George's term has ended.

Decisions: The Board signed decisions.

Adjournment

Chair George adjourned the meeting at 7:35 pm.