

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

November 21, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present: Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Kola A. Akindele, Associate Member
Timothy Loew, Associate Member

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.

UNFINISHED BUSINESS

1. **342 Greenwood Street (ZB-2011-049):** Ibrahim Abdulmassih, the petitioner, was present. Mr. Fontane stated that on October 17, 2011, the Board continued the item in order to allow the petitioner time to consider the possibility of applying for a freestanding monument sign, instead of the originally petitioned freestanding pole sign. He stated that the petitioner informed staff that he wants to proceed with a petition for a freestanding pole sign. Mr. Fontane stated that on October 17, 2011, the petitioner submitted a rendering of the proposed sign showing that a 32 SF freestanding sign would be visible from a distance of 275-ft (7" letter height), and a 25 SF sign would be visible from a distance of 150-ft (5.5" letter height) (Exhibit D). Based on Exhibit E ("Methodology for Estimating the Appropriate Area of Freestanding Signs (Three Options Based on Highway Speeds)") proposed by staff, Mr. Fontane stated that the applicant's estimate appears to be overstated for the 32 SF sign, as according to this source, such a sign should be visible from a distance of ~200-ft.

Mr. Freilich stated that the area is predominately commercial in nature. Mr. Fontane stated that the parcel is located in a residential zoning district, with a Business, Limited zoning district across the street. He stated that as an alternative to the current petition, the petitioner could petition City Council to rezone his parcel to a business zone. He stated that staff recommends the requested Special Permits for sign relief, but not the Variances for additional relief.

Chair Abramoff and Mr. Bilotta stated they were in favor of the Special Permits only as well.

Mr. Abdulmassih stated that there is a slight bend in the road before his property thus impacting visibility of the sign and that people drive at a speed of 30-35 miles per hour. He stated that he was concerned with snow banks blocking a monument sign. Mr. Fontane stated that the maximum height of a monument sign cannot exceed 10 feet.

Mr. Abdulmassih stated that he was amenable to apply for a monument sign as an alternative to a freestanding pole sign. Mr. Freilich asked that the petitioner provide conceptual drawings of the sign.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to continue the hearing to December 12, 2011 to allow the petitioner time to apply for a monument sign consideration and to extend the Constructive Grant deadline to January 10, 2012.

List of Exhibits:

- Exhibit A: 342 Greenwood Street - Special Permit and Variance Application; received August 22, 2011, revised (with Variance information) September 6, 2011 prepared by Ibrahim Abdulmassih.
- Exhibit B: Plot Plan 342 Greenwood Street – original plan prepared by Builders Realty Network Inc. Applicant marked up plan; undated, unsigned.
- Exhibit C: Sign Elevation Package – 342 Greenwood Street, dated February 15, 2011; prepared by Sign Techniques, Inc.
- Exhibit D: A rendering of proposed 32SF and 25SF signage submitted by the petition at the October 17, 2011 meeting.
- Exhibit E: Page from *A Framework for On-Premise Sign Regulation - Model Regulatory Guidelines*. Alan Weinstein. Street Graphics and the Law. March 2009.

NEW BUSINESS

2. **11 Lake Avenue (MBL 17-017-00002) (ZB-2011-053):** Attorney Michal Dolan, of Brown Rudnick LLP, representative for New Cingular Wireless, PCS, LLC by AT&T Mobility Corporation, stated that the petitioner is seeking to add 3 panel antennas with 6 radio heads and 1 surge arrestor, with antennas connected to an equipment cabinet located inside the existing shelter on the rooftop. He stated that he believed the proposal would have minimal visual impact on this 14-story building. Mr. Bilotta asked that the proposed antennas are color-coordinated with the building.

Chair Abramoff referred to the Maximum Permissible Exposure Study submitted with the application and its reference to the maximum site measurement taken on the rooftop which was 441.25% of FCC Standard for Uncontrolled/General Public Maximum, Permissible Exposure. He asked what the impact of the radiation could be on the employees and residents. Mr. Dolan stated that the measurements were taken in front of the antennas and that the building has a protocol of restricted roof access, that all doors leading to the roof have warning signage, and that there is no danger to the residents at the ground level. Mr. Dolan stated that he is amenable to a condition that radio-frequency levels are tested at the top level of the building. He stated that the petitioner is obligated by the FCC to maintain the exposure at levels below the guidelines.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, 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 a Personal Wireless Services Facility with the following conditions:

- That only authorized personnel are allowed onto the roof and public access to the roof is forbidden.
- That notice/warning signs are posted at the roof access and at the installation point of all existing and proposed PWSF installations.
- That six (6) copies of final revised plans to-scale clarifying the height of the existing and proposed PWSFs above the roofline are to be submitted to the Division of Planning & Regulatory Services.
- That the structure is constructed in substantial accordance with the final approved plans submitted and the photo simulation package on file with the City of Worcester.
- **Cost of decommissioning:** 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 Department of Inspectional Services and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Paint color matching:** That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Department of Inspectional Services and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** 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 term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;
- **Post-installation measurement of sound:** That post-installation measurements of the total noise emitted by all PWSF on the building are taken by a certified noise engineer; that results of these measurements demonstrate compliance with the noise 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;
- **Post-installation measurement of RFR:** That post-installation measurements of total Radio Frequency Radiation emitted by all PWSFs on the building are taken by a certified RF engineer on the top habitable floor of the building at points directly below the antennas and at public access points; the roof, and the ground floor. That results of these measurements demonstrate compliance with the 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.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, 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 October 13, 2011; prepared by AT&T Mobility Corporation.
- Exhibit B: Special Permit Plan; dated March 4, 2011; prepared by Vertical Resources Group & SAI Communications.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board; re: 11 Lake Avenue; dated November 16, 2011.

3. **904 Main Street (ZB-2011-054):** Chung Tong, petitioner, stated that she is seeking to convert the existing 3,397 SF single-family to a two-family residential dwelling. She stated that she has owned the building for 2 years. Mr. Kelly recommended that the petitioner applies for a building permit for a change of use if granted a Special Permit by the Board.

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

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to approve the requested Special Permit for residential conversion with the following condition of approval: That each side of the driveway remain as green space and not be paved.

The Board also voted to approve the requested application requirement waiver for a certified plot plan of land.

List of Exhibits.

- Exhibit A: Special Permit Application; received October 12, 2011; prepared by Chung Tong. Revised November 15, 2011.
- Exhibit B: Waiver Request to the Zoning Board of Appeals from Chung Tong, owner, requesting relief of provision of a plot plan, dated November 15, 2011.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board re: 904 Main Street; dated November 18, 2011.

4. **1050 Main Street (ZB-2011-055):** Attorney Michal Dolan, of Brown Rudnick LLP, representative for New Cingular Wireless, PCS, LLC by AT&T Mobility Corporation, stated that the petitioner is seeking to add 3 panel antennas with 6 radio heads and 1 surge arrestor, with antennas connected to equipment cabinet located inside the existing shelter on the rooftop. The Board decided to impose the same conditions of approval as the ones for 11 Lake Avenue petition (ZB-2011-053).

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, 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 Amendment to Special Permit to allow a Personal Wireless Service Facility (PWSF) in a BG-2.0 zoning district and a Special Permit for expansion or change of pre-existing non-conforming structure with the following conditions:

- That only authorized personnel are allowed onto the roof and public access to the roof is forbidden.
- That notice/warning signs are posted at the roof access and at the installation point of all existing and proposed PWSF installations.
- That six (6) copies of final revised plans to-scale clarifying the height of the existing and proposed PWSFs above the roofline are to be submitted to the Division of Planning & Regulatory Services.
- That the structure is constructed in substantial accordance with the final approved plans submitted and the photo simulation package on file with the City of Worcester.
- **Cost of decommissioning:** 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 Department of Inspectional Services and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Paint color matching:** That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Department of Inspectional Services and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** 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 term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;

- ***Post-installation measurement of sound:*** That post-installation measurements of the total noise emitted by all PWSF on the building are taken by a certified noise engineer; that results of these measurements demonstrate compliance with the noise 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;
- ***Post-installation measurement of RFR:*** That post-installation measurements of total Radio Frequency Radiation emitted by all PWSFs on the building are taken by a certified RF engineer on the top habitable floor of the building at points directly below the antennas and at public access points; the roof, and the ground floor. That results of these measurements demonstrate compliance with the 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.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, 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 October 13, 2011; prepared by AT&T.
- Exhibit B: Special Permit Plan; dated March 14, 2011; prepared by Vertical Resources & SAI Communications
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; 1050 Main Street; dated November 16, 2011.

5. **712 Pleasant Street (ZB-2011-057):** Attorney Todd Rodman, representative for 712 Pleasant LLC, petitioner, stated that the petitioner is seeking to convert the vacant commercial space to a 20-seat restaurant serving pizza and provide dine-in seating, take-out, and delivery services. He stated that the existing 500 SF nail salon, three family dwelling and the existing off-street parking spaces will remain. He stated that he believed there was sufficient on-street parking on Pleasant Street and June Street and that he anticipated that a large portion of the clients will not arrive by car, but will mostly be high school students on foot. He stated that the dumpster will be screened, that there will be 1 truck delivery a week to the site, and 1 restaurant perishable food delivery a day. Attorney Rodman stated that snow will be trucked off-site. He distributed Exhibit D demonstrating that exhaust vents will be directed in such a way as to minimize impact on abutting residential developments.

Mr. Fontane recommended that the Variance relief for the off-street parking be reduced to 10 off street parking spaces (not 11) in addition to the one space by Special Permit for a total of 11 spaces (not 12).

Chair Abramoff asked how many seats the previous restaurants have had. Attorney Rodman stated that he couldn't find records of that, but that previously on site there was a Gary Rosenhal's hot dog restaurant, followed by Moonstruck Pizza, and then Tatnuck Pizza.

Mr. Freilich asked how many walk-ins the owner expected. Patrick Logan stated that at his current location he gets about 60 orders a day which translates to about 30 people a day.

Mr. Freilich had concerns regarding the location and stated that the "area is treacherous at times". He asked if the City can increase on-street parking. Mr. Fontane stated that the Board can request that the owner petitions the City to do so.

Mr. Abramoff stated that the nearby elementary school has crossing guards.

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 5-0 to approve the requested Special Permit for Extension, Alteration or Change of a Privileged, Pre-Existing Nonconforming Use & Structure; Special Permit to Change to a use of a similar nature; Special Permit to modify parking requirements to waive the requirement to provide one off-street parking space (for the existing commercial use); and a Variance for relief of 10 off-street parking spaces from the 18 off-street parking spaces requirement for the proposed use with the following conditions of approval:

- That the petitioner provides screening for the existing dumpster prior to issuance of the Occupancy Permit;
- That the location of the dumpster and direction of the exhaust vents are installed and operated in accordance with Exhibit D (712 Pleasant St Site Plan; prepared by Benoit, Reardon Architects; dated 11/21/2011) on file with the City of Worcester Division of Planning & Regulatory Services;
- That snow is removed off-site as needed;
- That if the Department of Inspectional Services deems parking and traffic situation connected with the uses on site unsafe, the owner would need to remedy the situation up to and including filing a petition with the City Council with respect to altering on-street regulation such as timing restriction, as applicable.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to grant the following requested application waivers of plan requirements: 1) Displaying of the names of owners of properties up to abutters of abutters of the subject property; and 2) Displaying distance from adjacent buildings and property lines.

List of Exhibits:

Exhibit A: Special Permit Application; received October 18, 2011; prepared by 712 Pleasant LLC.

Exhibit B: Special Permit Plan; dated October 17, 2011; prepared by Benoit & Reardon Architects.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals re: 712 Pleasant Street; dated November 18, 2011.

Exhibit D: 712 Pleasant St Site Plan; prepared by Benoit, Reardon Architects; dated 11/21/2011.

6. **10 Claremont Street (ZB-2011-058):** Mr. Fontane stated that a substantive issue prevents the Board from approving this item and stated that staff is recommending a continuance in order to allow the petitioner time to address issues related to completeness of the application and compliance with the Zoning Ordinance. Mr. Fontane stated that per Zoning Ordinance requirements, the configuration of off-street parking spaces for a Lodging House use does not allow for backing out of vehicles onto a City street as a means of egress for required off street parking. The proposed plan does not conform to that Zoning Ordinance standard and the Board cannot approve it as presented. Mr. Fontane stated that the petitioner can either withdraw the petition or amend its proposed parking configuration with no backing out. One alternative would involve demolishing the garage structure in the rear of the building to allow the cars entering the site from Silver Street to exit onto Claremont Street.

Son Van Nguyen, petitioner, requested continuance of the hearing to January 9, 2012 in order to address the issues raised by staff and to revise the plans.

Mr. Kelly requested that the petitioner also submits to-scale architectural floor plans of the proposed bedrooms.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to continue the hearing to January 9, 2012.

7. **805 (fka 801) West Boylston Street (ZB-2011-059):** Attorney Robert Hannigan, representative for Worcester Police Department Credit Union, petitioner, stated that petitioner is seeking to convert the existing building to a bank/credit union with a drive-through facility with 1 drive-through lane and 1 escape lane and with 58 off-street parking spaces. No physical changes to the site with respect to building footprint, drive-through lane or parking, are proposed. He stated that the existing landscaping is in good shape.

Jo Hart stated that she believes there are too many drive-throughs in the City and recommended that the petitioner reduces number of parking spaces on the parking lot.

Mr. Fontane suggested that if Board thinks there are too many off-street parking spaces, it could request that 4 parking spaces along the drive-through lane are eliminated.

Mr. Freilich asked about Worcester Police Department Credit Union membership. Mr. Hannigan stated that members of the Union have to be members of a Police Department, but not necessarily members of the Worcester Police Department.

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 to allow a bank with a drive-through in a ML-0.5 zoning district with the following conditions:

- The petitioner provides 3 copies of to-scale plans prior to the release of the Occupancy Permit to the Division of Planning & Regulatory Services with the following changes:
 - Provide the relief requested;
 - Provide the petitioner's name;
 - Provide the proposed use;
- The structure be operated in substantial accordance with the final approved Special Permit plan.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to accept the petitioner's findings of fact as amended by staff.

UNFINISHED BUSINESS

8. **342 Greenwood Street (ZB-2011-049):** Mr. Fontane stated that per Zoning Ordinance, the maximum height of a freestanding monument sign can be 10-ft and that the vertical dimension cannot exceed the horizontal one, thus the sign itself cannot be taller than 5.5 ft.

APPROVAL OF MINUTES

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted to accept the following minutes: August 8, 2011, August 29, 2011, September 19, 2011, & October 17, 2011.

OTHER BUSINESS

9. Elections of Officers:

Chair Abramoff nominated Mr. Freilich as a chair. The Board voted 5-0 to elect Mr. Freilich as a chair.

Mr. Freilich nominated Mr. Abramoff as a Vice-Chair. The Board voted 5-0 to elect Mr. Abramoff as a Vice-Chair.

Adjournment: Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board adjourned the meeting at 7:25 pm.