

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

November 23, 2009

WORCESTER CITY HALL, 455 MAIN STREET, ESTHER HOWLAND ROOM

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

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

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

1. **21 Caro Street (ZB-2009-078) – Administrative Appeal:** Gary Brackett, representative for Paul J. and Michele Meaney, sent a letter requesting a continuance to December 21, 2009 for the Administrative Appeal. The letter stated that he had a personal scheduling conflict. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the request to continue the hearing to December 21, 2009.
2. **23 Caro Street (ZB-2009-079) – Administrative Appeal:** Gary Brackett, representative for Paul J. and Michele Meaney, sent a letter requesting a continuance to December 21, 2009 for the Administrative Appeal. The letter stated that he had a personal scheduling conflict. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the request to continue the hearing to December 21, 2009.
3. **39 Jolma Road (ZB-2009-080) – Amendment to Special Permit and Amendment to Variance:** Paul Reed, representative for Clear Wireless, LLC, sent a letter requesting a continuance to December 21, 2009 for the Amendment to Special Permit and Amendment to a Variance to allow a personal wireless service facility and a variance for relief of 50 feet from the height requirement. The letter stated that more time was needed by the applicant to provide staff with requested information. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 4-1 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George (voting no) to grant the request to continue the hearing to December 21, 2009.

- 4. 76 Webster Street ZB-2009-085) Special Permit:** Shawn Gallant, petitioner, presented the plan to allow a personal services shop (tattoo art studio) in an MG-2 zone. He stated that the area is an artist district. He said that he put up a sign and then applied for permits to open his business when it was discovered he needed a Special Permit through the Zoning Board of Appeals. He stated that the business is by-appointment only and that at this time he is not planning on having any art events or showings. William Bilotta recused himself. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 4-0 by David George, Lawrence Abramoff, Leonard Ciuffredo and Andrew Freilich to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 4-0 by David George, Lawrence Abramoff, Leonard Ciuffredo and Andrew Freilich to approve the requested Special Permit for a personal service shop in an MG-2 zone with the conditions that 1) no work be performed outside and 2) no art gallery be on premises without an Amendment to the Special Permit by the Zoning Board of Appeals.

- 5. 15 John Street (ZB-2009-050) Special Permits:** Robert Longden and Robert O'Neil, representatives, and Mrs. Porras, owner, for Porras Realty Corp., presented the plan for a Special Permit for expansion or change of a pre-existing non-conforming use and a Special Permit to modify parking, loading and landscaping requirements. Mr. Longden stated that the building on the property is to be demolished and was replaced by a 5-space parking lot for accessory parking at 55 Linden Street. He said that the structure was occupied by Victory Productions which provides textbooks and electronic scholastic publishing in both English and Spanish. He presented a letter by Joseph Mikielian which states that a Special Permit for accessory parking of 10 additional parking spaces was granted in 1986. The additional parking allowed 4 parking spaces at 15 John Street which made the existing parking a privileged pre-existing non-conforming use. The new parking area will be expanded by 8-parking spaces that will serve 55 Linden Street and will have its own entrance off John Street. He also stated that a 6-foot high stockade fence will buffer the lot from the residential areas. Mr. Ciuffredo was concerned with unused vacant space downtown and that the business will encroach further into a residential area. Mr. Longden said that the area around the business has lost its residential character and that it is segregated from the residential neighborhood. Mr. O'Neil stated that there will be a 4-foot high concrete retaining wall as there is a slope in the rear of the property and that access will be from John Street along the sidewalk. Mr. Freilich stated that he was in support of the petition. Mr. George was concerned that the current parking exceeds the required parking and questioned why more parking was needed. Mrs. Porras stated that the new parking lot is for the safety of her employees walking to their cars. Mr. George asked about the process for an expansion of this use at this location. Mr. Fontane said that based on past interpretations, in cases where there was a previously granted use variance, the ZBA no longer has the authority to modify a use variance. Therefore, a zone change would be required. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Billotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 2-3 by Lawrence Abramoff and Andrew Freilich and David George, Leonard Ciuffredo and William Billotta (voting no) to approve the requested Special Permit for expansion or change of a pre-existing, non-conforming structure and the Special Permit to modify parking, loading and landscaping requirements. Upon a motion by Leonard Ciuffredo and seconded by William Billotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to reconsider

the vote. Upon a motion by Leonard Ciuffredo and seconded by William Billotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner's request for Leave to Withdraw without Prejudice.

- 6. 28 Garden Street (ZB-2009-060) – Special Permit:** Robert Longden, representative for Lamar Outdoor Advertising Company stated that the requested Amendment to Special Permit was to allow a non-accessory sign (billboard). He said that the location of the two-faced digital billboard is part of a pilot program by the Outdoor Advertising Board of Mass Highway and that this is one of 20 sites in the state. He said that there are 44 states that govern digital billboards and Massachusetts does not. He said that the way digital billboards operate is for the display to fade out which is a static change of not less than 10 seconds; no scrolling, flashing or other movement. It is considered safe technology for uses next to highways. He said that Lamar Outdoor Advertising requested that BSC group perform an assessment of the existing roadway and where to place a new sign based on impediments to visibility on I-290. He said that the sign is visible for approximately 1500 feet on the westbound side which will be 1 or 2 changes of the sign, while the visibility on the eastbound side is approximately 1300 feet. The testing for Mass Highway will assess crash data to see if it is safe now and will it be safe after the sign is erected. Mr. Longden provided accident data from a preliminary report that does not attribute accidents over the last few years to any billboards. Mr. Abramoff asked if the conditions of approval from the staff report were consistent with what Mass Highway is proposing. Mr. Longden stated that some were not. He said that if the sign is approved a study must be done 30 days after the sign is erected and then again after a 13 month period. Mr. Ciuffredo stated that he was happy the state was running this program but not pleased with using Worcester as a test site. He further stated that he did not want to be responsible for accidents in this area based on the new digital technology as decisions must be made by drivers on this dangerous part of I-290. Mr. Longden said that the assumption is that digital technology is a distraction and that the technology causes accidents. He said that studies conducted in Philadelphia and Cleveland concluded that digital signs do not cause distractions or automobile accidents and that Mass Highway is trying to create a “Best Practices” to develop regulations for digital billboard technology and how often images should change. Mr. Freilich was concerned that the messages changed every 10 seconds and stated that he did not want to be a test case. He further stated that he would be more inclined to support the billboard if it was operated in a sequence with other billboards and did not change images as often. Mr. Longden stated that the purpose of the study is to create regulation and give the City the opportunity to have input. He further stated that there are other test sites in the state and that Worcester is not the first test site. Mr. Fontane confirmed that Ed Farley from the state had been interviewed and indicated that the city had not sought being a test site nor was informed by the state it was chosen. The Board was concerned with the size of the new digital billboard and was told that the size of the face of the sign would be the same, but the height would be 55 feet instead of the current 35 feet. Mr. George said that this is a local issue and that the sign industry should be willing to reduce the number of non-digital signs when installing digital ones. He further stated that the area of the highway where the sign is to be located is difficult to maneuver and lanes merge and that he is not in favor of the sign at this location. He also stated that the planners say there is evidence that the signs cause accidents and the sign industry says it does not. This issue needs to be reconciled. Mr. Bilotta questioned the future of the test site if problems occurred. The answer was that if a problem is discovered, there would be a correction and then if the problem continued, the sign would be removed.

He stated that the sign costs between \$800,000 and \$1 million. Mr. Abramoff stated that staff is recommending an extensive list of conditions and that this needs to be reconciled with Mass Highway. Mr. George and Mr. Ciuffredo stated that they were not able to support the sign at this time. Mr. Longden said that he was aware that the Board was disinclined to approve the sign and stated that he would like to ask for a continuance to seek the participation of Mass Highway to explain the rationale for this test site. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner's request to continue the hearing to January 25, 2010 to allow the petitioner time to provide more information regarding safety and have a representative from Mass Highway present to participate in the discussion and answer the Board's concerns. The Board was asked if the location for this type of sign could be changed to a place where driver decisions were not as critical.

- 7. 1059 Millbury Street (ZB-2009-070) – Amendment to Special Permit and Amendment to Variance:** John-Markus Pinard and Scott Heffernan, representatives for T Mobile Northeast LLC, petitioner, are seeking an Amendment to Special Permit and Amendment to a Variance to allow a personal wireless service facility and a variance for relief of 50 feet from the height requirement. Mr. Markus stated that the ownership concerns of the property have been resolved and that he has provided a letter of authorization to staff. The Board was concerned that all of the documentation that was provided had not been reviewed by staff. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner's request to continue the hearing to December 21, 2009 and extend the constructive grant date to January 25, 2010.
- 8. 4 Cliff Street (ZB-2009-073) – Special Permit:** Item #9 was taken up contemporaneously with Item #8. David Sadowski, representative, presented the plan for the Special Permit for Expansion or Change of a Pre-existing non-conforming structure and a variance of 3.9 feet from the front yard setback. He stated that the plan is to construct a two-car garage in front of the existing single-family dwelling unit which is located on a split-zoned lot, RL-7 and MG-1. The garage will be entirely in the MG-1 zone and will extend into the front yard setback. He said that the lot is steep making it difficult to construct a driveway. Mr. George asked if the future plan was to construct another dwelling unit and if that was why the garage was not being built in the side yard and also if there were other issues regarding topography or the presence of ledge. Mr. Sadowski answered affirmatively. Upon a motion by Leonard Ciuffredo and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by William Billotta it was voted 4-1 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George (voting no) to approve the Special Permit for Expansion or Change of a Pre-existing non-conforming structure with the following conditions: 1) structure not to be habitable, 2) house number placed on the house, 3) constructed to the plan dated 10/27/09 and 4) built in accordance with the rendering dated 10/22/09.
- 9. 4 Cliff Street (ZB-2009-089) – Variance:** Item #8 was taken up contemporaneously with Item #9. David Sadowski, representative, presented the plan for the Special Permit for Expansion or Change of a Pre-existing non-conforming structure and a variance for 3.9 feet

of relief from the front yard setback requirement. Upon a motion by Leonard Ciuffredo and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by William Billotta it was voted 4-1 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George (voting no) to approve the Variance for 3.9 feet of relief from the front yard setback.

10. 805 Grafton Street (ZB-2009-077) – Special Permit: William Bloom, Steve Phlug, Berkley Henderson and Nicholas Herston, representatives for Z&H, LLC presented the plan for a Special Permit to modify parking/loading and landscaping requirements. Mr. Phlug stated that the property located at 805 Grafton does not have the required landscape buffer but there will be a 10 foot landscape buffer on the lot and the abutting lot. Mr. Ciuffredo asked about the planned use of the new parcel. Mr. Phlug said that they have an agreement for a professional office. Mr. Fontane confirmed that either retail use or professional office uses are allowed by-right. Mr. George asked if the required parking for other parcels will be satisfied. Mr. Phlug said that traffic flow, parking and drainage will all remain the same as they are now. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the requested Special Permit to modify parking/loading and landscaping requirements with the following conditions: 1) dumpster to be screened with chain link fence with slats, 2) southern boundary of property to be densely planted with shrubs and trees, 3) 10 foot landscaping buffer at 803 Grafton Street to remain, 4) that 12 trees to be planted along Grafton Street by June 30, 2010 in accordance with the Zoning Ordinance and, 5) that revised plans submitted to Division of Planning and Regulatory Services showing the required plantings.

11. 200 East Mountain Street (PB-2009-084) Special Permit: Joe Boynton, representative for Mountain Village Company, LP, presented the plan for the Special Permit for Expansion or Change of a Pre-existing non-conforming structure. Mr. Boynton stated that he wanted to praise staff for finding a previously Special Permit that allowed the construction of the residential complex. He stated that the plan is to construct a 5,567 SF club house with key card access for use by the residents of the apartment complex. He stated that they were waiting for the orders of condition from the Conservation Commission. Mr. Frielich was concerned with the temporary storage containers and asked that they be removed. Kevin Powers from Quabbin Estates stated that his group was concerned with the supervision of the people and the hours of operation of the facility. Mr. Boynton stated that the toddler and teen room would only be open when staff is present, from 8:00 AM to 5:00 PM; the fitness center would be open from 6:00 AM to 10:30 PM and the club room would be available by special arrangement. Mr. George was concerned about nuisance control for the abutting neighbors. Mr. Boynton stated that there is a security team for the complex. Upon a motion by Andrew Freilich and seconded by Leonard Ciuffredo it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Andrew Freilich to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Andrew Freilich to approve the requested Special Permit for Expansion or Change of a Pre-existing non-conforming structure with the following conditions: 1) the neighbors be

provided with contact information, such as security and management telephone numbers, 2) outside cameras be installed, 3) hours of use be from 6:00 AM to 10:30 PM for the fitness room, 4) hours of use for the function rooms by appointment only until 10:00 PM on weekdays and 11:00 PM on weekends, 5) extra basketball court to be removed, 6) 4 temporary storage containers to be removed, 7) storage containers to be on site for only 30 days, except during construction, and 8) constructed to approved parking plan.

12. 651-667 West Boylston Street (ZB-2009-083) – Special Permit: Steve Madaus, Jeff Howland and Chris Tully, representatives for Fidelis Corporation, presented the plan for a Special Permit for the expansion or change of a pre-existing non-conforming use/structure regarding length, rear yard setback and landscaping. Mr. Madaus stated that the parcel has two buildings, one is a donut shop and the other is a one-story structure that houses several businesses. He said that the drive-through, created in 1995, is a pre-existing non-conforming use and that a portion of the drive-through goes over railroad land. He further stated that the donut shop will be relocated so that the front of the building will align with other buildings, the drive-through will be lengthened and an escape lane and a 5-foot landscape buffer will be added. Also, the WRTA bus shelter is being moved and a curb cut is being eliminated. Mr. Howland stated that he had met with Ali Khorasani from DPW&P – Traffic Engineering and that Mr. Khorasani's concern is that there will be a back up onto West Boylston Street. Mr. Fontane clarified that there were issues with parking spaces, even if they were used for employee parking. The Board is concerned with the location of handicapped parking space and how many cars can be stacked in the drive-through lane. Mr. Kelly clarified that one of the handicapped parking spaces does not meet the requirement of the zoning ordinance and also that the curb cut on the south end of the building be constructed to city standards. Mr. Freilich questioned if the use that was permitted in 1996 can still continue. Robert Branca from Batista Co. stated that he had tried to purchase the land where the drive-through is currently from the railroad and was unable to and so leased it from the railroad, but then his company purchased the land in 2007. He further stated that his company is leasing the property and that he has rights to the property and use of the property through his lease. He stated that he believed the use will be abandoned in January. Mr. Madaus stated that it is the applicant's intention to commence their rights of the Special Permit through a building permit and making improvements to the site. Mr. Freilich is concerned that the property will not be used as a donut shop because of the lease that Mr. Branca has and stated that he is in favor of the plan. Mr. George stated that he was concerned with the layout of the parking spaces, landscaping plan and wants the applicant to provide information regarding their legal right to be before the Board. Mr. Cuiffredo is concerned with the traffic congestion and the traffic back up onto West Boylston Street. Mr. Bilotta and Mr. Abramoff both expressed that they want to see revised plans but were in favor of the proposal. The Board stated that they wanted the plans revised to show the improved parking layout, landscaping and snow storage. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner's request to continue the hearing to December 21, 2009 to allow the applicant time to provide the requested information.

OTHER BUSINESS

Minutes: Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 4-0 to approve the minutes for October 19, 2009.

Recruitment Session: Mr. Fontane stated that an interview was scheduled for next week for a new Board member and that there are currently three positions open on the Board. Mr. George stated that there are no specific requirements for a board member. Mr. Fontane explained that the search and interviewing committees look for candidates that are interested in the subject matter, can commit the time and demonstrate that they make informed decisions. A team of staff including representatives from HR, the City Manager's office and DPRS interview each candidate before making a recommendation to the City Manager for his consideration. Mr. Freilich stated that the demand on current board members is high because the Board has not had alternates for about three months. Mr. Abramoff also noted that new members need a few months to get up to speed.

Election of Officers: The Board voted 4-0 to elect David George, Chair and Lawrence Abramoff, Vice-Chair.

Scrivener's Error: Mr. Fontane explained that staff had identified a scrivener's error in both the decision and the minutes related to 390 Southbridge Street special permit consideration. He said that the decision referred to the salt pile as no more than 50 feet in height and no more than 80,000 tons. After reviewing the file and consulting with staff he concluded that the decision should have stated 80,000 tons and in accordance with site plan dated June 8, 2009 as revised. He further said that the minutes should state that the salt pile be constructed in accordance with the site plan dated June 8, 2009 as revised. Mr. Ciuffredo asked if there was going to be a containment area around the salt pile. He further stated that he would not have voted for the proposal if the containment was not for the entire salt pile. He also asked if DPW& P had made comments on the salt pile prior to the ZBA meeting. Mr. Kelly stated that the applicant was going to wrap the containment area so that the flood waters would not back up and that the applicant was also considering a permanent shelter to cover the salt pile.

Board reviewed and signed decisions.

ADJOURNMENT

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