

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

**August 8, 2011**

**WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

**Zoning Board Members Present:**

Lawrence Abramoff, Chair  
Andrew Freilich, Vice-Chair  
Vadim Michajlow  
Kola A. Akindele  
Timothy Loew

**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 Abramoff called the meeting to order at 5:30 PM.

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

1. **3 Lodge Street (ZB-2011-031):** Andrew Ansara, petitioner, requested postponement of the hearing due to the fact that staff identified some potential legal issues with the property (re: common law doctrine of merger) and has requested a Legal Opinion on the matter. Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voted 5-0 to postpone the hearing to August 29, 2011.
  
2. **666 Lincoln Street (ZB-2011-033):** Attorney Jonathan Finkelstein requested a postponement of the hearing because his client was not able to attend the meeting and because the petitioner needed time to review staff's memo and submit additional documentation to the Board. Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voted 5-0 to postpone the hearing to August 29, 2011.

## UNFINISHED BUSINESS

3. **994 Grafton Street (ZB-2011-023):** Attorney Merrill Campbell on behalf of Robert and Melissa Gibson, petitioners, stated that the petitioners are seeking to open a business on the premises with animal day-care, training, grooming and retail space for pet products, per Article IV, Section 2, Table 4.1, Use #12: Kennel, of the Zoning Ordinance. Also present were Melissa and Robert Gibson. Ms. Campbell stated that the petitioners entered into a commercial lease agreement with the owner and that they have been operating their business since 2002 at another location. She clarified the application statement that number of dogs being about 40 refers to number of dogs housed on premises in the kennels, and does not account for dogs that are brought in for other services, such as grooming. Mr. Gibson stated that the maximum number of dogs will be dictated by space, and that he is planning to have minimum 75 SF of space allocated per dog. He stated that the leased space has 8,500 SF, but that 3,200 SF will be used for the dogs' daycare, and 1,200 for grooming and similar services.

Mr. Freilich asked if Administration was developing regulations for kennels. Mr. Fontane stated no. Mr. Kelly stated that this use would require an annual kennel permit from the Animal Control, but that annual inspections are not required as part of this permit.

Mr. Fontane noted that the site is currently non-conforming with the landscaping ordinance and suggested that a landscaped buffer is provided along the street. Ms. Campbell stated that the petitioner is amenable to working with the owner to do that, with a condition that the buffer will be planted in the spring.

Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voted 5-0 to close the public hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voted 5-0 to approve the requested Special Permit for a Use #12 under Article IV, Section 2, Table 4.1 to allow animal day-care, training, grooming and retail space for pet products with the following conditions of approval:

- That no more than 73 dogs are located on site for the daycare component of the use at any one time;
- That a 3-5-ft landscaped buffer providing at a minimum low-level landscaping (with drought resistant seasonal plantings) along the front property line is installed within a year of this approval;
- That there shall be no off-site queuing of vehicular traffic onto Grafton Street;
- That six (6) copies of final approved plan are submitted showing the provision of a landscaped buffer to the Division of Planning & Regulatory Services;
- That the parking lot be constructed and operated substantially in accordance with the final revised plan on file with the City of Worcester.

### List of Exhibits.

Exhibit A: Special Permit Application -994 Grafton St.; received June 10, 2011; prepared by Robert & Melissa Gibson, petitioners and Luigi Digioia, owner.

- Exhibit B: Parking Plan – 994 Grafton St.; dated July 7, 2011; revised July 29, 2011 prepared by Daniel Tivnan, HST Group.
- Exhibit C: Special Permit Decision – 994 Grafton St., Zoning Board of Appeals, January 5, 1983
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: Special Permit: 994 Grafton St, dated July 15, 2011.
- Exhibit E: Request to Postpone from Atty. Mary Campbell to the Zoning Board of Appeals, dated July 15, 2011.
- Exhibit F: Supplemental Information re: Business Information Dog Daycare – 994 Grafton St. – Prepared by Robert and Melissa Gibson, received July 29, 2011.

4. **20 Massachusetts Avenue (ZB-2011-024):** Attorney Todd Rodman, representative for the petitioner, Alpha Phi International Fraternity, stated that the petitioner is seeking to convert the single-family detached dwelling into a sorority house affiliated with Worcester Polytechnic Institute (WPI) to house 12 students, per Article IV, Section 2, Table 4.1, Use #5: Fraternity/Sorority/Cooperative residence of the Zoning Ordinance. The applicant will provide six (6) off-street parking spaces, as required for this use (0.5 per bedroom), two (2) spaces in the existing garage and four (4) spaces in the driveway area with a turnaround. He stated that the house has been vacant for over a year.

Also present were Linda Cahangi, Executive Director of Alpha Phi, Candace Hodge from Alpha Phi Housing Board, and Matt Brassard, an architect. Mr. Rodman stated that the work is planned to be completed by 2012 and consists of both inside and outside work. He stated that Alpha Phi has 65 members at WPI, with an allowed maximum chapter size of about 100. He stated that physical and topographical separation of the property from the neighborhood coupled with operational controls imposed on the Sorority by Alpha Phi will help reduce impact on the neighborhood which are the abutters concerns. Mr. Rodman stated that on July 7, the applicant conducted an informal neighborhood meeting.

Ms. Cahangi stated that Alpha Phi is one of the oldest and largest organizations in the country and that a full time staff (an Educational Leadership Consultant) would be living on site. She stated that her organization looked at many properties in the City and had hard time finding one that was suitable for the purposes of the Sorority. The Facility could also be used for smaller executive meetings, with larger ones taking place on campus. She stated that the House Rules preclude alcohol or loud parties, in line with the national rules of the sorority. She felt that 6 off-street parking spaces was too much for the use most of the members do not have a car. Ms. Cahangi stated that in her time as an executive director she never received a negative comment from a neighbor of an Alpha Phi chapter location.

Mr. Rodman disagreed with the staff's memorandum regarding the potential impact of the proposed use on the neighborhood's structure. He stated that this use would provide housing for a new use and would add productive residents to the community. He stated that there is a physical segregation of the property from the rest of the community. Mr. Rodman stated that the required number of parking spaces is provided and that less than 6 parking spaces will be used by the residents, but that 1 or 2 will be reserved for visitors. Mr. Rodman stated that a shuttle connects WPI campus and the nearby neighborhoods and that the site is easily accessible by foot and bike from the WPI campus. He stated that the residents would be

provided with a number to call in case there are any concerns. Mr. Rodman stated that he did not feel that 12-people residence was disproportionate to the neighborhood, as he knew of one family of 8-people (2 adults and 6 kids) living in the vicinity. He stated that he believed the net effect on the City would be a positive one and that this property has used the Bancroft Tower Road for many years and he was not sure how to respond to staff's comment regarding providing proof of the access rights.

Mr. Michajlow asked who the staff person living on-site will be reporting to. Ms. Cahangis stated that the staff would be reporting to the Program Manager of the Education Leadership Consultants, two levels below her Executive Director Position in the Alpha Phi, but that the housing itself will be managed by the alumni board.

Mr. Akindele asked if large meetings will be held at the house, given that the chapter will have 65-100 members by the fall. Ms. Cahangis stated that the house does not lend itself to large meetings, but that occasionally there might be Open House events held at the house for the parents. She stated that there will be a study room in the basement that Alpha Phi members will be able to use.

Mr. Cahangis stated that there are 153 chapters in the North America with 75-80 facilities. Mr. Abramoff asked how often there are conflicts with the neighbors. Ms. Cahangis stated that in her 2.5 years in this position she has not heard of any and that she was surprised to learn of the WPI opposition to the project. She stated that the members will be competing using points to get a designated parking space, but that most members do not have cars.

Mr. Freilich asked what the differences are between the fraternity/sorority uses and the rooming house uses as defined in the Zoning Ordinance. Mr. Fontane stated that fraternity/sorority uses have to be recognized by a National Chapter and that they are only meant for college/university students, while rooming/lodging houses cannot discriminate as to who to accept as a resident. He stated that nature of the operations is similar.

Mr. Freilich stated that while he was impressed with the Alpha Phi organization and the proposed House Rules, he did not feel it was an appropriate use for this particular neighborhood which is single-family residential in nature.

Mr. Fontane stated that the owner needs to establish the right to pass and repass the Salisbury Park property for the use of the driveway.

Mr. Fontane stated that staff does not recommend approval of this petition because the benefits do not outweigh the negative impacts of the proposed use and stated the following with respect to the Special Permit criteria and staff's proposed findings of fact:

*“Criteria 1: Social, economic, or community needs that are served by the proposal;*

When considering this and other special permit criteria, the Board should evaluate how the proposed use meets the purposes and intent of the Zoning Ordinance. Among the ways the Zoning Ordinance addresses the social, economic, or community needs is by promoting the health, safety and general welfare of the city. To do so, the ordinance provides a regulatory framework that encourages the most appropriate use of land and protects against the use of land in a way that is incompatible with nearby uses or causes “congestion in travel or transport” among other

considerations including protecting the “aesthetic qualities” of the community.

Among the purposes and intent of the Zoning Ordinance related to this special permit criteria is the creation *and* maintenance of conditions under which people and their environment can fulfill the social, economic and other needs. Fulfilling these needs requires a balance between fostering growth and change and maintaining the qualities of the existing built environment, neighborhood character and social structure. In some places the greatest value, both social and economic, is gained through change and development. In others, the greatest value is achieved through the maintenance of the existing character of an area by protecting it from incompatible uses, such is the case for 20 Massachusetts Ave.

At this location, addressing the social, economic and community needs represented by the sorority will neglect those same needs for the abutting residential neighborhood since this use will degrade the quality of life and character of the neighborhood by presenting urban problems associated with high intensity uses. Instead, the community’s needs are best served through the maintenance of a single-family use of the property and *not* allowing a sorority.

Maintaining the single-family residential use of the property yields the greatest overall value when considering the tangible and intangible costs and benefits of the proposed development.

In looking more broadly at whether all community needs are being fulfilled we find that there are more appropriate locations in the WPI area for the proposed sorority. For example, the neighborhood between Highland and Institute Road is more accessible to the WPI campus for pedestrians and is an appropriate location for a sorority given its neighborhood character. In fact, several other sororities / fraternities were approved in that area including the Board’s most recent approval of an 11 bed sorority on Hackfield St.

In conclusion, precluding the proposed use from locating at 20 Massachusetts Ave. does not prevent the city from addressing the social, economic and community needs represented by this proposal.

*Criteria 2: Traffic flow and safety, including access, parking and loading areas;*

With respect to parking and traffic, the Board should consider the adequacy and functionality of the off-street parking proposed as well as traffic safety and congestion in the neighborhood.

- The proposal is technically in compliance with zoning ordinance in that it provides the minimum number of parking spaces and adequate interior circulation to reasonably avoid directly backing out onto the street. However, as a practical matter, the parking provided will not be sufficient

to accommodate twelve (12) students without dramatically increasing on-street parking congestion and traffic in the neighborhood.

- The distance, topography, the lack of sidewalks and a physical barrier (the fence along Park Ave.) make walking from 20 Mass Ave. to the WPI campus arduous, less accessible and generally inconvenient for pedestrians and bicyclists, particularly during the winter months. This physical reality coupled with the lack of public transportation options will lead to greater vehicle use by those residing at the proposed sorority. Specifically, residents of the proposed use will be deterred from non-vehicle trips to campus due the distance (~.75 miles from majority of academic buildings on WPI's campus), significant hill (~10%+ grade in sections) and the lack of sidewalks along certain segments of the route to campus. Moreover, Massachusetts Ave. is not well-lit and the sight distance at the intersection of Bancroft Tower Rd and Massachusetts Ave is limited and presents pedestrian safety concerns.

*Criteria 3: Neighborhood character and social structure; & Impacts on the natural environment:*

20 Massachusetts Ave. is located within an established neighborhood with a low-density built environment and a single-family social structure. This neighborhood derives its property values and quality of life from the stability afforded by the consistency of use, social structure, its setback and open space, and its lack of traffic and parking congestion. It also benefits from its proximity to the Massachusetts Avenue Local Historic District approximately 500 feet away.

In summary, an integral part of this neighborhood's value is the integrity of its residential character. The retention of the specific elements of that character is what enables this neighborhood to convey its quality of life and value. A key element of that character is the absence of the urban problems associated with a high-intensity residential uses such as a sorority.

The proposed use will impinge on this residential character in a number of ways:

1. The intensity of the proposed use is considerably higher than what is otherwise allowed and is not compatible with the neighborhood.

- The number of unrelated adults proposed is *four* (4) times more intense than what would otherwise be allowed since no more than three (3) unrelated people can reside in a dwelling unit per the City's Zoning Ordinance unless otherwise permitted (i.e. sorority special permit consideration or similar).

2. The residents of the proposed use will be significantly more transient than is typical for this established, low-density residential neighborhood with a single-family social structure.

- Given the typical length of tenure of a college student and since sorority members will spend only a portion of their college career in the sorority house, tenant turnover will be considerably higher as residents graduate and new members move in. Direct abutters, and the neighborhood in general, will likely experience a greater number of move-related disruptions caused by tenant turnover and students returning from summer vacations, college breaks and membership turnover within the sorority.

3. The sorority's social structure will negatively affect the neighborhood's character, despite its proposed house rules, by generating considerably more vehicle traffic and associated noise than would otherwise occur in this residential setting.

- On a regular basis, the neighborhood will experience a greater number of vehicle trips as residents, other sorority members and guests frequent 20 Massachusetts Ave.

- Given the number of independent adults proposed (12), it is likely that the combination of residents and visitors will overwhelm the site's proposed parking capacity and necessitate the use of on-street parking or lead to the development of additional parking, which would necessitate further site work and removal of trees and vegetation. A larger parking area, if proposed, would detract from the aesthetics of the site's setting and would be out of character for the neighborhood.

- The proposed house rules are insufficient to fully mitigate the negative impact on the neighborhood's character.

- The proposed use would change the character of the area in such a way as to encourage additional encroachment of high-intensity institutional uses in this residential neighborhood.”

Attorney Finkelstein spoke on behalf of the following abutters: Susan and Joseph Mathews, Mark Awed & Kathleen Tamalio, John O'Grady, and Naren Sodha, as well as the Greater Hammond Heights Association. Mr. Finkelstein stated an opposition to the project as in his opinion the application is inadequate in failing to meet minimum requirements of the Zoning Ordinance, because the 6<sup>th</sup> parking space is located within the exterior side yard setback.

John O'Grady, an abutter, stated his opposition to the proposed use and stated concern with the increased density of the use, the transient nature of the residents, potential increase in traffic and noise, and encouragement of WPI encroachment on the residential neighborhoods. He did not believe the potential benefits will outweigh the negative impacts, and that he has not been convinced that there are any benefits.

Naren Sodha, an abutter, stated his opposition to the project. He stated that the neighborhood was not designed for what he called “an equivalent of a boarding house”, that the project would have more traffic, that students crossing Park Avenue would present a danger to themselves. He stated that the project would change “the historical, quiet nature of the neighborhood”. He did not see the benefits of the proposed use.

Joseph Mathews, a direct abutter, was concerned with traffic and safety of the neighborhood. He did not believe that 6 off-street parking spaces would be adequate for the needs of the use,

such as visitors and Open House events. He stated that the Bancroft Hill Road is steep and not well maintained.

Sheila Killeen, representative for Greater Hammond Heights Neighborhood Association, stated her opposition for the project because in her opinion the transient nature of the proposed use does not fit with the residential neighborhood.

Jeff Solomon, Executive President of the WPI, and an abutter, spoke on his and WPI President Burke's behalf. He stated that WPI was opposed to the proposal which made a commitment of no further encroachment of WPI west of Park Avenue. He stated that the proposed use would not be compatible with the neighborhood, and that a WPI fraternity on Regent Street had issues with the neighborhood. He was concerned with students' crossing of Park Avenue. He stated that WPI is working with the chapter to identify some other potential properties for the chapter in the area.

Geoff Smith, City of Worcester Councilor, expressed opposition to the project. He stated that it is a predominately a single-family neighborhood close to the Historical District, and he felt that it is not an appropriate location for the proposed use. He stated that if approved, this project would set a dangerous precedent for future fraternities/sororities changing neighborhoods, and that this neighborhood needs to be preserved.

Sandra Ansaldi, an abutter, expressed opposition to the project.

Mr. Finkelstein stated that there is no on-street parking in the area of the 20 Massachusetts Avenue area according to the evidence collected from the Department of Public Works & Parks (Exhibit M). He stated that a Special Permit is a permit that, in general, can be approved with conditions that would liken it to the by-right uses. However, no amount of conditions imposed by the Board or the sorority itself, in his opinion, would allow the sorority "be like a single-family dwelling, which is the core of this neighborhood".

Mr. Freilich asked that WPI make a strong effort to help the sorority to find an appropriate location. Ms. Cahangis stated that the sorority was not made aware of the University President's commitment not to encroach into the community west of Park Avenue, and when it was made aware, it was too far along the process of permitting and purchasing the property.

Mr. Rodman stated that the plan was reviewed by the Division of Planning & Regulatory Services and that he believes it complies with all regulatory requirements with respect to parking.

Chair Abramoff commended the sorority for its work but stated that he was concerned about site constraints, its distance to the WPI campus and potential change to the character of the neighborhood.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 0-5 to approve the requested Special Permit for a sorority house affiliated with Worcester Polytechnic Institute (WPI) to house 12 students, per Article IV, Section 2, Table 4.1, Use #5: Fraternity/Sorority/Cooperative residence of the Zoning Ordinance. The motion did not carry, therefore, the Special Permit was denied.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to adopt the Findings of Fact as proposed by the petitioner and modified by staff (Exhibit D).



List of Exhibits.

- Exhibit A: Special Permit Application and House Rules; received June 15, 2011; prepared by Alpha Phi International Fraternity.
- Exhibit B: Special Permit Plan; dated 6/14/2011; prepared by Brassard Design & Engineering.
- Exhibit C: Revised Special Permit Plan of Land; dated 7/15/11; prepared by Brassard Design and Engineering.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 20 Massachusetts Avenue (ZB-2011-024); dated August 4, 2011.
- Exhibit E: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals; re: 20 Massachusetts Avenue (ZB-2011-024); dated July 21, 2011.
- Exhibit F: Zoning Determination Letter from Commissioner John Kelly re: 20 Massachusetts Avenue; dated July 14, 2011.
- Exhibit G: Request to Postpone to August 8, 2011 from the Applicant to the Zoning Board of Appeals; dated July 14, 2011.
- Exhibit H: Request to Postpone to August 29, 2011 from Jonathan Finkelstein, representative to abutters, to the Zoning Board of Appeals.
- Exhibit I: Letter from Jonathan Finkelstein, representative to abutters, to the Zoning Board of Appeals; re: 20 Massachusetts Avenue; requesting revised plans.
- Exhibit J: City of Worcester Zoning Board of Appeals' Lodging House Rules per Board's November 8, 2010 discussion.

Letters of Opposition:

- Exhibit K-1: Email Letter of Opposition from Susan Mathews to Zoning Board of Appeals; re: 20 Massachusetts Avenue Special Permit; received via email July 12, 2011.
- Exhibit K -2: Letter of Opposition from Joseph and Susan Mathews to Zoning Board of Appeals, dated July 13, 2011 re: 20 Massachusetts Avenue Special Permit received via email July 13, 2011.
- Exhibit K -3: Letter of Opposition from Dennis Berkey, President and CEO – Worcester Polytechnic Institute to the Zoning Board of Appeals, re: 20 Massachusetts Avenue Special Permit, dated July 12, 2011; received via email July 12, 2011.
- Exhibit K -4: Letter of Opposition from Naren & Danuta Sodha to the Zoning Board of Appeals, re: 20 Massachusetts Avenue Special Permit, dated July 13, 2011; received July 13, 2011.
- Exhibit K -5: Letter of Opposition from Sheila Killeen to the Zoning Board of Appeals, re: 20 Massachusetts Avenue Special Permit, dated July 13, 2011; received July 13, 2011.

- Exhibit K -6: Letter of Opposition from Ken and Michele Miller to the Zoning Board of Appeals re: 20 Massachusetts Avenue Special Permit dated July 13, 2011; received July 13, 2011.
- Exhibit K -7: Letter of Opposition from Mark and Kathy Tamilio-Awed to the Zoning Board of Appeals re: 20 Massachusetts Avenue Special Permit; dated July 13, 2011.
- Exhibit K -8: Letter of Opposition from Donna and John S. Kishibay to Ms. Perlow; received July 16, 2011.
- Exhibit K -9: Letter of Opposition from Frank R. Callahan to the Zoning Board of Appeals re: 20 Massachusetts Avenue Special Permit dated July 17, 2011; received July 18, 2011.
- Exhibit K -10: Letter of Opposition from John B. Anderson to the Zoning Board of Appeals re: 20 Massachusetts Avenue Special Permit dated August 3, 2011; received August 4, 2011.
- Exhibit L: An Aerial Image of the 20 Massachusetts Avenue Neighborhood.
- Exhibit M: Evidence demonstrating no on-street parking in the 20 Massachusetts Avenue Neighborhood, collected and submitted by Attn. Finkelstein at the 8/8/2011 ZBA meeting.

5. **44 Byron Street 666 (ZB-2011-028):** Attorney Edward Pare of Brown Rudnick LLP, representative for the petitioner, New Cingular Wireless PCS, LLC by its manager, AT&T Mobility, stated that AT&T is proposing to upgrade its LTE service by enhancing the 4-G network throughout the City and the state. Most of the existing AT&T sites in the City of Worcester – 17 in total - will be upgraded with this new technology. He stated that the petitioner is seeking to add three panel antennas with six small box-like radio heads and one surge arrestor all located behind the existing screen wall on a roof of a multi-family high-rise residential dwelling with existing personal wireless service facilities.

Mr. Fontane stated that federal cases for denials hinged on the technical merits, or lack thereof, of coverage. Otherwise, the petition itself is a compliance check with the Zoning Ordinance, such as Radio Frequency and noise, and the Board can set reasonable conditions of approval, such as camouflage. Mr. Pare provided a revised Request for Waivers (Exhibit H), per staff's memorandum.

Chair Abramoff asked that the petitioner provides post-installation RF and noise study demonstrating compliance.

John Nordquist, an abutter, was concerned with Radio Frequencies, as he felt it is a health concern. He stated that his property is 75-yards away, but at the similar height as 44 Byron Street roof height (due to topography gradient). Mr. Freilich stated that the Board has gone at great lengths in the past to explore these concerns with experts and petitioners. He stated that the Board cannot deny a permit because the evidence provided shows compliance with the RF exposure, per FCC regulations.

Mr. Freilich asked if the camouflage on the roof will be changed. Mr. Pare stated that no changes to the camouflage are proposed.

Chair Abramoff suggested that the petitioner submits post-installation noise study. Mr. Pare stated that there will be no noise generated by the newly proposed antennas. Mr. Fontane

stated that the site as whole, and not just the petitioner's installation, needs to comply with the noise ordinance.

Chair Abramoff suggested that as a condition of approval, signage is placed on site and the roof to warn of the danger of being too close to the antennas. Mr. Pare stated that FCC already requires such signage.

Ralph Perez, an abutter, had concern that he will not have the financial resources to upgrade to the new technology, thus leaving his with "less service". The Board stated that it is not within the Board's purview to consider these types of concerns.

Jo Hart stated that "the whole situation is getting out of hand" and that "a separate Board is needed to review these projects." Chair Abramoff stated that the Board has a power to hire an independent consultant to review a project if the Board feels like it needs access to independent technical expertise.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Michajlow, the Board voted 5-0 to approve the requested Amendment to a Special Permit for Extension, Alteration or Change of a Preexisting, Nonconforming Use (a Personal Wireless Services Facility) with the following conditions:

- That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.
- That post-installation measurements of the total noise and total Radio Frequency Radiation emitted by all PWSF on the building are taken by a certified noise and RF engineer; that results of these measurements demonstrate compliance with the Noise and Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy;
- That the structure is constructed in substantial accordance with the final approved site plan submitted and the photo simulation package on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- That six (6) copies of the following documentation is submitted to the Division of Planning & Regulatory Services including:
  - Clarification on whether any additional cable runs are proposed and where.
  - A color version of the PWSF location map so the legend can be interpreted.

Upon a motion by Mr. Freilich and seconded Mr. Michajlow, the Board voted 5-0 to approve the waiver from the following application requirements:

- Vicinity Plan: 1) Vegetative cover on the subject property and immediately abutting adjacent properties; 2) Security barrier, indicating type and extent as well as point of controlled entry (Article IV, Section 12 (D)(7)(d)(iii)(aa))
- City-wide map showing the other existing Personal Wireless Service Facilities in the City and outside the City within one mile of its corporate limits. (Article IV, Section 12 (D)(7)(d)(ii))
- Sight lines and photographs (Article IV, Section 12 (D)(7)(d)(iii)(bb))
- Design Filing Requirements: Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species. (Article IV, Section 12 (D)(7)(d)(iv)(ff))
- Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed Personal Wireless Service Facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. (Article IV, Section 12 (D)(7)(d)(iv)(gg)).

List of Exhibits:

- Exhibit A: Special Permit Application – 44 Byron St; received June 30, 2011; prepared by New Cingular Wireless PCS, LLC by its manager, AT&T Mobility Corporation, including:
- Exhibit 2 – Report of Radio Frequency Engineer
  - Exhibit 3 – Radio Frequency Coverage Plot Map
  - Exhibit 4 – Photo Simulations
  - Exhibit 10 – Equipment Specifications
  - Exhibit 11 – Noise Letter
  - Exhibit 14 – Waiver Requests
- Exhibit B: Special Permit Plan – 44 Byron St; dated 4/4/11; prepared by Vertical Resources GRP and SAI Communications, received June 30, 2011.
- Exhibit C: Letter from Noise Control Engineering, Inc. to Centerline Communications, LLC; re: AT&T Cell Tower Site Noise for Worcester, MA; June 23, 2011.
- Exhibit D: Equipment Specifications from Kathrein Scala Division; dated 2/22/11.
- Exhibit E: Maximum Permissible [RF] Exposure Study – 44 Byron St, Prepared by SAI Communications, dated June 27, 2011.
- Exhibit F: Radio Frequency Coverage Plot Maps.
- Exhibit G: Photo Simulations by SAI Communications.

Exhibit H: Revised Waiver Requests submitted by the petitioner at the ZBA 8-8-2011 meeting.

6. **114 Randolph Road (ZB-2011-030):** Attorney Edward Pare of Brown Rudnick LLP, representative for the petitioner, New Cingular Wireless PCS, LLC by its manager, AT&T Mobility, stated that the petitioner is seeking to add three panel antennas at a height of 150 ft on the 181 ft monopole. Mr. Pare felt that a post-installation noise and RF study is not necessary in this non-residential zone. Mr. Pare submitted revised Waiver Request (Exhibit H).

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve the requested Special Permit for Extension, Alteration or Change of a Preexisting, Nonconforming Use (a Personal Wireless Services Facility) with the following conditions:

- That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.
- That post-installation measurements of the total noise and total Radio Frequency Radiation emitted by all PWSF on the building are taken by a certified noise and RF engineer; that results of these measurements demonstrate compliance with the Noise and Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspection Services prior to the issuance of the Certificate of Use & Occupancy;
- That the structure is constructed in substantial accordance with the site plan and the photo simulation package submitted on June 30, 2011 submitted by Clear Wireless LLC on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to approve the waiver from the following application requirements:

- Vicinity Plan: Vegetative cover on the subject property and immediately abutting adjacent properties (Article IV, Section 12 (D)(7)(d)(iii)(aa))
- City-wide map showing the other existing Personal Wireless Service Facilities in the City and outside the City within one mile of its corporate limits. (Article IV, Section 12 (D)(7)(d)(ii))

- Design Filing Requirements: Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species. (Article IV, Section 12 (D)(7)(d)(iv)(ff))
- Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed Personal Wireless Service Facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. (Article IV, Section 12 (D)(7)(d)(iv)(gg)).

List of Exhibits.

Exhibit A: Special Permit Application; received June 30, 2011; prepared by New Cingular Wireless PCS, LLC by its manager, AT&T Mobility Corporation, including:

Exhibit 2 – Report of Radio Frequency Engineer

Exhibit 3 – Radio Frequency Coverage Plot Map

Exhibit 4 – Photo Simulations

Exhibit 10 – Equipment Specifications

Exhibit 11 – Noise Letter

Exhibit 14 – Waiver Requests

Exhibit B: Special Permit Plan; dated 4/4/11; prepared by Vertical Resources GRP.

Exhibit C: Letter from Noise Control Engineering, Inc. to Centerline Communications, LLC; re: AT&T Cell Tower Site Noise for Worcester, MA; June 23, 2011.

Exhibit D: Equipment Specifications from Kathrein Scala Division; dated 2/22/11.

Exhibit E: Report of Radio Frequency Engineer from Kevin Breauer, RF Engineer, AT&T; re: Radio Frequency of the proposed three panel antennas at 240 Barber Avenue.

Exhibit F: Radio Frequency Coverage Plot Maps.

Exhibit G: Photo Simulations by SAI Communications.

Exhibit H: Revised Waiver Requests submitted by the petitioner at the ZBA 8-8-2011 meeting.

7. **64-79 Beacon Street & 42 Jackson Street (ZB-2011-037):** Attorney Robert Longden of Bowditch & Dewey, representative for Legacy Parks Apartments, LLC, stated that the petitioner is seeking to develop three abutting parcels that contain former manufacturing buildings. The petitioner is seeking a 10% reduction in the required off-street parking spaces. Mr. Longden described the project in more details and stated that it will involve 2 vacant manufacturing buildings that were known as Junction Shop Mills, which have been vacant for many years. He stated that the structure formerly at 42 Jackson Street has been demolished. He stated that in 2003 the City Council has adopted an Adoptive Reuse Overlay District allowing these buildings for development of residential use. The project for a

development of 181 dwelling units approved in 2004 did not get off the ground. He stated that the applicant proposes to raze a portion of the manufacturing buildings on site; rehabilitate the remaining buildings for multi-family, low-rise use containing 133 loft style dwelling units. In addition, the applicant will construct a new multi-family low-rise structure containing 27 dwelling units and 31 single-family attached dwelling units (townhouses). The applicant proposes two hundred twenty-seven (227) off-street accessory parking spaces to be provided in parking lots adjacent to the units and at 42 Jackson St. He stated that Exhibit L demonstrates that there are 58 public parking spaces within a 1-min walk of the site.

Eric Noon, an abutter, stated that he invested a lot of money into his building and the community. He felt that the proposed use is incompatible with the abutting manufacturing uses and stated that vibrations produced by Killeen Machine business, which is a direct abutter to the proposed project, and a manufacturer of dye stamping, would negatively affect the residents. He was concerned with the parking and stated that the applicant should provide all the required off-street parking spaces on site. Mr. Noon had concerns with trucks accessing Beacon Street for his business. He stated that he has 15 employees and 40 off-street parking spaces for his business.

Jo Hart was in favor of the project because she wanted to see the manufacturing buildings preserved. She suggested that the residences have sound-proof windows. She suggested that the access to the site is not provided from Beacon Street, but from Herman Street or Jackson Street only.

Mr. Longden stated that the developer is aware of the constraints of the site and is prepared to go forward, and that the Planning Board has approved a Special Permit allowing this use last week. He stated that the developer is proposing to develop the site in phases – starting with new units, for cash flow purposes and to market it better. He estimated the first phase would take place 2011-2013. The second phase would include the mill buildings and depending on the speed of construction and absorption, would probably be completed by 2015. Mr. Longden stated that renovating the mill building would take more time and money because of customization of work and that might create the problem with the cash flow. Mr. Longden stated that the timeline he is providing has been given to him by the developers, and that while the site and the area are risky, the developers have experience doing similar urban residential projects in Lowell and Haverhill. He stated that the purchase of the property is hinged on the getting permits from all the necessary Boards.

Mr. Fontane stated that the Planning Board has already granted the maximum amount of relief allowed by the Zoning Ordinance, and that additional relief from parking requirement requested from the ZBA would allow for construction of 13 additional dwelling units.

Mr. Loew asked if, per Exhibit L, the on-street parking is reduced during the winter time. Mr. Longden was not sure but stated that as a condition of the Planning Board approval, the petitioner will provide a traffic study to the City.

Mr. Fontane stated that his Division has received a letter from the Chief Sullivan of the Fire Department stating that he is satisfied with the revised plans as pertaining to the Fire Safety issues (Exhibit M).

Upon a motion by Mr. Loew and seconded by Mr. Michajlow, the Board voted 5-0 to close the public hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve the Special Permit for Modification of Parking/Loading Requirements (Article IV, Section 7

(A) (2)) for relief of 25 off-street parking spaces (10% of the required off-street parking) with the following conditions of approval:

- 1) That the Special Permit is subject to the following conditions as agreed to by the developer:
  - a. That the proposed new townhouse units, new apartment units and their accessory parking, as shown on the Site Plan, will be built as part of Phase 1 of the project and the rehabilitation of the existing mill buildings will occur as a later phase of the project;
  - b. That the owner shall not demolish the existing mill buildings on site except for a) select demolition of a portion of the building depicted in the final revised approved special permit/site plan that occurs as part of the construction of the new apartment building at the corner of Beacon and Jackson Streets; and b) incidental demolition necessary to rehabilitate and convert the existing mill buildings into loft-style apartments;
  - c. That the owner shall, consistent with the City of Worcester adaptive reuse overlay district zoning, rehabilitate and convert the existing mill buildings into loft style apartments in accordance with the final revised special permit/site plan approved by the Planning Board;
- 2) That concurrent with Phase I of the development, the implementation of the following actions is completed with respect to fire prevention:
  - a. The sprinkler system shall be maintained and electronically supervised.
  - b. All unnecessary utilities to this building shall be shut off. This includes electricity, natural gas and water. Electrical power or heat shall only be provided to maintain a fire suppression system and if necessary a security alarm system.
  - c. A floor plan of the entire structure shall be provided to the Fire Department.
  - d. A daily inspection of the premises documented with a name, date and time of the inspection.
  - e. The entire complex shall be boarded up in accordance with the United States Fire Administration National Arson Initiative Board up Procedure.
  - f. Post “No Trespassing” signs on the property.
  - g. Provide the Fire Department with at least 3 names, addresses, and phone numbers of responsible people who may be contacted in case of emergency. Also, a contact number for all responsible persons shall be posted on the main entrance.
  - h. All hazardous or combustible materials as designated by a Fire Inspector are to be removed from the property.
  - i. Post “No Trespassing Signs” on the property.
  - j. Complete all requirements by the Director of Health and Housing Inspection.
  - k. Obtain a Certificate of Building Closure.



- 3) That three (3) copies of the final approved Amendment to Definitive Site Plan (PB-2011-024) be submitted to update the Zoning Board of Appeals Special Permit file, including all sheets as finally revised.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve findings of fact as presented by the petitioner and modified by staff.

#### List of Exhibits.

- Exhibit A: 64-79 Beacon St; 42 Jackson St –Special Permit Application; received July 18, 2011; prepared Atty. Robert Longden.
- Exhibit B: Letter from Building Commissioner John Kelly to Atty. Robert Longden, re: Permits in Effect; dated June 24, 2010.
- Exhibit C: 64-79 Beacon St; 42 Jackson St; Amendment to Definitive Site Plan, More than One Building on a Lot, Special Permit Plan Set; dated May 12, 2011; revised July 15, 2011 prepared by Meridian Associates.
- Exhibit D: Rendering / Floor Plan – 64-79 Beacon Street, prepared by Woodbrier Architects, received July 19, 2011.
- Exhibit E: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Worcester Zoning Board; re: 64-79 Beacon / 42 Jackson St. Special Permit, dated August 3, 2011.
- Exhibit F: Memorandum from the City of Worcester Department of Public Works & Parks to the Worcester Planning Board; re: 64-79 Beacon Street dated August 5, 2011.
- Exhibit G: Memorandum from the City of Worcester Fire Department to the Worcester Planning Board; re: 64-79 Beacon Street – Fire Prevention Recommendations; revised July 26, 2011.
- Exhibit H: Memorandum from the City of Worcester Fire Department to the Worcester Planning Board; re: 64-79 Beacon Street – Site Plan Review Comments; revised July 26, 2011
- Exhibit I: Letter from Legacy Park Apartments LLC to Worcester City Council, re: Federated Companies - Multi-family Dwelling Development Experience, dated July 15, 2011.
- Exhibit J: Massachusetts Historical Commission -Form A – MACRIS – Junction Shops / Beacon and Hermon St. Manufacturing Districts; prepared by Worcester Heritage Preservation Society; dated March 1979.
- Exhibit K: Letter from Meridian Associates to Lara Bold, Chief Planner, Division of Planning & Regulatory Services; re: Response to Worcester Fire Department Memorandum; dated July 27, 2011.
- Exhibit L: On-Street Parking Site Vicinity Plan – Prepared by MDM Transportation Consultants, Inc., dated 9/28/2004; submitted July 27, 2011.
- Exhibit M: Memorandum from the City of Worcester Fire Department; re: 64-79 Beacon Street – Site Plan Review Comments; revised August 8, 2011.

## **OTHER BUSINESS**

### **8. Approval of the Minutes:**

- o Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 4-0 (with Mr. Michajlow abstaining because he was not present at that meeting) to approve the minutes for the February 8, 2011 meeting.
- o Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve the minutes for the March 14, 2011 meeting.
- o Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve the minutes for the April 25, 2011 meeting.
- o Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 4-0 (with Mr. Akindele abstaining because he was not present at that meeting) to approve the minutes for the June 6, 2011 meeting.
- o Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to approve the minutes for the July 18, 2011 meeting.

### **9. Signing Decisions:**

- o The Board signed the decisions for the 3 Malden Street, 0 Malden Street, and 0 West Boylston Street (ZB-2011-026) and 108 June Street (ZB-2011-025).

**Adjournment:** Chair Abramoff adjourned the meeting at 9:00 pm.