

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

SEPTEMBER 10, 2007

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Morris Bergman, Vice-Chair
Matthew Armendo
David George
Lawrence Abramoff
Andrew Freilich

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Judith Stolberg, Division of Planning & Regulatory Services
John Kelley, Division of Code Enforcement

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

UNFINISHED BUSINESS

- 1. 15 Putnam Lane (Z-07-77) Extension of Time – Special Permit:** Robert Longden, representative for the petitioner, informed the Board that the petitioner is requesting an Extension of Time for a Special Permit previously approved on July 28, 2003 to allow multi-family dwellings in an RL-7 zone. He explained to the Board that the petitioner had encountered contamination on the site that required remediation and experienced delays in obtaining a construction agreement with CSX Transportation for the proposed stormwater pipeline. Chair Ciuffredo stated this is the fifth request for an extension and he was concerned that, although it is a good project, it is taking too long to commence. Mr. Longden assured the Board that the investment in the property is significant for purchase and site remediation. He went on to say that market conditions had changed quite significantly as well which further delayed the construction. Andrew Chaban, Chief Executive Officer, Princeton Worcester Four, LLC, said Plantation Ridge, a nearby project, targets the same market segment and has only just been fully absorbed by the growing market for these units and would no longer be competition for the same market. Mr. Chaban said the significant contamination took years to clean up and resolution of the issue with CSX Transportation took a great deal of time as well. Mr. Fontane recommended approval of the extension. Mr. George expressed his frustration that work has not begun and asked if phasing had been considered. Mr. Longden responded that it would not be financially feasible. Chair Ciuffredo asked if Mr. Chaban would be willing to cut overgrowth and remove trash from the site to improve the appearance in the interim. Mr. Chaban expressed a willingness to do that. Mr. Armendo said he opposed another extension but, after listening to Mr. Longden and Mr.

Chaban, realized there was significant money invested and was willing to vote to approve the extension of time. Chair Ciuffredo said that he, too, was willing to vote to approve the extension of time but this would be the last time he would do so. Upon a motion by Matthew Armendo and seconded by Andrew Freilich, it was voted 4-1 by Leonard Ciuffredo, Matthew Armendo, Andrew Freilich and Lawrence Abramoff (David George voted no) to approve the following:

- **Extension of Time for a previously approved Special Permit for a period of twelve (12) months.**

The extension of time was approved with the following conditions:

- **Site is to be fully maintained (e.g. trash removed, overgrowth removed, etc.) to make the entrance more visually appealing.**

2. **76, 78, 82 May Street, Lot 38B, 394, 402, 404 Park Avenue and 123 Winfield Street (Z-07-71A) – Special Permit:** Todd Brodeur, representative for the petitioner, said the petitioner requested a Special Permit to modify parking layout requirement by allowing a drive-through lane length of 111 feet (120 feet required) for construction of a CVS Retail Pharmacy. He said the plan had been revised at the request of DPRS staff to make it more pedestrian friendly and had also included bike racks. Mr. Brodeur also said there would be screening for residential properties in back of the site. Chair Ciuffredo asked if a traffic study had been done and Mr. Brodeur responded a traffic study would be included in the filing for site plan approval with the Planning Board. Mr. Armendo inquired how long a person would be at the drive-through window awaiting a prescription. Gershman Brown, representative from CVS, said, since it just for picking up prescriptions, the time spent at the window is minimal. Mr. Armendo and Mr. George were concerned about the difficulty encountered when trying to make a left turn onto Park Avenue. Mr. Brodeur felt that should be addressed at site plan review. Mr. Freilich asked if DPW could make a recommendation relative to the right turn issue at the site plan review. Mr. Fontane said approval could include a condition disallowing left turns onto Park Avenue. Mr. Kelly said the signage prohibiting left turns could be time specific if the Board wished. The applicant stated that landscaping along the rear of the parcel would need to be changed due to grading. Mr. Fontane said that, where possible, staff would prefer that this mature landscaping remain, however, if the applicant meets the requirements of the Zoning Ordinance, they could replace the landscaping. Upon a motion by Matthew Armendo and seconded by Andrew Freilich, the Board voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, Matthew Armendo, David George, Andrew Freilich and Lawrence Abramoff to approve the following:

- **Special Permit – To allow a drive-through with lane length of 111 feet (120 feet required)**

The Special Permit was approved with the following conditions:

- **Left turns onto Park Avenue be prohibited with signage stating same.**

- **Screening, as it presently exists, be maintained by meeting the requirements of the Zoning Ordinance.**

3. 500 Salisbury Street (Z-07-65) – Special Permit: Daniel Klasnick, representative for the petitioner, stated the petitioner requested a Special Permit to install and operate a roof-mounted personal wireless facility on the rooftop of the Living Learning Center Residence Hall at Assumption College. Once again, the issue of taxes arose. Mr. Fontane said Robert Allard, City Assessor and Acting Chief Financial Officer, informed him that an income approach was used to assess the facilities with the service provider paying the taxes. Industry standards are used to assess such facilities. Mr. Freilich was troubled that a non-profit site was chosen and that the lease information is proprietary. Mr. Klasnick assured the Board that the fact the site was owned by a non-profit had no bearing on why the site was chosen. Mr. Fontane said that the Assessor’s Office receives notification of all building permits when issued and that is how they know when a new personal wireless facility is installed. He informed the Board that there is an outstanding tax bill issued to Verizon Wireless Messaging. Mr. Klasnick said that was a different entity from the petitioner but he was still investigating with the Verizon Tax Division to determine if they are liable for the taxes owed. Mr. Fontane said it is incumbent upon the petitioner to provide proof to the Board. When asked if any more personal wireless facilities could be located on the building, John Barila, representative from Assumption College, said there was one more corner on the roof, so, theoretically, one more facility could be located there. Mr. Freilich asked what other sites in the area were looked at during the siting process and Michael Creamer, representative from Verizon, said the water tower on Chester Street had been viewed. Mr. Freilich asked if the college needed the lease income from the towers for their operational budget. Mr. Barila responded that the leases do provide revenue for the college. Mr. Longden said that the main reason for locating the facility at Assumption College was to provide better service and security (such as text messaging during an emergency on campus). He said presently students oftentimes have to go outside to use their cell phones because of poor reception. Stephen Quist, a resident of Worcester, expressed his concerns about non-profits collecting revenues from these facilities while paying no taxes to the City. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 to close the hearing. Mr. Armendo stated he was going to make a motion, however, it would be with the caveat that Assumption College keep in mind visual pollution that can occur by the proliferation of these towers. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to approve the following:

- **Special Permit: To install and operate a roof-mounted personal wireless facility.**

The Special Permit was approved with the following condition:

- **Petitioner must provide proof that delinquent taxes are owed by a different entity or have been paid in full.**

4. 256 Massasoit Road (Z-07-78) – Variance: Richard Fields, petitioner, requested a Variance for 25’ of relief from the frontage requirement to divide the lot and create a second

buildable lot. Chair Ciuffredo stated that the petitioner was creating his own hardship. Mr. Fontane said that the lot could be divided in a manner that may meet the zoning requirements. Mr. Fields requested Leave to Withdraw without Prejudice. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to grant the petitioner's request for Leave to Withdraw without Prejudice.

NEW BUSINESS

- 5. 482 Park Avenue (Z-07-83) – Special Permit and Variance:** Victoria Mariano, petitioner, presented the plan. The petitioner is seeking a Special Permit for expansion or change of a pre-existing nonconforming use/structure and a Variance for relief of 18 parking spaces from the parking requirement in order to create a lounge, café and art gallery within the two-family detached dwelling. She further explained that the lounge would be what is known as a hookah lounge, an establishment where patrons share flavored tobacco from a communal hookah placed at each table. She said disposable mouthpieces are provided to each patron. The purpose of establishing the business was to provide young adults (18+) a place to go that would have an atmosphere for social interaction without the undesirable influences of drugs and alcohol. Mr. Freilich asked the difference between this type of lounge and a cigar bar. Mr. Kelly said the smoke is not as intense but still requires installation of air filters. Mr. Abramoff applauded Ms. Mariano's ingenuity and initiative and said she was breaking new ground in the City with her entrepreneurship. When asked if there would be security on the premises, Ms. Mariano said yes. Mr. Bergman asked if she had a lease for the space and Ms. Mariano responded that the lease would not be signed until the Special Permit and Variance are approved. Mr. Bergman also asked what the hours of operation would be and the number of employees. She said the hours of operation would be 3:00 P.M. to 3:00 A.M. and there would be ten employees. The Board wanted some further information relative to operating a hookah lounge from the Health Department, Police Department and Fire Department. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to continue the hearing to September 24, 2007 in order to obtain additional information from the Health Department, Fire Department and Police Department relative to any concerns they may have regarding the operation of this type of facility.
- 6. 9-11 Redding Court (Z-07-84) – Special Permit and Variance:** Donald Bray, representative for the petitioner, presented the plan. The petitioner is seeking a Special Permit for expansion or change of a pre-existing nonconforming use/structure, Special Permit to modify parking layout relative to landscape buffers and a Variance for 8 feet of relief from the front yard setback requirement to construct an addition on the front of the building. Mr. Armendo asked how long the petitioner had owned the premises. Roland Barrows said he purchased the property in 1996. Mr. George was concerned that a structure had been built on the site without a building permit. Mr. Barrows said that was prior to his ownership. Mr. Armendo wanted the dumpster moved onto the property. Staff informed the Board that the Special Permit to modify parking layout relative to landscape buffers was not necessary.

Upon a motion by Morris Bergman and seconded by Lawrence Abramoff, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to grant the petitioner's request for Leave to Withdraw without Prejudice the Special Permit to modify parking layout relative to landscape buffers. Upon a motion by Lawrence Abramoff and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to approve the following:

- **Special Permit: Expansion or change of a pre-existing nonconforming use/structure**
- **Variance for 8 feet of relief from the front yard setback requirement**

7. **5 Orrison Street – Amendment to Variance:** Donald O'Neil, representative for the petitioner, and Michael Hannon, petitioner, presented the plan. The petitioner is seeking to amend a previously approved Variance for 40 feet of relief from the frontage requirement by changing the lot lines for two proposed lots. Mr. O'Neil explained to the Board that there are two existing homes and when the lots are re-configured one dwelling would be situated on 9 acres of land and one dwelling would be situated on 1.75 acres of land. It was brought to the Board's attention by Mr. Hannon that there is a deed restriction on the larger lot that precludes more than one house being built on the lot. Mr. Abramoff asked if the deed restriction was permanent and Mr. O'Neil responded that it runs with the abutting land owned by Burton Chandler. Mr. Chandler stated his opposition to the amendment to the Variance and said the only criteria for lawfully granting a Variance are hardship related to soil conditions, shape or topography of the land. He went on to say that, since none of the above hardships are applicable, the petitioner is not entitled to a Variance. Steven Rottman said he believed that Mr. Hannon is buying more parcels in the area for the future development of a subdivision and that, until his true intentions are known, things should remain as they are. Mr. Bergman asked, if the Board is to assume financial hardship is the reason for the petition, what is the financial hardship that necessitates the request at this particular time. Mr. Hannon responded that he was not before the Board because of financial hardship. He said he just wants to reconfigure the lots to construct a home on the larger lot in the future. Upon a motion by Morris Bergman and seconded by Matthew Armendo, the Board voted 5-0 to close the hearing. Upon a motion by Morris Bergman and seconded by David George, it was voted 0-5 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to approve the Amendment to Variance for 40 feet of relief from the frontage requirement because the petitioner failed to demonstrate hardship related to soil conditions, shape or topography of the land and admitted there was no financial hardship to him as a result. Therefore, the Amendment to Variance was denied.

8. **33 Whipple Street (Z-07-86) – Variances:** Donald O'Neil, representative for the petitioner, stated the petitioner requested a Variance for 5 feet of relief from the frontage requirement (Lot 1) and a Variance for 5 feet of relief from the frontage requirement (Lot 2) to construct a single-family semi-detached dwelling. Mr. Bergman asked how the proposed structure would fit into the neighborhood. Mr. O'Neil responded that the petitioner had incorporated some architectural details to make the structure complement the neighborhood. He added that because of the parking requirement, a garage was necessary which affects the appearance

of the structure. He also said architectural styles change so a neighborhood is often comprised of architecturally different structures built over many years. Mr. Armendo asked if the structure would be owner-occupied and Amilcar Carneiro, petitioner, responded that the structure would be built for sale. Mr. George asked why something that required less relief wasn't considered. Mr. O'Neil said it would not be economically feasible. Margaritta Figueroa, an abutter, was concerned about how the structure would fit on the lot but was satisfied after viewing the plan. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to approve the following:

- **Variance: 5 feet of relief from frontage requirement (Lot 1)**
- **Variance: 5 feet of relief from frontage requirement (Lots 2)**

The Variances were approved with the following condition:

- **Large mature tree on the western property line of Lot 2 be retained.**

Mr. Bergman left the meeting.

9. 112 Stanton Street (Z-07-87) – Special Permit and Variance: Brian MacEwen, representative for the petitioner, stated the petitioner requested a Special Permit for expansion or change of a pre-existing nonconforming use/structure and a Variance for 8.2 feet of relief from the rear yard setback requirement to construct a deck onto the rear of the existing single-family detached dwelling. Mr. Kelly informed the Board that the deck had been constructed without a building permit and the purpose of the petition was to bring the deck into compliance. Joan Delaney asked if she could build a deck and then apply for a permit. Chair Ciuffredo replied that a building permit is required prior to construction and the petitioner was trying to correct his mistake and bring the property into compliance with the Zoning Ordinance. Upon a motion by Matthew Armendo and seconded by Lawrence Abramoff, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, Matthew Armendo, David George, Andrew Freilich and Lawrence Abramoff to approve the following:

- **Special Permit: Expansion or change of a pre-existing nonconforming use/structure**
- **Variance: 8.2 feet of relief from rear yard requirement**

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 9:15 PM.