

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

November 17, 2008

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
David George, Vice-Chair
Lawrence Abramoff
Andrew Freilich
Brian Murphy

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

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

1. **1394 Main Street (ZB-2008-097) – Special Permit:** Attorney Donald J. O’Neil, representative for the petitioner, Joseph Nguyen, who is requesting a Special Permit to allow food service with consumption/sale of alcoholic beverages in the Bamboo Hut Restaurant, requested to postpone the hearing to December 1, 2008 because the notices to the abutters were not sent out on time to hold the hearing. There was a disagreement among staff as to whether postponement date is December 1 or December 15. No abutters or other interested parties were present. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to postpone the public hearing to December 15, 2008.
2. **9 Tihonet Street (ZB-2008-098) – Variance:** Patrick Perkins, of J.E.P. Contracting Inc., the petitioner, who is requesting 8.2 feet of relief from the front yard setback for a single-family home with a deck, was not present because he was notified by staff that the notices to the abutters were not sent out on time and, as a result, the hearing would be postponed to the December 1st meeting. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to postpone the hearing to December 1, 2008.

UNFINISHED BUSINESS

3. **10 New Bond Street Lot A (ZB-2008-077) – Variances:** Attorney Patricia Gates, representative for Liberty MA Portfolio, was seeking a Variance for 15 feet of relief from the rear yard setback requirement and a Variance to allow a Floor to Area Ratio of 1:21 to 1 to create Lots A and B by dividing the building along a common wall between a two-story front part of an existing building and an one-story rear part of the building. Ms. Gates explained that the hardship is the structure itself, and that by dividing the property, the current uses would be better served. Mr. Kelly said that he met with the applicant's structural engineer and resolved fire safety requirements, so that now the property complies with all building code requirements. Chair Ciuffredo asked about schools in the MG-1.0 zone, and Mr. Fontane told the Board that the Elementary School located in the front part of the building is an allowed use. Mr. Abramoff asked the applicant to name current uses located at the property. Ms. Gates responded that an elementary school is located in the front of the building and five business tenants are located in the rear part of the building with a separate access. Mr. George asked if the building has a sprinkler system to which Ms. Gates responded affirmatively. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich, and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich, and Brian Murphy to approve the following:

VARIANCE: 15 feet of relief from the rear yard setback requirement

VARIANCE: To allow a Floor to Area Ratio of 1:21 to 1

Ms. Gates thanked the Board for their work.

4. **20 Imperial Road (ZB-2008-084) – Variances:** David Sadowski, representative for the petitioner, Gerald Gallo, who was requesting a Variance for 4 feet of relief from the side yard setback requirement and a Variance for 4 feet of relief from the rear yard setback requirement, was not present for the hearing. Mr. Abramoff noted that the constructive grant deadline was drawing near, December 3, 2008. Mr. Fontane concurred that even if the item was postponed until the December 1 meeting, it would be difficult to write the decision and file it by the December 3 deadline. Moreover, if the Board were to lack a quorum they would not be able to take action. Mr. Ciuffredo and Mr. Abramoff expressed dissatisfaction with Mr. Sadowski who missed a meeting in the past for a separate item. Mr. Murphy was hesitant to agree with other Board members and suggested there might have been an emergency on the part of the petitioner. At the same time, Mr. Murphy indicated that he does not think it is a good policy to grant an extension if a petitioner does not come to a meeting. In response, Mr. George said that the Board usually does not grant continuances, unless there has been a mistake on the part of the Board. The item was tabled until later in the meeting. After the last item on the agenda has been discussed, the Board took up the item, though the petitioner still was not present. Mr. Freilich urged the Board to be flexible with petitioners, the same way petitioners had to be flexible with the Board in the past when their items were postponed due to insufficient members. Mr. Murphy suggested fining as an alternative to denying a petition if an applicant does not come to the meeting, but staff indicated that it was not an option. The

Board then reviewed the application and in the absence of testimony proceeded to close the hearing. Upon a motion by Andrew Freilich and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to close the hearing. Upon a motion by Andrew Freilich and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich, and Brian Murphy to deny the petition.

5. **8 Boynton Street (ZB-2008-085) – Special Permit and Variances:** Attorney Jeffrey Turco, representative for the petitioner, Delta Sigma Phi Building Association of Alpha Chi Rho, Inc., was seeking a Variance for relief of 6 parking spaces from the off-street parking requirement, a Variance for 3.7 feet of relief from the rear yard setback requirement, a Variance for 9.08 feet of relief from the side yard setback requirement, and a Special Permit for expansion or change of a pre-existing nonconforming use/structure. Mr. Turco briefly described the project. He said that currently 22 people are living in the fraternity house. The applicant wished to raze a two-story concrete block building and construct a new addition that would provide a total of 36 beds in a fraternity house and add a handicapped access. The additional students would need 12 additional parking spaces, six of which would be provided on the WPI grounds, across the street from the site. He added that this house would be consistent with the neighborhood which is a mix of school and residential uses with several other fraternity houses in close proximity. Mr. Turco also added that it is a \$600,000 project, which would provide significant tax benefits to the city. The addition would make the entire building completely handicapped accessible and would incorporate green technology. The project would also reduce the spread of students who live off-campus into other neighborhoods. In response to a question from Chair Ciuffredo, Mr. Turco verified that the organization pays property taxes to the City as a 501(c)(7) organization. Chair Ciuffredo asked the petitioner what part and function of the building would be demolished and Mr. Turco responded that it is currently a meeting room. Chair Ciuffredo expressed concern that fraternity houses might have a negative impact on the residential neighborhood and asked the petitioner to explain the value of fraternities. Mr. Turco responded that while the movie “Animal House” has done a lot of damage to the perception of fraternity houses in this country, Alpha Chi Rho has always had a good reputation. According to Mr. Turco, this fraternity expels anyone who does not comply with the strict national charter’s rules and regulations. In addition, the members do a lot of community service. Last year, the fraternity volunteered around 5,000 hours to a community service, and raised \$6,000 which they donated to charities. The organization teaches men leadership skills and creates strong lasting bonds. Chair Ciuffredo asked if the petitioner knows the number of fraternities other colleges and universities in the City have. Mr. Turco responded that he is not sure.

Since the petitioner proposed an expansion of use which can impact the neighborhood, Mr. George asked the petitioner for a record of police complaints associated with the property in question. Alfredo DiMauro, WPI VP Facilities Manager, was present and responded that he has no information with him but can later provide WPI police records since WPI often responds to the calls, even though the fraternity is not located on the WPI property. Mr. Kelly presented to the Board a copy of a City of Worcester’s police and fire log. The list consisted of approximately 50 records, most of which seemed to be related to smoke detector incidents and fire inspections. However, the Board did not have sufficient time to review this record.

Mr. George asked Mr. Kelly if he knew what the cost of these services to the City might be. Mr. Kelly said he could not answer this question. Mr. Turco asked the Board to keep the information in perspective when reviewing the records. He also added that one complaint he knows about was provoked by work that students did early in the morning on a weekend in order to finish a homecoming float in time for an event.

Mr. Freilich asked if there were house rules and Mr. Turco answered that Alpha Chi Rho has both national and local chapter rules it has to follow. Mr. DiMauro added that the university also expects the fraternity members to abide by WPI rules. Mr. Fontane suggested that the Board requests these rules from the petitioner for review. Chair Ciuffredo agreed and also asked for a copy of WPI police records from the last five years. Mr. Freilich asked what action WPI takes if a fraternity or fraternity member violates its rules. Mr. DiMauro responded that the university expels a student or disbands the fraternity resulting in no affiliation with the University. Mr. Freilich asked Mr. Fontane if the Board could condition its approval on making WPI accept full responsibility for rules violation by the fraternity. Mr. Turco said the City has some leverage as well since it can withhold a lodging permit through the License Commission. Mr. Kelly said that the City only inspects the property for code and fire compliance, not house rules and personal conduct violations. Mr. Freilich and Mr. George suggested making the permit renewable, subject to a number of violations per year. Mr. Kelly responded that this would present a problem as there is no apparent connection between code and fire violation and violation of organizational rules. Mr. Fontane expressed doubt with regards to this strategy as he was not sure what the City could withhold in case of a violation. The problem of potential risk for investors caused by this condition was also expressed by Mr. Abramoff and Mr. Murphy. Mr. Turco also added that this strategy might jeopardize financing of the entire project, as a local bank they are currently working with might be hesitant to lend capital to a project that would need conditional approvals. Mr. Fontane and Mr. Kelly also raised a question as to defining the authority determining violations. Chair Ciuffredo concurred that currently the City does not have the authority to monitor the situation. Mr. Abramoff said that WPI has a good reputation and he is not aware of any pattern of problems associated with it, unlike other colleges in the City, thus he was comfortable with the project.

Mr. Abramoff asked the WPI representative if he knew the proportion of students currently living on-campus, as well as the proportion of students that WPI is capable of housing on-campus. Mr. DiMauro said that currently 60% of all undergraduate students reside on-campus, and that WPI's on-campus housing is at capacity. Mr. George expressed concern about WPI expansion plans in the future and asked if the institution is planning to increase its student housing on-campus. Mr. DiMauro responded that university's more immediate goal is to provide graduate on-campus housing (none currently exists) such as in the Gateway Park. He added that the University is planning to increase on-campus undergraduate housing as well, however, so far there is no timetable for this project. Mr. George said that he is aware of expansion of research facilities at WPI, and asked why the university is not synchronizing its facilities expansion with the on-campus housing expansion. Mr. Turco responded that the University is not increasing its enrollment, just improving and expanding its facilities.

Upon a motion by Lawrence Abramoff and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich, and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 3-2 by Lawrence Abramoff, Andrew Freilich, and Brian Murphy (Leonard Ciuffredo and David George voted no) to approve the following:

SPECIAL PERMIT: Expansion or change of a pre-existing nonconforming use/structure
VARIANCE: 9.08 feet of relief from the side yard setback requirement
VARIANCE: 3.7 feet of relief from the rear yard setback requirement
VARIANCE: Relief of 6 spaces from the off-street parking requirement

The motion failed, therefore the petition was denied.

Mr. Freilich then motioned a short recess which was granted by the Chair. When the meeting was resumed, Mr. Freilich motioned to reconsider the vote so that the Board has opportunity to further review the information to be provided by the WPI and the fraternity with regards to the police records and house rules and regulations. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, Lawrence Abramoff, Andrew Freilich, David George and Brian Murphy to reconsider the vote.

Chair Ciuffredo asked Mr. Fontane who should make the motion to rescind the vote and how many votes are needed to pass the motion. Mr. Fontane could not recall that information at the moment but said that he thinks it is the winning side that should make the motion to reconsider. Mr. George asked Mr. Freilich what other information he thinks is needed for further consideration. Mr. Freilich answered that he wants to see house rules as well as WPI rules and regulations. Mr. Abramoff added that he would like to see the conditions imposed by the ZBA on previously approved fraternity and sorority houses.

Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 4-1 by Leonard Ciuffredo, Lawrence Abramoff, Andrew Freilich, and Brian Murphy (David George voted no) to rescind the vote that denied the petition. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich, and Brian Murphy to continue the hearing to December 1, 2008 so that the following information can be provided by WPI to the Board at least one week prior to the meeting:

- 1) Summarized WPI Police records with regards to the property for the last 5 years;
- 2) Summarized City of Worcester's Police records with regards to the property for the last 5 years;
- 3) Rules and regulations of the national and local chapter of Alpha Chi Rho;
- 4) WPI rules with regards to regulating and monitoring students in off-campus fraternity houses;
- 5) Conditions imposed by the ZBA on previously approved fraternities and sororities.

The Board also requested DP&RS to provide the Board with a list of previous conditions of approvals for fraternities, sororities and lodging houses.

6. **242-242A Stafford Street (ZB-2008-093) – Special Permit:** Attorney Robert Longden, representing 242 Stafford Street LLC, was seeking a Special Permit for expansion or change of a pre-existing nonconforming use/structure to utilize the property as headquarters for Yellow Cab of Worcester. The petitioner is planning interior renovation only. One of the existing metal buildings on the site (in the eastern portion of the site) would include offices. The second metal building (in the western portion of the site) is proposed to be used for motor vehicle service and repair. The site is proposed to have the following uses: dispatch desk, Yellow Cab vehicles repair, paint and body shop for the Yellow Cab vehicles, sale and storage of approximately seven vehicles that are bought at an auction and sold to the Yellow Cab affiliates or other taxi companies. The prospective owner explained that he is proposing to locate the Yellow Cab company there. The site has 2.57 acres and abuts a residential zone. Most of the site slopes down from the street level and is densely screened. 54 parking spaces are required for the use, and there are currently 97 provided on the site. Of the two entrances to the site, the eastern entry would be the main entrance to the property, while the western entrance would be gated and opened only as needed. Snow would be stored as far away from the Kettlebrook River as possible. The Yellow Cab of Worcester employs 32 taxicabs. Taxi drivers would arrive in their private vehicles and would park on the site. When asked by a Board member about hours of operation, the prospective Yellow Cab owner responded that taxicabs usually arrive twice an hour and usually do not come back during peak times. During the 7am-2pm shift, there would be five people in the dispatcher office, and two mechanics. During the 11pm-7am shift, there would only be one dispatcher on the site. Mr. Longden said that the traffic impact on the neighborhood would be benign. To dispel odor concerns, Mr. Longden said that all paint and repair activities will be inside and that no seepage would occur since current state laws are very stringent in regulating ventilation.

Mr. Longden distributed to the Board members a letter he sent to the abutters on October 7th, 2008 introducing himself and the project. He also handed out three aerial photographs of the site taken in 1985, 1996, and 2005. While the 1985 photograph is not very clear, it seems the site was not yet developed then. In 1987, according to Mr. Longden, 242 Stafford Street was built by right, and the property later zoned ML-0.5 (Manufacturing, Limited). In 1988, the area was rezoned RS-7 (Residential, Single Family), which made the site non-conforming. Located currently on the site is a company assembling and fabricating cell tower components. In 2005, the Zoning Board of Appeals approved a Special Permit for expansion or change of a pre-existing, nonconforming use to allow a construction of an additional 6,000 square foot multi-tenant contractor's office and garage space for an existing vehicle and equipment storage area and truck repair area. Mr. Longden concluded by summarizing three main points: 1) that the site never had a residential use; 2) that the site was in a manufacturing use ever since it was first developed; 3) that even after rezoning, the ZBA had granted a Special Permit allowing the use to expand from one non-conforming use to another but similar non-conforming use; and 4) lastly, that the new use by the Yellow Cab would not be substantially more detrimental to the neighborhood than the previous one.

An abutter, Phyllis Pate of 269 Stafford Street, then spoke. She stated that she lived at her current property for 36 years. She claimed that the land in question was first used decades ago by her neighbor, T. Mann, who parked his four trucks there. Ms. Pate said that she

believed the land was never meant have non-residential use. Her biggest concern was the change that her neighborhood had experienced in the last 36 years. She stated that her desire was to preserve the small neighborhood she is living in and spoke against the Yellow Cab proposal. Her other concerns were the potholes in the road, fumes that could be coming off the site (as she was skeptical about complete odor capture), and an increase in already heavy eastward traffic. She was also concerned with the noise carrying over from the site, which she described as an “echo-chamber”. Lastly, she warned the prospective owners of the site that Kettlebrook River floods heavily at times which might have affected previous owners on the site. Ms. Pate raised several questions such as why 97 parking spaces are needed for only 32 taxi cabs, and why has the applicant not found a different parcel of land that is zoned appropriately for the use he is proposing.

Mr. Abramoff recused himself and left the room due to a conflict of interest when he discovered that CNB Properties, the current owner of the site, stands for Commonwealth National Bank, which he is associated with. Mr. Abramoff had not commented on the petition up to this point. After consulting with his clients, Mr. Longden decided to continue with the hearing.

John J. Binienda, State Representative for 17th Worcester District, spoke next. He indicated that he opposes the Yellow Cab petition for several reasons. He said that the property abuts the Kettlebrook River and the Lyndbrook River which are headwaters for the Blackstone River. Mr. Binienda’s concern was that the nature of the business is one involving motor oil and other chemicals and paints that are harmful to the environment should an accident or spillage occur which would result in soil contamination. The Kettlebrook River also swells, which caused flooding of the Levy Factory previously located there. He also indicated that there are units for residents 55 years old and older in Leicester, close to the border with Worcester. He said that many taxicabs are already serving that area. Lastly, Mr. Binienda was concerned with the general negative impact of the Yellow Cab business on the quiet residential character of Cuba, Stafford, and Ludlow Streets.

William J. Eddy, District Five City Councilor, then spoke. He said that he ran for the City Council on the platform of preserving neighborhoods and good quality of life. He urged the Board to use caution and prudence when making their decisions and reminded that the area is currently zoned residential.

Joan Cotter, of 267 Stafford Street, indicated she has lived at the property for two years. She expressed concern that her quiet neighborhood would be impacted by the commotions, noise, and odors coming from the Yellow Cab property.

Ann Broomfield, of 257 Stafford Street, has lived directly across the street from the petitioners’ property for 59 years. While she did not mind school busses parking near sport fields near the property, she stated that the new use would increase traffic on the already busy street and indicated skepticism towards how the petitioner described the proposed use.

Mr. Freilich asked who owns the property now. Mr. Longden said that 242 Stafford Street LLC is currently under agreement to purchase the property which is foreclosed and owned by

a bank. Mr. Freilich asked if the entire property in question is zoned RS-7. Mr. Longden responded affirmatively. Mr. Murphy asked if the facilities are still in use. Mr. Longden said that Andrews Systems are currently operating on the site.

The staff questioned whether the radio antenna, car repairs and sales are really a similar use to the previous use. Mr. George stated that the main issue at hand, in his opinion, is to determine whether or not the new use would be substantially different from the current use. He then asked Mr. Longden three questions with respect to how the project meets the zoning requirements under the change of use. First, he asked if the petitioner applied to the Conservation Commission. Mr. Longden responded that Conservation Commission approval would not be needed since no new construction would take place on the site, but that the petitioner will need Site Plan approval from the Planning Board. The second question was whether the impervious surface area would change as a result of the project. Mr. Longden responded that no changes to the impervious area would occur. He added that the site has 2.57 acres, 1.78 acres of which are impervious. Lastly, Mr. George asked whether the proposed new use would be more intensive than the previous use. Mr. Longden responded that he is not sure, however he was told that previous uses on the site (such as American Tower) included regular maintenance and repairs of trucks. Mr. Freilich asked how frequently the taxicabs would have to be repaired. The prospective owner said that the vehicles would be inspected weekly, the oil would be changed once every three weeks, and the breaks would be inspected every three to four months. Mr. Longden reiterated that since the repairs would take place inside the buildings, there would be no impact on the neighborhood. Mr. George said that he is interested in understanding if there would be a greater impact on the neighborhood as a result of the use, and asked the petitioner if he knew the current traffic count as compared to the anticipated traffic count. Mr. Longden said he did not have that information, but that the peak usage would involve every one of the 32 taxicabs using the site twice within a 24 hour period. Mr. George asked if there were outdoor parking on the site previously. Mr. Longden responded that there were both outdoor parking and outdoor storage on the site. Mr. George said that sales are not allowed on the site according to the Zoning Ordinance. Mr. Longden responded that he believes in the past there were small outdoor car sales. The prospective owner stated that last year he sold only three vehicles, which demonstrates that car sales would be minimal.

Mr. George asked the prospective owner why he did not select a parcel that was zoned appropriately for the proposed use. The prospective owner responded that he has been looking for the right site for eight years, but could not find a parcel large enough to accommodate all of the proposed uses. Mr. Longden added that many large manufacturing sites that could be appropriate for the Yellow Cab business are contaminated. Chair Ciuffredo said that he would like DPW to comment on the project since there are so many uses proposed on the site. Chair Ciuffredo said that RS-7 is the second most restrictive zone in the City and in his eyes the proposed use would be more detrimental to the neighborhood. Mr. Longden asked the Board if it would be more comfortable with the project if some of the uses were eliminated, such as car paint shop or car sales. The prospective owner indicated that if he had to choose, he would eliminate the paint shop first, and then the repair shop, but in the end all the uses were vital to his business.

Mr. Freilich indicated that odors from the site are not one of his concerns, because he knows that current state regulations are very stringent and effective. He also was not concerned with the noise from the mechanic shop as the repairs would take place inside the buildings. However, he was concerned with the taxicabs idling on the parking lot and with the noise from the cab radios carrying over. Lastly, Mr. Freilich said he was worried that the taxicab drivers would exacerbate the already existing traffic problem. The prospective owner said that dispatching is done via computers so that there would be noise associated with it, though he acknowledged that it is hard to regulate the noise from the radios. Mr. Freilich asked the petitioner if he chose this parcel because of the good location or because finances made it more attractive. Mr. Longden said that the most appealing aspect of the site for his client was that the facilities could be used as they are, thus not requiring any new construction.

Mr. Murphy said that while the history of the site leads one to believe that it would work for the Yellow Cab business, at the same time, the area has been rezoned to RS-7 for a particular reason. He added that he believed that the Yellow Cab body shop would not be more detrimental, but that the increased traffic of 150 or so cars leaving and exiting the site would be more detrimental to the neighborhood. Mr. Freilich asked Mr. Fontane if he knew there was opposition from the site's business owner at the time of the rezoning. Mr. Fontane said that he did not participate in the 1988 rezoning. He further explained to the Board that rezoning is a long-term desire for the future use of this site and is a process that is transitional in nature. This gives the Board more control over change of uses like the one proposed.

Mr. Freilich indicated to the applicant that he would vote to deny the petition. Chair Ciuffredo stated that he supports City businesses since they provide necessary tax base, and asked Mr. Fontane if the City administration could assist the petitioner with finding an appropriate site for his business. Mr. Fontane said that the Economic Development Division provides business assistance and that the applicant should continue to work with them.

After a brief consultation with his client, Mr. Longden asked for Leave to Withdraw without prejudice. Upon a motion by Brian Murphy and seconded by Andrew Freilich, it was voted 4-0 by Leonard Ciuffredo, David George, Andrew Freilich and Brian Murphy to grant the request of the petitioner for Leave to Withdraw without prejudice.

7. **24A Maplewood Road (ZB-2008-088) – Variance:** Paul Bergevin, the petitioner, was seeking to construct a single-family detached dwelling on a 7,500 SF (min 7,000 SF required) vacant lot and was asking for a Variance for five feet of relief from the frontage requirement to allow 60 feet frontage. Mr. Bergevin said that he is in the business of constructing single-family starter homes and he does the majority of his business in the City. He currently has a Purchase and Sale agreement with the owner of the property who currently lives in New Mexico. Mr. Bergevin plans to build a 1,200 SF house and sell it in the low \$200,000s. The petitioner also added that there are several other lots on the street that have non-conforming frontages of 60 feet and that 24A Maplewood Road is the last remaining vacant lot on the street.

Chair Ciuffredo said that on the rendering the proposed house looks like a 'sideways' house with an unarticulated facade. The petitioner responded that this is a gable-front 1920-1930s Cape Style house.

Rachel Bishop of 22 Maplewood Road spoke. She stated that the City described the lot as undevelopable and assessed it at \$6,000. She added that the houses on Maplewood Road are predominately of colonial style and therefore the proposed Cape Style house would not fit in with the character of the neighborhood. Also, the lot is located on a more than 15% slope which triggers Site Plan Approval from the Planning Board as well. Ms. Bishop also stated that the current owner of the lot did not take care of her property for the past 10 years so that dead trees were not removed and the lot was not manicured. Lastly, Ms. Bishop indicated that many people in the neighborhood oppose the proposed development of this lot as can be seen from numerous signatures on the "oppose" sign-in sheets from this and previous ZBA meetings.

Pauline Dell'Olio of 25 Westview Road said that 24A Maplewood Road is up the hill from her property and that she is concerned her lot could be flooded from the erosion resulting from the development of 24A Maplewood Road.

Another neighbor, who did not name herself, objected to the house's 'sideway' look. Another comment was that there is a winter parking ban on the street, and adding more people to the neighborhood would exacerbate the problem.

Tony Zahariadis of 20 Tahanto Road asked who the variance would go to in case it was granted. The Board determined that since Mr. Bergevin has a Purchase and Sale agreement, he would have the right to be granted the variance.

Chair Ciuffredo asked the petitioner to explain his hardship. Mr. Bergevin stated that while land values have been rising, house values have been decreasing making it harder to make a profit. He stated that he needs to make a reasonable profit from the land and thus claimed financial hardship. Chair Ciuffredo asked the petitioner to explain the hardship as it relates to the soil conditions, shape of the lot, and other qualities of the lot as they differ from others in the neighborhood. Mr. Bergevin responded that the lots have been subdivided before zoning came into effect and that a 60 foot frontage was legal at the time. Mr. Murphy reasoned that the land is not developable and that the hardship was created by an owner of the lot when it was subdivided into 24 and 24A Maplewood Road. Thus, the hardship was created after the zoning change. He added that there appears to be enough land for 24A Maplewood Road to conform if the garage was torn down and land was purchased from 24 Maplewood Road. Mr. Murphy concluded that given this fact and in light of the strong neighborhood opposition, he would vote to deny the petition.

Mr. Bergevin said that he has been before the Board as a petitioner for other projects that required a five feet of relief and was granted it. Chair Ciuffredo responded that it depends entirely on the situation and then asked the petitioner if he can buy land from adjacent properties in order to make the lot conforming. Mr. Bergevin replied that he doubts it is possible.

Mr. Freilich said that he used to live on Maplewood Road many years ago and he thinks it is a beautiful street. In his opinion, the proposed house would not fit well with the neighborhood. Mr. Bergevin responded that the house shown on the rendering is just a proposal and he could change it. Mr. Freilich indicated that he would still vote no and proposed that the petitioner asks for Leave to Withdraw before his petition is denied. Mr. Bergevin asked the Board if the basis of their decision is the proposed house design. Chair Ciuffredo said that it was one of the factors. Mr. George summarized the reasons why the Board was considering denying the application: 1) the petitioner needs to explore the opportunity to purchase land from the abutters in order to make the lot conforming; 2) the petitioner did not meet the terms of the statutory requirements needed for granting a variance; 3) the proposed house's style did not fit well with that of the neighborhood. Mr. Murphy indicated that no design would convince him to vote yes for the petition. Mr. Bergevin chose to have the Board vote and did not request Leave to Withdraw.

Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 0-5 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to approve the petition. The motion failed, therefore the petition was denied.

8. **325 Grafton Street a.k.a. 327-329 Grafton Street (ZB-2008-089) – Special Permit:**

Jackson Viana, the petitioner, was seeking a Special Permit to allow food service with sale and consumption of alcohol in a BL-1.0 zone. Present use on premises is a restaurant (no alcohol served), a beauty salon, a nail salon and residential dwelling units on the second and third floors. The Board asked Mr. Fontane to explain the difference between a Special Permit to allow food service with sale and consumption of alcohol and the License Commission's liquor license. Mr. Fontane explained that the ZBA is regulating land use, and as such is assessing the compatibility of the new use with the neighborhood. The License Commission, on the other hand, regulates the sale of liquor. Mr. George asked if it is possible for the petitioner to get a license from the License Commission before applying for the ZBA Special Permit. Mr. Fontane, Mr. Abramoff and the petitioner said no. Mr. Fontane explained that the Board could restrict the type of alcohol served, for example to beer and wine only, if it was concerned with the new use's impact on the neighborhood. Mr. Freilich asked if it is possible to attach the Special Permit to this particular restaurant, so that any new restaurant would need a new approval from the ZBA. Mr. Fontane responded that he would advise against this approach since a Special Permit should be granted to a property, not a particular person or establishment. Only if the restaurant use would change (e.g. to a bar), would the petitioner need to reapply for a Special Permit. Mr. Freilich asked how the City differentiates between a restaurant and a bar. Mr. Kelly responded that the determination is made based on the number of seats, the area of tables and the area of the bar, and more. The petitioner reaffirmed that his intent is to keep the restaurant, not a bar. Mr. George asked the owner, Arthur Marko, how the new use would be compatible with other uses on the site. Mr. Marko responded that the restaurant use would be compatible because personal services uses on the site close around 5-6pm, while the restaurant patronage increases in the evening.

When asked, Mr. Viana said that current hours of operation are 7am-6pm Monday-Wednesday, and 7am-12am Thursday-Sunday. He added that the reason for applying for the Special Permit is to expand his clientele, because presently many people take-out the food so that they can eat it with alcohol elsewhere. Mr. Abramoff asked the petitioner if he allows his customers to bring in their own beer or wine. Mr. Viana answered affirmatively. Then, Mr. Abramoff told the Board that giving the Special Permit to the petitioner would regulate the activity that already takes place there. Mr. Murphy concurred with Mr. Abramoff, but stated that he wanted to make sure the restaurant does not turn into a loud bar that is opened until early morning hours. Mr. Freilich asked the applicant why he closes at 6pm instead of 8pm or 9pm. Mr. Viana responded that many of his clients take out the food and eat it elsewhere because the restaurant does not serve alcohol currently. As a full-fledged operation serving alcohol, the restaurant would be more successful and could be opened longer hours, he added. Mr. Viana's friend added that Mr. Viana used to live in Chelsea, and now that he and his family moved to Worcester, it will be easier to keep the restaurant open longer hours.

Mr. Fontane advised the Board to consider the petition from the point of view of the potential external undesirable impacts to residents and nearby uses. Mr. George asked the owner the percentage of the floor that is occupied by the restaurant as compared to other businesses. Mr. Marko responded that 325 Grafton Street is occupied entirely by the restaurant on the first floor. Chair Ciuffredo expressed concern with the potential increase in the need for parking, as well as potential disturbance to the residents living above the restaurant. Mr. George asked if the petitioner would have to come before the Board for this consideration if the parking overlay district was ordained. Mr. Fontaine said that the applicant would still have to apply, because the Special Permit deals with the change of the land use on the site. Mr. George asked how many parking spaces are currently on the site and how many are needed to comply. Mr. Fontane responded that there are 15 parking spaces and that there would be no additional parking needed because it is already a restaurant use. Mr. Viana said that he does not expect the number of customers to change dramatically. When asked, he said that he is busiest on Sundays. Last time he had 150 customers come during business hours of 10am-6pm, which included sit-down as well as take-out customers.

Mr. George asked if the landlord notified his tenants of the potential change in the restaurant use. The landlord indicated that he did. Mr. Abramoff asked the petitioner if they have considered the alcohol safety issues such as TIPS (Training for Intervention ProcedureS). The petitioner's attorney indicated that this point has been discussed.

Mr. Freilich was concerned about the restaurant turning into a bar and/or dancing establishment at night and asked Mr. Fontane if the Board could regulate the hours of operation. Mr. Fontane responded that he believes it is within the Board's authority, as well as that of the License Commission. Mr. Freilich asked the petitioner if it would inhibit his business if dinner was served 4pm-10pm. The petitioner responded that it would be ok, but would prefer longer working hours on Saturday and Sunday. Mr. Freilich said that he is not yet sure how he is going to vote. Mr. Freilich asked Mr. Kelly if the Board can regulate the restaurant in such a way as to make sure the business will not operate as a bar or a night club to which Mr. Kelly responded it is within the authority of the License Commission to

regulate. Mr. Freilich indicated that he would approve the petition if the restaurant is opened no later than 11pm.

Mr. Fontane said that the City is working towards improving its visual scape and asked the Board to consider asking the petitioner or the property owner to remove signage from former tenants as well as to address the amount of temporary signage on the property. The property owner said he would.

Upon a motion by Brian Murphy and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to close the hearing. Upon a motion by Brian Murphy and seconded by Andrew Freilich, it was voted 4-1 by David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy (Leonard Ciuffredo voted no) to approve the petition with the following conditions:

- 1) That the establishment is opened no later than 11pm in order to be considerate of the residential dwelling units located above the restaurant;
- 2) That the Special Permit for the food service with alcohol consumption is for a restaurant use where alcohol is served in addition to and as an enhancement of the predominant food service use only;
- 3) That restaurant's operation will not include a bar or be operated as a bar.

OTHER BUSINESS

8 Boynton Street: At the end of the meeting, Mr. Freilich asked the Board to allow him to explain his thinking behind his motion to rescind the Board's vote for the 8 Boynton Street application. He explained that he felt it was unclear what the fraternity's impact on the neighborhoods might be and thus felt uncomfortable denying a large project without examining the data and information provided at the meeting for the first time. While he acknowledges that rescinding a vote might send mixed message, he thought that in this case it was justifiable. Some of the questions he wanted to explore further were the extent to which WPI controls and enforces the rules and whether the City could hold WPI accountable for the actions of its students living off-campus in the fraternity houses. Mr. Kelly said that he would obtain City's code and police records.

Elections: Mr. Ciuffredo thanked his fellow Board members for being able to represent them as a Chair for the past three years and expressed belief that every Board member should have the opportunity to serve as a Chair. Mr. George added that he thinks the Chair position should be rotated every year. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to elect David George as Chair and to elect Lawrence Abramoff as Vice-Chair.

ZBA Rules and Regulations: Mr. Ciuffredo and Mr. Abramoff asked Mr. Fontane if it was possible to require a rendering as part of the application by recording this new requirement in the official ZBA Rules and Regulations. Mr. Fontane said that he would ask his staff to prepare a draft of the revised Rules and Regulations. He also reminded the members that the revision can not be voted the same night as it is proposed. Mr. George also suggested that a certified plot plan

for variance applications also be required. He drew a distinction between certified plot plans and mortgage plot plans, saying that the latter do not serve the purpose needed for the ZBA review. Mr. Murphy noted that certified plot plans can incur a significant expense to the petitioner. In response, Mr. Abramoff said that he would like to see cost estimates of certified plot plans and Mr. Kelly said that he can provide that information. Mr. Freilich, agreeing with Mr. Murphy, responded that it might be cost prohibitive to impose this expense on the applicant, but proposed an idea of providing applicants with a list of land surveyors who would guarantee to provide the service for a discounted price. Mr. Fontane indicated that he will need to check with regards to the legality of having such a list. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to request from the staff a quote of certified plot plans.

Legal Ad Mistake Correction: Mr. Fontane informed the Board of the legal ad mistake and corresponding correction with regards to the 1A and 1B Rosamond Street application. The ad missed the name of the street when it was published on November 17th. The corrected ad was run on the November 18th and will run on November 24th. Corrected notices to the abutters were also mailed out.

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 9:45 P.M.