

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

**March 9, 2009**

**WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM**

**Zoning Board Members Present:** David George, Chair  
Leonard Ciuffredo  
Lawrence Abramoff  
Brian Murphy  
William Bilotta

**Staff Present:** Joel Fontane, Division of Planning & Regulatory Services  
Judy Stolberg, Division of Planning & Regulatory Services  
John Kelly, Department of Inspectional Services  
Russ Adams, Department of Public Works & Parks  
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. 161 West Mountain Street (ZB-2009-007) – Special Permit:** Brian Wilson, representative for the petitioner, MetroPCS, requested Leave to Withdraw without prejudice for the Special Permit to allow a personal wireless service facility in an RS-7 zone. He explained that he was submitting a new application for a Special Permit for expansion or change of a pre-existing nonconforming use/structure to allow a personal wireless service facility in an RS-7 zone. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to approve the request of the petitioner for Leave to Withdraw without prejudice.
- 2. 153 West Street (ZB-2008-110) – Administrative Appeal:** Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to grant the request for a continuance to April 6, 2009 and an extension of the constructive grant deadline to May 12, 2009.
- 3. 17 Elbridge Street (ZB-2009-005) – Administrative Appeal:** Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to grant the request for a continuance to April 6, 2009 and to waive the public hearing deadline.

4. **30 Wachusett Street (ZB-2009-006) – Administrative Appeal:** Upon a motion by Leonard Ciuffredo and seconded by William Bilotta, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to grant the request for a continuance to April 6, 2009 and to waive the public hearing deadline.
5. **39, 45 & 48 Water Street (ZB-2009-010) – Special Permits:** Upon a motion by Leonard Ciuffredo and seconded by William Bilotta, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to grant the request for a continuance to March 23, 2009 to allow the petitioners to hold further discussions with abutters.
6. **75 East Mountain Street (ZB-2008-101) – Special Permit:** A. Lorusso Development LLC, petitioner, who was requesting a Special Permit to allow placement of fill on the property had requested Leave to Withdraw without prejudice. The hearing had been continued because the Board wanted information relative to the estimated volume of earth/fill dumped; documentation regarding the origin of the fill on site; estimated volume of fill to be used for the proposed single-family semi-detached dwellings; and a site plan showing existing and proposed erosion controls prior to a vote on the request for Leave to Withdraw. Mr. Fontane informed the Board that none of the information requested has been submitted to the Division of Planning & Regulatory Services. Mr. Kelly stated nothing had been submitted to his office either. Mr. Murphy indicated he was prepared to vote and that it appeared that Mr. Lorusso did not care if his request for Leave to Withdraw was acted favorably upon or not. Mr. Fontane stated that Mr. Lorusso will have to make the case that the fill is clean and only incidental to the construction related to the approved site plan when he applies for a Building Permit. The Board agreed that Mr. Kelly will require that the applicant demonstrate that the fill is incidental as part of the building permit review process.

Mr. Fontane stated that the Planning Board's approved the Site Plan with the condition that excess fill be removed from the site by April 30, 2009 whether construction to the approved site plan has commenced or not. Mr. Kelly stated that a demolition permit had been applied for and received and some of the fill will be used to fill the hole when the existing house on the site is razed. Mr. Ciuffredo asked if the request for Leave to Withdraw was denied, is the Board procedurally required to act on the Special Permit application. Mr. Fontane responded that the Board would still have to vote on the Special Permit. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 0-5 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to approve the request of the petitioner for Leave to Withdraw without prejudice. The motion failed and the request for Leave to Withdraw without prejudice was denied. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to close the hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 0-5 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to approve a Special Permit to allow placement of fill. The motion failed and the Special Permit was denied.

7. **155 Ararat Street (ZB-2009-011) – Remanded Administrative Appeal:** Atty. Gary Brackett, representative for Campus Realty Group, said an appeal had been filed in Land Court to reverse the decision of the Zoning Board of Appeals dated December 18, 2006 dismissing an Administrative Appeal of the Planning Board's September 6, 2006 written decision denying parking plan approval for a parking lot expansion. He said the court determined the Zoning Ordinance required a written decision regarding denial and the appellants filed their appeal within thirty days of that decision and are entitled to a hearing. He stated the Land Court had remanded the matter to the Zoning Board of Appeals (ZBA) to review the substance of the Planning Board's denial of the parking plan. Atty. Brackett contended, and the court agreed, that the appeal was timely because a written decision is needed in order to determine the basis for an appeal.

He also asserted that the Planning Board lacks jurisdiction to deny a parking plan but can impose reasonable conditions. He cited *Prudential vs. Westwood* as case law in support of his contentions. He further stated he did not believe the reasons given by the Planning Board for denying the parking plan satisfy the standards necessary. He said the judge has retained jurisdiction so that the process does not have to begin anew. Mr. Brackett indicated his conviction that the ZBA overturn the Planning Board's denial and remand to the Planning Board for proceedings in accordance with the Land Court judge's decision. Mr. Brackett said that Mr. Fontane and staff have consistently recommended approval of the parking plan with suggested conditions of approval and still offer the same recommendation. He said he appreciated Mr. Fontane's and his staff's professionalism.

Mr. George asked if the use was not allowed by-right can parking for that use be by-right? Atty. Brackett maintained that it is because it was a use allowed by a use variance. Mr. George asked if the use variance would have to be modified? Atty. Brackett indicated that they applied for Parking Plan approval to increase parking and the plan meets dimensional requirements. Mr. George said that the ZBA is acting as a review body to approve with conditions or deny.

Mr. Murphy asked Mr. Fontane if a remand to the Planning Board was his recommendation. Mr. Fontane answered no and said it is before the Zoning Board of Appeals to decide to uphold the decision of the Planning Board or overturn the decision of the Planning Board and approve the parking plan with reasonable conditions. He further noted that he recommended that the ZBA approve the parking plan with reasonable conditions. Mr. Ciuffredo said it seemed that the ZBA is being asked to replace the Planning Board's decision and the Board needs to decide if it is a bad decision. Mr. Ciuffredo indicated that he was unsure that the ZBA had the expertise to review the parking plan and overturn the Planning Board. Mr. Fontane explained that the ZBA did not need to be expert in a particular review to render a decision and noted that they were, like the Planning Board, advised by professionals in their review, thus the presence of staff from the Planning Division, Public Works and the Inspectional Services. In addition, he indicated that ZBA was provided all of the information that the Planning Board had when it made its decision and the records from all deliberations on the matter.

Mr. Fontane then went on to recount his recollection of the Planning Board's deliberations regarding the applicant's parking plan and referred to the Planning Board's decisions. He indicated that the Planning Board had asked if the applicant would agree to certain conditions

that the Board deemed reasonable and are commonplace, including paving the parking areas. At that time, the applicant, through Atty. Brackett, expressed that they were unwilling to accept the condition of paving because of what they asserted to be the high cost of paving and the fact that paving is not a requirement of the Zoning Ordinance. The applicant's refusal to accept what the Planning Board thought were reasonable conditions needed to address its concerns related to access, circulation, and safety, and the lack of credible evidence related to the alleged cost, precipitated the Planning Board's denial of the parking plan. Mr. Adams, Senior Civil Engineer for the City of Worcester Dept. of Public Works & Parks, who also attended that Planning Board's meetings, agreed with Mr. Fontane's recollection of what led to the parking plan denial.

Atty. Brackett indicated that the Planning Board decision was not specific as to its conditions. Mr. Fontane said that the Planning Board's decision was specific and that it also referred to the Planning Board's detailed Nov. 9<sup>th</sup> 2005 decision (Nov. 18<sup>th</sup>, 2005 written decision) and indicated that the applicant should revise the plan to address the inadequacy of the parking lot circulation without paving and striping and, through that, the Planning Board's concerns regarding pedestrian and vehicle safety. Mr. Murphy stated that paving was not a requirement of the Zoning Ordinance.

Mr. Adams stated that the Department of Public Works and Parks recommends only one condition if the parking plan is approved: that the applicant provide parking lot drainage infrastructure and associated drainage calculations, which had not been included in the application. He also noted that there are "green paving technologies" now available that were not as well known at the time of the Planning Board's public meeting in 2006 (e.g. pervious pavers, engineered gravel surfaces and plastic engineered materials to secure gravel), which can be utilized for "paving" parking lots and would address the Planning Board's concerns. Mr. Murphy asked if there were standards used by DPW&P relating to drainage. Mr. Adams answered that DPW reviews drainage calculations and systems to ensure that water runoff onto abutting properties is not increased by the use of land.

Atty. Brackett referred to page 9 of the Land Court decision, top paragraph, regarding whether the denial of the Planning Board was valid. He further stated that rejection is tenable only if the use is determined to be intrusive. He indicated that he was asked to agree to certain conditions regarding paving and stated that paving is not a requirement of the Zoning Ordinance and would not agree to that condition based on initial cost estimates. Atty. Brackett then referred to staff's memo and indicated the ZBA should overturn the Planning Board and, if necessary, place reasonable conditions of approval. Mr. George state we must determine if the Planning Board decision is valid. Mr. Murphy asked whether denial would mean remand to Planning Board or approve with reasonable conditions. Mr. Fontane indicated that staff recommended approval of the Parking Plan with reasonable conditions. Atty. Brackett indicated that if the Board votes that the Planning Board's decision was valid it does not mean an approval of Parking Plan, which was clearly invalid and should be remanded to Planning Board.

Atty. Timothy McGee, an abutter and representative for some of the abutters, urged the Board to uphold the decision of the Planning Board. He said the denial was valid. He testified to the fact that the Planning Board had offered the applicant multiple opportunities to accept what he believes were reasonable conditions and the applicant had refused. He stated his legal opinion that the Planning Board had the authority to deny the parking plan

because it was intrusive to the neighborhood. He said the use was not a by-right use, but was allowed by the granting of a use variance in the early 1980s. He also commented on the impacts of the use on the neighborhood. Atty. McGee stated it would not be proper, in a cursory manner, to overturn the Planning Board denial. Faith Woods, an abutter, said she had attended numerous meetings relative to the parking lot approval and said the applicant had been given many chances to submit a revised plan that would serve to protect the interest of the students at the Salter School as well as the neighborhood's interests.

Mr. Abramoff asked Mr. Adams what the standard width of an egress/ingress for a parking lot. Mr. Adams responded the maximum curb cut is 30'; minimum for a two-way traffic access is 20' without 90-degree parking next to it; and the minimum for a two-way traffic with 90-degree parking next to it is 24'.

Mr. Murphy asked Atty. Brackett if his client would be willing to agree to the Planning Board's stated conditions at this time. Atty. Brackett said his client was not present so he could not commit to conditions of approval. Several Board members indicated that they were unsure if they could approve with conditions. Mr. Fontane advised the Board that it should request an opinion from the City's Law Department if it was struggling with a legal matter that was central to its deliberations and reiterated that staff recommended that the ZBA approve with reasonable conditions. The Board discussed whether to request a legal opinion from the Law Department but ultimately agreed to make a decision on the matter. Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to close the hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 3-2 (Lawrence Abramoff and Brian Murphy voted no) to uphold the decision of Planning Board denying Parking Plan Approval. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 2-3 (David George, Leonard Ciuffredo and William Bilotta voted no) to reverse the decision of the Planning Board. The motion failed. Therefore, the decision of the Planning Board stands. Staff requested a clarification of the Board's decision. Mr. Fontane asked if the ZBA believed that the Planning Board did what it was required to do in its review and deliberations based on the information provided to the Board. The members of the prevailing side of the vote indicated that they did and that the Planning Board acted within its authority. Atty. Brackett commented that findings should be made before the decision is adopted by a majority. Chairman George said that the Board would discuss this matter further at the end of the meeting. At the end of the meeting, Mr. Ciuffredo and Mr. George explained that they upheld the Planning Board decision based on the information in the Board packages and the testimony taken at the hearing.

- 8. 309 Park Avenue (ZB-2009-003) – Variance:** Richard Tedesco, representative for 309 Park Avenue, LLC, said a Variance for 879 square feet of relief from the gross dimensional requirement was requested. Ms. Stolberg informed the Board that according to the 2008 plot plan by Robert O'Neil, 850 square feet of relief is needed not the requested 879 square feet. Mr. Tedesco said there would be no kitchen because the occupant of the dwelling unit would use the restaurant kitchen on the first floor. Chair George asked Mr. Kelly if it would meet the definition of a dwelling unit without a kitchen. Mr. Kelly responded that some sort of kitchen facility in the unit is required to meet the definition of a dwelling unit. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David

George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to approve the following:

VARIANCE: 850 square feet of relief from the gross dimensional requirement with the following conditions:

- The apartment must be constructed in accordance with the definition of a “dwelling unit” in the Zoning Ordinance.
- A modified plot plan must be submitted to the Division of Planning and Regulatory Services as amended and marked as “Exhibit A”.

9. **142 West Street (ZB-2008-107) – Administrative Appeal:** Given the commonality among items #2 (142 West Street), #3 (26 Elbridge Street), and #4 (24 Elbridge Street), the Board took them up contemporaneously. Atty. Gary Brackett represented the petitioner, Broggi Realty Series, LLC, owner of the properties. He said the petitions were filed to appeal the Cease and Desist Orders relative to operation of a lodging house at 142 West Street in an Residential Limited (RL-7) zone and lodging houses located in a Residential General (RG-5) zone at 24 Elbridge Street and 26 Elbridge Street.

Atty. Brackett contended that the use of these properties has continued uninterrupted and existed prior to the February 6, 2007 Zoning Ordinance amendment related to the renting of rooms and are therefore preexisting nonconforming. Atty. Brackett indicated that the complaints regarding these properties were based on conversation with one of the tenants at each residence and Inspectional Services staff. He indicated that his client had tried to resolve the matter administratively and believes Mr. Kelly could determine there are no violations and could withdraw the enforcement orders. Atty. Brackett explained that there are five (5) unrelated people living at 142 Elbridge Street and four (4) unrelated people at 24 Elbridge Street but asserted that they are pre-existing nonconforming uses and therefore not in violation of the Zoning Ordinance per State law.

Mr. Fontane indicated that the Board is considering the definition of a lodging house and whether it was applied appropriately in each of the cases before it. Mr. Kelly said if the leases are for three or fewer unrelated people then it is not a lodging house. Atty. Brackett said that Mr. Kelly never checked to see if the use had pre-existing nonconforming protections. He further asserted that considerations before the Board were all dwelling units with three unrelated persons leasing to two non-transients and were legally pre-existing nonconforming uses. Mr. Kelly said that he would not withdraw the enforcement orders.

Atty. Brackett questioned the Senior Housing Inspector authority to issue such an enforcement order. Mr. Kelly stated that Mr. Nordberg does have the authority as a designee of Commissioner Mikielian, Amanda Wilson or the Acting Building Commissioner (John Kelly) to act in this capacity. He advised that the orders had been signed by Commissioner of Inspectional Services, Joseph Mikielian as well.

John Nordberg, Senior Housing Inspector of the Department of Inspectional Services, said the violations were found as a result of a “neighborhood sweep” within the North Ashland Street, Dix Street, and Wachusett Street area conducted on November 8, 2008 by the City’s Property Review Team (PRT). He said the area has a high concentration of vacant and foreclosed homes as well as homes in danger of foreclosure. Mr. Ciuffredo asked why that

particular area was chosen. Mr. Nordberg explained that the area had been chosen for the sweep by the City Manager based on information related to increased criminal activity, fire safety concerns, illegal dumping activity, unregistered vehicles and illegal uses in general.

Mr. Nordberg then explained that when the inspectors had cause, they knocked on doors to verify code compliance. He said when the properties in question were inspected, they were found to have more than three (3) unrelated occupants and the enforcement orders were then issued. Chair George asked if these inspections used a method of acceptable practice. Mr. Nordberg responded that they were and, in fact, a similar sweep was conducted recently in the College Hill area of the City. Mr. Abramoff inquired as to where the number of unrelated people, three (3), came from. Mr. Fontane answered that he did not know, but that the local definition was derived from the lodging house language included in the Massachusetts General Laws.

Atty. Brackett referenced a written administrative decision by David Holden, former Code Enforcement Officer, regarding a property on Fruit Street, which Mr. Holden determined to be pre-existing nonconforming. Chairman George stated that the Board is not bound by the interpretations of a former zoning enforcement officer.

Mr. Murphy opined that when he reviewed the applications, the arguments appeared to be valid in isolation but not when considered in general. He noted that the lodging house definition was in existence prior to 2007 zoning ordinance amendment referred to by Atty. Brackett. Mr. Brackett countered that there is a clear distinction between a lodging house and a dwelling unit and whatever protections the owners had didn't suddenly dissolve because of four or more people living there. Mr. Murphy said he understands Mr. Brackett's position but the fact is that the Zoning Ordinance's reference to four unrelated people is clear and has been around for a long time.

Chair George said it is clear that Mr. Nordberg has the requisite authority to issue enforcement orders as evidenced by the table of organization and Mr. Kelly's testimony. Mr. Brackett said he had tried to settle these matters administratively with no success to date. However, he indicated that Mr. Kelly could still make a determination that no violations exist and can withdraw the enforcement orders. Mr. Kelly stated that the orders would not be withdrawn based on the information provided.

Mr. Abramoff inquired if the Zoning Ordinance needed to be amended and asked about the intent of the 2007 amendment. City Councilor Barbara Haller indicated that it was the intent of the City Council when it passed the Zoning Ordinance amendment to clarify the issue and establish that no more than three unrelated people could occupy a dwelling unit. Mary Broggi, owner, said all of her family's properties are well managed, productive properties. She said they have a careful screening process for tenants and sub-lessees. She wondered how they could be in compliance in 2005 but not in compliance now. Chair George reiterated that David Holden's findings are not binding on the Board. Ms. Broggi stated her family owns and operates a lodging house and that these properties are clearly very different from a lodging house. She explained that a lessee has a legal interest in the property while a lodger has no such interest. Mr. Bilotta asked if the inspections had uncovered any other violations. Mr. Nordberg responded that the owner was a model landlord with good management of its properties. He continued that it is one of the unfortunate aspects of these

inspections that orders have to be issued to responsible owners, but one of his charges is to report illegal lodging houses.

Mr. Ciuffredo told Ms. Broggi that the Board is not trying to put her family out of business and that there are remedies available. Atty. Brackett said it appears that Code believes any time you have more than three unrelated people living together, it constitutes a lodging house. He then stated that is not the case with these properties because these are dwelling units and inquired when the definition of a dwelling unit morphed into a lodging house and referred to Atty. Todd Riche's Milford case memo. Mr. Kelly said that the building and fire codes are geared to protecting lives and it is the City's responsibility to enforce the law and that it's a matter of control.

Mr. Murphy stated it was a very close case with legitimate arguments on both sides but he said he was not convinced by Atty. Brackett's grandfathering argument. Mr. Abramoff said he was torn regarding the issue. While he thought the number of unrelated people allowed (3) was clear, he felt it was an arbitrary number and doesn't reflect the nature of the housing stock in the city. Mr. Kelly noted that the petitioner could remedy the situation through a special permit consideration for two of the properties (24 & 26 Elbridge Street) since they are in located in an RG-5 zoning. Mr. Kelly noted that a lodging house is not allowed in an RL-7 zoning district where 142 West Street is located.

Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to close the hearing for all three matters. Mr. Kelly agreed.

**Regarding Item #9, 142 West Street (ZB-2008-107) – Administrative Appeal:** Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to uphold the decision of John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et. al., to issue a Cease and Desist Order relative to operation of a lodging house in an RL-7 zoning district. The Board recommended to Mr. Kelly that compliance enforcement be delayed to provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, preexisting, non-conforming use.
- That the current use of the property is a lodging house.

**10. 26 Elbridge Street (ZB-2008-108) – Administrative Appeal:** See item #9 for minutes. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to close the hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to affirm the decision John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et. al., to issue a Cease and Desist Order relative to operation of a lodging house in an RG-5 zoning district. The Board recommended



to Mr. Kelly that compliance enforcement be delayed to provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, preexisting, non-conforming use.
- That the current use of the property is a lodging house.

**11. 24 Elbridge Street (ZB-2008-109) – Administrative Appeal:** See item #9 for minutes. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to close the hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to affirm the decision of John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et. al., to issue a Cease and Desist Order relative to operation of a lodging house in an RG-5 zoning district. The Board recommended to Mr. Kelly that compliance enforcement be delayed to provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, preexisting, non-conforming use.
- That the current use of the property is a lodging house.

**12. 878 Southbridge Street (ZB-2009-009) – Special Permit:** Jason Bibeau, owner of the property, said he is seeking a Special Permit to convert a residential use to a nonresidential use in order to convert the apartments in an existing two-family dwelling into office space. He further explained that he and his associate would work in the office but there would be no customers coming to the premises. He added that it would be a real estate office but customers would go to their Grove Street office to conduct business. Mr. Ciuffredo said it was his thought that the door to more commercial uses would be opened if the petition was approved. Chair George asked why this site was chosen instead of a site in another part of the city where the use is allowed by-right. Mr. Bibeau explained that he owns the building and he lives across the street. He also mentioned the proximity of the premises to I-290. James Setaro, who lives nearby, said he had no objections to the use. Mr. Bibeau said he would leave the upstairs apartment as is for now and just use the first floor for office space. Chair George asked if the parking spaces were marked and Mr. Bibeau responded that they were marked. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 2-3 by Lawrence Abramoff and Brian Murphy (David George, Leonard Ciuffredo and William Bilotta voted no) to approve the Special Permit to convert a residential use to a nonresidential use. The motion failed and the Special Permit was denied.

At the end of the meeting, after realizing no one thought to offer the petitioner an opportunity to withdraw his petition without prejudice, the Board, upon a motion by Leonard Ciuffredo and seconded by William Bilotta voted 5-0 to reconsider its vote that denied the Special Permit in order to allow the petitioner to request Leave to Withdraw without prejudice. The petitioner was not present so it was held until March 23, 2009 and staff was asked to notify the petitioner that he could avail himself of the opportunity to withdraw without prejudice thus enabling him to refile a new petition at a later date should he so choose.

**13.8 Beckman Street (ZB-2009-008) – Variances:** Hossein Haghanizadeh represented the owner, Sebouh Mardirossian, who requested a Variance for 930 square feet of relief from the gross dimensional requirement and a Variance for 1 foot of relief from the frontage requirement to divide the lot and construct a single-family dwelling on the second lot. Mr. Ciuffredo asked if the lots had been divided yet and Mr. Haghanizadeh answered they had not. Mr. Ciuffredo asked why they could not be configured to be conforming. Mr. Haghanizadeh indicated that the lot with the existing two-family dwelling requires 70 feet of frontage. Chair George said there were two renderings included in the packet and asked which rendering was the correct one. Mr. Haghanizadeh marked one as Exhibit A. He said the existing two-family dwelling is family occupied by Mr. Mardirossian's son and his in-laws. Rose Erickson expressed concerns about traffic. Debra Gardner was concerned about parking and neighborhood overcrowding. A letter from James Flynn, who also cited the parking issue, was distributed to the Board. Mr. Ciuffredo said it appeared to him that the petitioner was creating his own hardship by dividing the lot. Mr. Murphy said he shared the same sentiment. Mr. Haghanizadeh asked for Leave to Withdraw without prejudice because it appeared that there would not be enough votes to approve the Variances. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Leonard Ciuffredo, Lawrence Abramoff, Brian Murphy and William Bilotta to approve the request of the petitioner for Leave to Withdraw without prejudice the petition for a Variance for 930 square feet of relief from the gross dimensional requirement and Variance for 1 foot of relief from the frontage requirement.

### **ADJOURNMENT**

Chair George adjourned the meeting at 10:00 P.M.