

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

April 23, 2012

WORCESTER CITY HALL, 455 MAIN STREET, ESTHER HOWLAND CHAMBERS

Zoning Board Members Present:

Andrew Freilich, Chair
William Bilotta
Vadim Michajlow
Kola A. Akindele
Timothy Loew

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory
Services
Deborah Steele, Division of Planning & Regulatory
Services
John Kelly, Department of Inspectional Services

BOARD SITE VIEWS

CALL TO ORDER

Chair Freilich called the meeting to order at 5:33 PM.

APPROVAL OF THE MINUTES – Approval of the minutes was held.

OTHER BUSINESS

1. **Economic Development Overview Presentation by Timothy McGourthy, Chief Development Officer:** Joel Fontane informed Board that Mr. McGourthy requested a postponement of this item to a future Zoning Board of Appeals meeting.

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

2. **67 Millbrook Street (ZB-2012-009):** Amendment to a Special Permit: To allow a Personal Wireless Service Facility in the MG-2.0 Zoning District.

Amendment to a Special Permit: Expansion of a dimensional non-conformity with respect to height (more than 10-ft above the roofline)

Ms. Zhaurova informed the Board that applicant had requested a continuance until the next ZBA meeting to allow more time to submit requested documents.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 5-0 to continue the hearing to the May 14, 2012 Zoning Board of Appeals meeting.

List of Exhibits.

- Exhibit A: Special Permit Application – 67 Millbrook Street; received January 31, 2012; prepared by Bell Atlantic Mobile of Massachusetts Corporation, Ltd. d/b/a Verizon Wireless.
- Exhibit B: Special Permit Plan; dated January 27, 2012; prepared by Chappell Engineering Associates, LLC.
- Exhibit C: Photo Simulation; dated February 10, 2012; prepared by Chappell Engineering Associates, LLC.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 67 Millbrook Street; dated March 2, 2012, revised March 23, 2012, April 20, 2012.
- Exhibit E: Request for Extension; dated April 20, 2012; prepared by Daniel D. Klasnick of Duval, Klasnick and Pastel, LLC.

3. 49 (aka 51) Union Street (ZB-2012-013): Amendment to a Special Permit.

Ms. Zhaurova informed the Board that applicant had requested a continuance to the next ZBA meeting to allow more time to submit requested documents.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 5-0 to continue the hearing to the May 14, 2012 Zoning Board of Appeals meeting.

List of Exhibits.

- Exhibit A: Special Permit Application; received 2/17/2012; prepared by Sprint Nextel Corp., including:
 - a) An application waiver request
 - b) PWSF equipment brochures/information
 - c) RF Engineering Affidavit
 - d) Radio Frequency – Electromagnetic Energy Compliance Report
 - e) Report re: Structural Analysis
- Exhibit B: Special Permit Plan; dated 2/16/2012; prepared by Alcatel Lucent and Salient Architects, LLC.
- Exhibit C: Supplemental to the Application received 2/17/2012 including:
 - a) Existing and Proposed Indoor Reliable Coverage for BS73XC044
 - b) Photo Simulations
- Exhibit D: Letter from Mark Cook for Sprint Nextel Corp to the Zoning Board of Appeals; re: Application for Special Permit for Modification to Personal Wireless Service Facility; dated March 23, 2012. Subject Property: 49 Union Street (MBL 02-001-00020)
- Exhibit E: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 49 (aka 51) Union Street (ZB-2012-013); dated 3/26/2012, updated April 20, 2012

UNFINISHED BUSINESS

- 4. 1098 West Boylston Street (ZB-2012-011):** Attorney Donald O'Neil & Robert O'Neil appeared on behalf of the petitioner, Ricky L & Kelly A Sampson on request for a special permit to allow a multi family low rise dwelling (Residential Use #11, Table 4.1) in an RL-7 zoning district and request for a variance for relief of 59.3 feet from the 90-foot frontage dimensional requirement. Mr. Sampson was also present.

Attorney O'Neil stated that the petitioner has amended the petition to construct a 3-family dwelling unit, instead of the originally proposed 6-family unit. The revised plans show a smaller footprint building (~1,400 SF) and 8 off-street parking spaces which allows the building to be pulled closer to West Boylston Street increasing the rear yard set back to almost 100 feet. In addition there is a vacant lot behind the parcel that varies between 130 and 170 feet and the rear yard of the other properties. On the next street there is +/- 270 feet between the rear of their building and rear of the other houses.

Attorney O'Neil stated that proposed modification reduces the parking area. He stated that the parking area will accommodate eight required off-street parking spaces, and two additional ones. Attorney O'Neil stated that his client had indicated to the abutter at 1098 West Boylston Street that he would be willing to provide her with an easement for one of the additional parking spaces, but that the abutter did not indicate her agreement as of the time of the meeting.

Attorney O'Neil stated that the common entrance is not necessary due to reduction of dwelling units. He stated that the building will look like a three-decker in design and will look similar to other homes in the the neighborhood.

Attorney O'Neil stated his client owns one of the two units at 1098 West Boylston Street property (MBL 32-020-00001). He stated that he believed Susan Healer, the owner of the other unit at that dwelling, is confused about the property line location and does not have interest in his client's property.

Mr. Billota stated his concern with respect to proximity of the project for the wetlands in the rear and stated that he has seen similar projects having flooding issued after being constructed close to the wetlands.

Attorney O'Neil stated that there is a problem with water infiltration in the area but that this new project would not add to the problem due to the fact that there is a large natural berm between 1098 West Boylston Street parcel and the properties in the rear and because the proposed parking area will have catch basins which will capture water that is currently not being captured and will funnel in into the drainage system on West Boylston Street. He stated that there will also be roof interceptors that will capture rain from the roof which will go into the gutter system and then into the infiltration system.

Mr. Bilotta asked whether the grade of the property would change in any way. Robert O'Neil stated that the slope naturally grades from West Boylston Street to the rear of the

property and that the proposed project would decrease the grade thus decreasing the amount of water flow to the rear of the property by one third by capturing all the runoff from West Boylston Street all the way to the front of the building and putting it in the proposed drainage system.

Robert O'Neil stated that under the Stormwater Management Standards, the applicant will be required to recharge the groundwater which he will do by infiltrating roof runoff. He stated that the applicant proposes to put in a water quality tank which would clean the water that is captured in the paved parking area before it enters into the City of Worcester's drainage system. The snow storage area to the southerly side has been relocated so that snow melt would go into the catch basin.

Mr. Bilotta questioned the amount of free flow coming from West Boylston now and going into the wetland and whether the quantity of it will match the runoff from the roof so not to dry up the wetland. Robert O'Neil stated that the project will meet the Stormwater Management Standards with respect to water recharge for this type of project.

Joel Fontane stated that proposal has changed by reducing the number of proposed dwelling units, and if approved, staff recommends:

- 1.) That the Special Permit be granted for a three-family (requires a Special Permit in RL-7) and not a multi-family dwelling to reflect the proposed change.
- 2.) That 44.3' of relief be granted; not the initially requested 59.3' ft. (Three family requires 75'; 30.7' is provided)
- 3.) That 6 copies of a revised plan be submitted to the Division of Planning & Regulatory Services with the following modifications:
 - a. Update the zoning table to reflect the proposed 3 units and associated required/proposed dimensions.
 - b. The dumpster be removed from the proposed site since a three family dwelling is eligible for city trash service.
 - c. That the proposed off-street parking areas be reduced from 8 to 6 spaces and that spaces #7 and #8 be open space and not paved.

Mr. Fontane requested that the Board review Exhibit I for the areas that Department of Planning & Regulatory Services was recommending to be open green space instead of paved.

John Kelly from Inspectional Services stated he had no comments.

Mr. Loew stated that if the applicant removed the dumpster, there could be space provided to accommodate a parking space for the abutter (Susan Healey) if applicant wanted to work with neighbor on that issue. Attorney O'Neil stated that it is a possibility and that the applicant would be amenable to the Board's condition to reduce the paved area.

Mr. Fontane stated that Department of Planning & Regulatory Services is recommending that dumpster not be placed in the proposed location (per Exhibit I) in order to accommodate a parking space. He stated that the handicapped accessible space is not a

requirement so the width of that parking space can be reduced as well. Attorney O'Neil was amenable to these proposed changes.

Mr. Bilotta asked why Zoning Board of Appeals approval is required before the Conservation Commission votes on the item. Mr. Fontane stated that the City ordinance allows for parallel processing of Board approvals and it is up to the applicant to choose which Board to apply to first.

Susan Healey, an abutter to the property, presented pictures to the Board from that morning of water accumulation on the property (Exhibit J). She also presented a plot plan of property which she stated is different from the applicant's. (Exhibit N). She stated that applicant did offer her two parking spaces but with a condition that if she passed way the spaces would revert back to applicant and she was not willing to take that offer. John Kelly stated that prior to any construction the property would be verified before the issuance of a building permit.

Susan Healey stated that photographs submitted show where groundwater is on the property and stated that the applicant is in the process of constructing a driveway on the property without permits issued. Mr. Kelly stated he had been at the site the week before and had not observed a driveway being constructed.

Don Porcaro of 1098T West Boylston Street, an abutter, stated that the area has already been disturbed and that he went to proposed site that morning and stated that a driveway has been cut in and the elevation in the front has been graded with stone dust so changes have been made. Mr. Porcaro had concerns with water infiltration in the area. He stated this he will no longer have access to his property if this approval goes forward. Attorney O'Neil stated that the builder of houses on Darrow Street had landlocked Mr. Porcaro's property. Joel Fontane stated the he did not know the entire history of subdivision of the land but people cannot claim frontage on the street through property they don't own. He stated that sometimes lots are configured with a landlocked parcel which are not buildable and that when it happens, the ANR plans submitted to the Planning Board must label such lots as unbuildable.

Attorney O'Neil stated that his client has a small tractor on the site to investigate the drainage on the site and verify the issues being raised by the abutters.

Mr. Bilotta stated he would prefer this item first go before Conservation Commission before Zoning Board voted on matter.

Rose Porcaro, an abutter, stated that the reason behind last continuation of this item was to allow the applicant communicate his plans to the abutters, but that the abutters have not been contacted. She stated that she learned of the scope reduction of the project just now. Attorney O'Neil stated that he and the applicant did speak with people in the hallway after last meeting and responded to the neighbors' feedback with reducing the scope of the project.

Ms. Porcaro asked if abutters would be notified of Conservation Commission meeting. Mr. Fontane stated that the abutters will be notified of the Zoning Board of Appeals decision and the Conservation Commission hearing. Mr. Fontane stated that the project will be required to go to Conservation Commission for proximity to catch basin and area

of disturbance but if the Board chooses to approve with the condition that they create open space that would have to be looked into.

Chairman Freilich stated that he would like to add condition that Conservation Commission examine property to the highest level so there is no impact to the neighborhood and any of the abutters. He stated that all plans are certified and require an engineer stamp for any aspect of construction or land alterations. Mr. Bilotta stated he also would add that the applicant file Notice of Intent with Conservation Commission and that no work by the land owner be done until all permits have been filed and the appeals process has been exhausted. He recommended that if trees are to be removed, that the individuals cutting the trees be certified by the USDA with the Asian Longhorned Beetle program.

Chairman Freilich asked the applicant notify the abutters in simple letter form when construction will be commencing and when proposed work will be done.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Akindele, the Board voted 4-1, with William Bilotta voting against, to approve the:

- 1) Special Permit: To allow a multi-family low rise dwelling (Residential Use #11, Table 4.1 in an RL-& Zoning district.
- 2) Variance: Relief of 59.30 ft from the 90-ft frontage dimensional requirement.

with the following conditions of approval:

- 1.) That the Special Permit be granted for a three-family (requires a Special Permit in RL-7) and not a multi-family dwelling to reflect the proposed change.
- 2.) That 44.3' of relief be granted; not the initially requested 59.3' ft. (Three family requires 75'; 30.7' is provided)
- 3.) That 6 copies of a revised plan be submitted to the Division of Planning & Regulatory Services with the following modifications:
 - a. Update the zoning table to reflect the proposed 3 units and associated required/proposed dimensions.
 - b. The dumpster be removed from the proposed site since a three family dwelling is eligible for city trash service.
 - c. That the proposed off-street parking areas be reduced from 8 to 6 spaces and that spaces #7 and #8 be open space and not paved.

List of Exhibits.

- Exhibit A: Special Permit & Variance Application; received 2/1/2012; prepared by Ricky L. and Kelly A. Sampson.
- Exhibit B: Special Permit & Variance Plan; dated 1/23/2012, revised 4/1/2012; prepared by Robert D. O'Neil, Jr.
- Exhibit C: Rendering and Floor Plans of the proposed dwelling at 1098 West Boylston Street; prepared by Residential Design Inc.; dated 10/17/2011; revised 4/10/2012.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1098 West Boylston Street (ZB-2012-011); dated March 23, 2012, revised April 20, 2012.
- Exhibit E: Letter from Susan Healey to Zoning Board of Appeals; re: 1098 West Boylston Street; dated February 26, 2012.
- Exhibit F: Letter from Ryan B. Hacker to Zoning Board of Appeals; re: Testimony Submittal re: 1098 W. Boylston St; dated February 27, 2012.
- Exhibit G: Letter from John & Kristina Brand to Zoning Board of Appeals; re: 1098 West Boylston Street; dated February 27, 2012.
- Exhibit H: Photographs submitted by J. Hunt at the March 26, 2012 Zoning Board of Appeals Hearing.
- Exhibit I: DPRS marked up plan showing alternative parking layout (reduced pavement).
- Exhibit J: Photographs submitted by Susan Healey at the April 23, 2012 Zoning Board of Appeals Hearing.
- Exhibit L: Color exhibit submitted by Attorney Donald O'Neil at the April 23, 2012 Zoning Board of Appeals Hearing.
- Exhibit M: Plan submitted by Attorney Donald O'Neil at the April 23, 2012 Zoning Board of Appeals Hearing.
- Exhibit N: Plan submitted by Susan Healy at the April 23, 2012 Zoning Board of Appeals Hearing

NEW BUSINESS

- 5. 19 McKeon Road (ZB-2012-018):** Mark Cook appeared on behalf of the applicant, Sprint Nextel Corporation on a request for Amendment to Special Permit to replace three (3) existing antennas, add six (6) Remote Radio Head (RRH) units, replace, two (2) existing equipment cabinets, add two (2) battery backup cabinets, replace an existing GPS unit and perform work inside the building within its existing equipment space.

Mr. Cook stated that the current use of property is 10,000 sq ft commercial building with a 100 ft above ground level smokestack. He stated that no extension of height is being proposed and that two small remote radio heads will be added adjacent to each of the current antennas.

Mr. Akindele asked if the antennas could be positioned closer to the smokestack. Mr. Cook stated no due to the needed antennas orientation and due to code compliance reasons.

Mr. Bilotta asked whether everything would be color coordinated to the chimney. Mr. Cook stated yes.

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

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 5-0 to accept the petitioner's findings of fact and approve the:

Amendment to Special Permit to replace three (3) existing antennas, add six (6) Remote Radio Head (RRH) units, replace, two (2) existing equipment cabinets, add two (2) battery backup cabinets, replace an existing GPS unit and perform work inside the building within its existing equipment space.

with the following conditions of approval:

- The owner submit post installation noise and RF studies for the filing approved by the Zoning Board of Appeals on August 29, 2011.
- The proposed PWSF is constructed in compliance with the submitted application and plans on file with Division of Planning & Regulatory Services.
- Only authorized personnel are allowed onto the roof and that public access is prohibited.
- **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 Division of Building and Zoning 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 Division of Building and Zoning 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 and RFP:** That post-installation measurements of the total noise and total Radio Frequency Radiation emitted by

all PWSF on the building/site 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 within ninety (90) days of completion of the installation that RF study be submitted to Department of Planning & Regulatory Services.

Upon a motion by Mr. Bilotta and seconded by Mr. Akindele the Board voted 5-0 to approve the following application requirement waivers requested by the applicant:

1. City-wide map
2. Siting Filing Requirements
4. Landscape plan
5. Balloon or crane test
6. Noise Filing Requirements

List of Exhibits.

Exhibit A: Special Permit Application – 19 McKeon Road; received February 24, 2012; prepared by Sprint Nextel Corp.

Exhibit B: Special Permit Plan; dated February 24, 2012; prepared by Salient Architects, LLC.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 19 McKeon Road; dated March 26, 2012, revised April 20, 2012

- 6. 16 Atlas Street (ZB-2012-019):** Michael Burke appeared on behalf of the applicant Anthony Mattero on request to remove the mobile home and to construct a two-family detached (side-by-side) residential dwelling on 1 lot with 4 off-street parking spaces.

Chairman Freilich stated he went to look at site and did not see a mobile home on the site. Mr. Burke stated that the mobile home has been removed. Chairman Freilich asked whether a permit was needed to do that. Anthony Mattero stated he went to Inspectional Services and was told that since they were just breaking up the mobile home and throwing it away they would only need a dumpster permit.

Mr. Fontane stated that the Board is considering a request for a Special Permit for Extension, Alteration of a Privileged Pre-Existing Nonconforming Use and that applicant is proposing to remove the mobile home and replace it with a two family dwelling. Mr. Fontane stated applicant proposes a duplex on one set of plans and under the zoning ordinance it is known as single family detached but it was his understanding that applicant does not wish to subdivide the lot and wish to construct a two family side by side dwelling which will mean the structure will be serviced by one utility connection.

John Kelly from Inspectional Services stated he had no comments.

Mr. Fontane stated that the applicant also requested a zone change but that the Board could not act on that request as that is petition a before the City Council.

Jo Hart, city resident, stated she had question as to how applicant could just throw away the mobile home into a dumpster as there may have been asbestos present. Mr. Kelly stated that company receiving the product would handle that.

Warren Brousseau, abutter to the property, stated a concern regarding number of proposed bedrooms and sewage that will be put in due to the drainage in the area. Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Michajilow and seconded by Mr. Akindele, the Board voted 5-0 to approve:

1) Special Permit: Extension, Alteration of Change of a Privileged Pre-Existing Non-Conforming Use and Structure (Article XVI, Section 4).

with the following conditions of approval:

- 1.) The structure and off-street parking be constructed in substantial accordance with the submitted plan.
- 2.) That each side of the driveways remains as green space and not be paved.
- 3.) That structure be built in accordance with the plans and renderings presented.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 5-0 to accept the Findings of Fact as amended by staff.

List of Exhibits.

- Exhibit A: 16 Atlas Street Special Permit Application; received 3/19/2012; prepared by Anthony Mattero.
- Exhibit B: 16 Atlas Street Special Permit - Plot Plan; dated 3/19/2012, received 3/19/2012 prepared by Burke Engineering.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 16 Atlas St; dated April 19, 2012.
- Exhibit D: 16 Atlas Street -Special Permit decision, Zoning Board of Appeals, May 24, 1967.
- Exhibit E: Photo rendering of proposed home submitted by Anthony Mattero to the Zoning Board on April 23, 2012.
- Exhibit F: Foundation plan of proposed home submitted by Anthony Mattero to the Zoning Board on April 23, 2012.

Chairman Freilich requested a ten minute recess.

7. **22 South Lenox Street (ZB-2012-020):** Jay Melick appeared on behalf of the applicant Sheila Frias on request for a relief of 8-ft from the 15-ft height dimensional requirement for an accessory structure to construct a detached garage in the rear of the property that is 23-ft in height

Mr. Melick stated from the applicant is amenable to staff's suggested condition of approval.

Mr. Fontane clarified that the rain barrel would hook up to roof leaders to be used at later date in order to mitigate additional imperious space caused by the new structure.

Chairman Freilich was concerned that the garage looks like an apartment. Mr. Melick stated it will not be. Mr. Kelly stated that Inspection Services Department would verify site compliance and that there is no plumbing during the inspection.

Mr. Bilotta asked how much the proposed garage will exceed in height the existing building. Mr. Melick stated five feet.

Wayne Griffith, abutter to the property, stated he had concerns with how much they were go into the embankment but had no objection to the project.

Harry Carr, abutter to the property, stated he had concerns about the proposed garage looming over his property and asked how high the ceiling inside would be. Mr. Melick stated that the ceiling joints will be at eight feet.

Mr. Fontane stated the application was complete and the department had no comments on the Finding of Facts.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Akindele, the Board voted 5-0 to approve the request for Variance: for relief of 8-ft from the 15-ft dimensional requirement for an accessory subject with the following conditions of approval:

- 1) The proposed structure is to be non-habitable and no plumbing is to be installed;
- 2) No commercial business to be conducted in the structure;
- 3) Maintain green space on both sides of the driveway except for approved pavement expansion as shown on the plan;
- 4) Plant one Asian beetle-resistant tree of 3.5" for each tree removed; and
- 5) Install a rain barrel to collect rainwater runoff from roof down spouts.

List of Exhibits.

Exhibit A: Variance Application; received March 20, 2012; prepared by Sheila M. Frias.

Exhibit B: Site Plan; dated January 3, 2012; prepared by Places Site Consultants Inc.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 22 South Lenox Street; dated April 20, 2012.

Exhibit D: Sketch of proposed home submitted by Jay Melick at the April 23, 2012 Zoning Board.

Exhibit E: Photo of proposed garage submitted by Harry Carr at the April 23, 2012 Zoning Board meeting.

- 8. 266 Chandler Street (ZB-2012-020):** Attorney John Shea, Brian Perry, Vice President of Investments & Facility Management for Webster Five Cents Savings Bank, and Jeff Howland, engineer for the project, appeared on behalf of the applicant Webster Five Cents Savings Bank on petition to expand its parking area by providing 13 additional off-street parking spaces for employees in the southern portion of the site.

Mr. Fontane stated that the applicant has applied for a relief from the requirement to provide a 5-ft landscaped buffer along the proposed parking area adjacent to a residential use and a street. He stated that staff erroneously advertised also for a Special Permit to modify parking layout requirements with respect to required 24-ft access aisle width, but that the applicant did not apply for this relief and therefore does not need to withdraw this request on record.

Attorney Shea stated that on November 8, 2010 the Zoning Board of Appeals had approved a Special Permits to allow a bank/credit union with a drive-through on the site and that on October 17, 2011, the Board approved Amendment to the Special Permit to modify the parking layout.

Attorney Shea stated that the applicant is seeking to provide 10 additional parking spaces for employees. Attorney Shea stated that the applicant is requesting a waiver of landscaped buffer next to 62 Abbott Street and along Abbott Street, a private street. He showed on a plan a three family home (62 Abbott Street) with a garden which abuts the bank. He stated that the property owner of 62 Abbott Street has requested the bank not to create any further buffer zones as they have a child with Autism and the child takes care of the garden.

Attorney Shea stated that the applicant would be amenable to a condition of approval that if Abbott Street is developed southerly in the future, the applicant shall comply with current Landscaping Ordinance with respect to parking area's landscape buffer adjacent to a public street. He stated that the reason behind this petition is to allow the customers to get in and out of the bank easier. Mr. Fontane stated that staff is amenable to the applicant's proposed condition of approval.

John Kelly from Inspectional Services had no comment.

Chairman Freilich stated that he has security concerns with respect to the woods behind the property and asked the applicant continue to work to clear and improve the area. Attorney Shea stated that in discussion with Mr. Fontane, Department of Public Works may be willing to move the jersey barriers further up which would allow the applicant to clean up that portion of the Abbott Street.

Mr. Bilotta stated that he is in favor of the project and asked the applicant to explore possibilities of lighting up the property without shining onto the abutters' property. Brian Perry stated that the bank is looking to do something in terms of lighting.

Chairman Freilich asked if a fence would be installed. Mr. Perry stated there is existing fence that will be improved.

Chairman Freilich asked the bank work with the City on appropriate lighting for the property.

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

Upon a motion by Mr. Loew and seconded by Mr. Akindele, the Board voted 5-0 to approve the Special Permit: To modify the parking layout with respect to a 5-ft landscaped buffer along proposed parking area adjacent to a residential use and a street (seeking a partial waiver) with the following conditions of approval:

- That the project is constructed and operated in substantial accordance with the final approved Parking Plan Amendment;
- That if Abbott Street is developed southerly, the petitioner shall comply with current Landscaping Ordinance with respect to parking area's landscape buffer adjacent to a public street.

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

List of Exhibits

Exhibit A: Special Permit Application; received March 20 2012; prepared by Webster Five Cents Savings Bank.

Exhibit B: Special Permit Plan titled "Amended Proposed Conditions Plan"; dated March 19, 2012; prepared by JH Engineering Groups LLC. Note: this plan includes previously approved sheets.

Exhibit C: Planting Plan; prepared by EarthDesign Landscape Architecture; dated March 8, 2012.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Planning Board; re: 266 Chandler Street (ZB-2012-020); dated April 20, 2012.

9. **59 Granville Street (ZB-2012-024):** Attorney Donald O'Neil appeared on behalf of the applicant, Edward Rodriguez, to construct an additional single-family detached dwelling and to separate the lot into two. Attorney O'Neil stated that the applicant proposes to construct a single family home and that would be consistent with the neighborhood and that they have spoken with abutters to the property and they have agreed to make some revisions that will address the concerns of the neighbors.

Attorney O'Neil stated that the applicant is amenable to planting Arbor Vitae hedge between 59 Granville Street and the direct abutter to the left, who suggested that. Attorney O'Neil stated that the abutter also requested that the house be shifted to give abutter a little more separation between properties and that pending Department of Public Works approval, the applicant would be amenable to that. The abutter also requested that the applicant take into consideration the height of the existing houses on the street

particularly with the immediate abutters. The abutters requested home built be consistent in height with other properties in the neighborhood and Mr. O'Neil stated that could be done.

Chairman Freilich asked why there is already a curb cut. Attorney O'Neil stated that the curb cut was present when his client bought the property. Mr. Kelly stated that the reason could be because there could have been a house there 40 or 50 years ago. Mr. Fontane stated that curb cuts require a permit through DPW. Mr. O'Neil stated his client only recently bought the property but did not apply for curb cut.

Edward Rodriguez, the applicant, stated that he is a real estate broker and when he bought property he assumed it would be a buildable lot but that when he met with his attorneys, they determined the lot would need a variance.

Attorney O'Neil stated he is aware of five letters of opposition but that the applicant is amenable to making changes per the immediate abutter request with respect to the landscaping buffer.

Chris Basker of 53 Granville Avenue stated he owns a lot adjacent to where the dwelling is proposed and stated his concern with the height of the proposed building. He asked that it be consistent with heights of other homes in the neighborhood. Mr. Basker stated that the curb cut was created last year when Department of Public Works repaved the road but that he would like it moved a little further from his driveway.

Nicholas Caparelli stated that his driveway is opposite the applicant's property and stated his concern with parking. He stated that his driveway is constantly being blocked and adding another house 'will add more cars to the neighborhood'.

Marie Gut, an abutter, expressed concerns about the project with respect to lack of on-street parking.

Mr. Michajlow asked if the proposed home would have a driveway. Attn. O'Neil stated that the proposed home would have driveway with a two car garage and that the driveway would be able to accommodate 2 cars.

Chairman Freilich stated that he believed the applicant is seeking a lot of relief.

Mr. Fontane stated that the relief of 3.15 feet of the 20 foot yard setback dimensional requirement was advertised erroneously. He stated that the applicant is seeking a relief of 7-ft from the 65-ft frontage dimensional requirement, relief of 1.2 ft from the 8-ft side yard setback dimensional requirement, relief of 5-ft from the 65-ft frontage dimensional requirement for the proposed dwelling unit (60-ft proposed and relief of 580SF from the 7,000 SF gross dimensional area requirement for the proposed dwelling (6,420 SF proposed). So in several cases the relief being requested is less than 10% of less than what is required.

Mr. Fontane asked whether the front yard setback would be 23 feet. Mr. O'Neil stated yes. Mr. Fontane asked why the applicant chose 23 feet and not minimum required 20 feet. Mr. O'Neil stated that the applicant would be amenable to move decrease the front yard setback to align the proposed house with other houses on the street. Mr. Fontane agreed.

Mr. Michajlow stated this proposal seems to meet requirement of the variance and is consistent with the neighborhood.

Michelle Gabrille, a neighbor, said that she welcomes Mr. Rodriguez to the neighborhood.

Chairman Freilich asked if applicant would be willing to continue the item until next meeting to allow him for more time to review. The applicant was amenable to the continuation.

Upon a motion by Mr. Bilotta and seconded Mr. Akindele, the Board voted 5-0 to continue the hearing until the May 14, 2012 Zoning Board of Appeals meeting.

List of Exhibits.

- Exhibit A: Variance Application; received March 20, 2012; prepared by Edward Rodriguez.
- Exhibit B: Variance Plan of Land; dated March 7, 2012; prepared by HS&T Group, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 59 Granville Avenue; dated April 20, 2012, revised April 23, 2012.
- Exhibit D: Letter of Opposition from Mike Carlson on April 20, 2012.
- Exhibit E: Letter of Opposition from Donna Gustafson on April 20, 2012.
- Exhibit F: Letter of Opposition from Marian Ouimette on April 20, 2012.
- Exhibit G: Letter of Opposition from Maya Elisayeff on April 21, 2012.
- Exhibit H: Letter of Opposition from Ann and John Klump on April 23, 2012

10. 38 Hermon Street (ZB-2012-025): Jose Martinez appeared on behalf of the petitioner Richard Rizzo on a request for a Special Permit to allow retail use at 38 Hermon Street. First floor will provide retail sales and a professional office on the second floor. Richard Rizzo, the petitioner, was also present.

Mr. Martinez stated that the petitioner is requesting a special permit for retail use on first floor and office space on the second floor of 38 Hermon Street and waiver of the five feet landscape buffer along parking areas.

Mr. Fontane stated that the applicant had initially applied for a Variance for relief from the landscaping requirement but modified the application later per staff's comments to be considered under a Special Permit.

John Kelly from Inspectional Services had no comments.

Richard Mattheson from Clean Machine Tool Company on Hermon Street was concerned with not enough parking on site for the existing uses.

Richard Rizzo stated that allowing this change will allow the employees to use the back parking lot and free up front for customer parking thus alleviating parking problems. He stated that he was amenable to staff's proposed conditions of approval.

Mr. Bilotta asked that tree planted be Asian Longhorned Beetle resistant species and that the applicant conducts a six month landscaping maintenance on his property. Mr. Rizzo was amenable to that.

Mr. Martinez presented pictures of the building to the Board (Exhibit D). Mr. Mattheson stated that given narrow street, the parking in the area presents a potential safety issue. Mr. Kelly stated he had not received complaints any but that the police may have. Mr. Mattheson stated the police have been there several times in past few weeks and there is not sufficient parking to handle the automotive repair.

Chairman Freilich asked Mr. Fontane if the site conform with the parking requirement with exception of the requested for relief. Mr. Fontane stated it does.

Chairman Freilich stated if there are continued problems with respect to parking and safety, that Mr. Mattheson contact Mr. Kelly at Inspectional Services and/or the Police Department.

Mr. Kelly stated that he believes that this application is an attempt to alleviate the parking problems but that his department will send inspectors out to site to make sure it complies with the City's regulations and the Board's approvals.

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

Upon a motion by Mr. Akindele and seconded by Mr. Loew, the Board voted 5-0 to accept the petitioner's findings of fact and approve the:

- 1) Special Permit: To allow a Retail Use (Business Use #26) in the MG-2.0 zoning district.
- 2) Special Permit: A waiver of the 5-ft landscaped buffer along parking areas

with the following conditions of approval:

- That the proposed landscape buffer along Charlton Street be augmented with additional low level plantings (ornamental grasses/perennials) in addition to the two proposed trees.
- That the proposed landscaping buffer abutting 25 Charlton Street be augmented with one additional tree where the landscape bed is 5' wide and include a mix of shrubs (arbor vitae) in addition to two proposed trees.
- That the existing chain link fence on the 15 Charlton St. side of the property be replaced with a solid board or simulated stockade fence or at a minimum, chain link with slats to prevent vehicle lights from shining into the abutting residential property..
- That no motor vehicle sales or auto body repair are to be conducted on the BG-3.0 portion of the site.
- That trees planted shall be Asian Longhorned Beetle resistant species;
- That the landscaping will be maintained bi-annually;
- That all parking spaces are clearly marked on the pavement.

List of Exhibits.

- Exhibit A: 38 Hermon Street Special Permit Application; received 3/22/2012; prepared by Richard Rizzo.
- Exhibit B: 38 Hermon St Special Permit - Plot Plan; dated 3/22/2012, received 3/22/2012 prepared by Viacad.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 38 Hermon Street, dated April 20, 2012.
- Exhibit D: Photos of building submitted by Jose Martinez to Zoning Board of Appeals on April 23, 2012.

Chairman Freilich requested a three minute recess.

11. 100 & 120 Institute Rd, 210 West St, 30 Boynton St and 111 Park Ave (ZB-2012-023): Attorney Stephen Madaus and Attorney William Ritter appeared on behalf of the applicants, Worcester Polytechnic Institute and First Baptist Church of Worcester on request for two Specials Permits to construct a roof-top athletic field on top of a one-level 171,503 GSF parking area on the ground level to accommodate 527 parking spaces (90 degree parking spaces, one-way directional aisles), with associated modifications to the existing parking lot of the 111 Park Avenue property belonging to the First Baptist Church of Worcester. Also present was Craig Lizzotte, the site engineer,

Attorney Madaus stated that the petitioner is seeking a Special Permit to allow for aisle widths of 22 feet in the garage instead of the required 24-ft and a Special Permit to alter the pre-existing non-conforming parking lot of the church.

Attorney Madaus stated that WPI has revised its plans based on the Church's comment. Original plans showed 90 degree parking but revised them to show angled parking.

Attorney Madaus stated that as part of the proposal the church will gain access to 40 parking spaces on Worcester Polytechnic Institute property on Sundays.

Craig Lizzote of VHB stated that primary access to the site will be from Salisbury Street.

Chairman Freilich asked how the applicant will monitor the traffic flow from Park Avenue. Attorney Madaus stated that WPI will monitor the traffic flow and that a detail officer will be on duty to assist with the traffic during sporting events.

Mr. Fontane stated that staff recommends approval of the petition.

Mr. Loew asked how tall the light poles will be and whether Worcester Polytechnic Institute will commit to not using the lights during certain times of the day.

Attorney Madaus stated that the lights will be operated in a similar fashion to a football field and will be powered down at around 10:00PM.

Chairman Freilich asked if there was a way to divert traffic up further to the old West Street. John Kelly stated that old West Street is one way.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta the Board voted 5-0 to approve:

- 1) Special Permit: Extension, Alteration of Change of a Privileged Pre-Existing Nonconforming Use for the 111 Park Avenue property belonging to the first Baptist Church of Worcester (Article XVI, Section 4)
- 2) Special Permit: Modify parking requirement regarding aisle widths in the new parking facility-24-ft wide aisles required, 22-ft proposed (Article IV, Section 7) with a condition that the project is constructed and operated in accordance with final revised Special Permit Plans and Definitive Site Plans.

List of Exhibits.

- Exhibit A: Special Permit Application; received March 20, 2012; prepared by Worcester Polytechnic Institute and First Baptist Church of Worcester.
- Exhibit B: Site Plan – Page C-1.0; dated March 19, 2012; prepared by VHB , Inc.
- Exhibit C: Rendering of the proposed garage as seen from Park Avenue; prepared by Symmes, Maini & McKee Associates; dated March 30, 2012; received April 6, 2012.
- Exhibit D: Letter from John Kelly of Department of Inspectional Services to Stephen Madaus; re: Response to Request for Zoning Interpretation; WPI, Parking Garage and Athletic Fields Project; Park Avenue, Worcester; dated February 16, 2012.
- Exhibit E: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 100 & 120 Institute Road, 210 West Street, 30 Boynton Street and 111 Park Avenue (ZB-2012-023); dated April 20, 2012.

OTHER BUSINESS

Signing Decisions: The Board signed 2 decisions –10 Claremont Street and 50 Gardner Street.

ADJOURNMENT

Chair Freilich adjourned the meeting at 9:35 p.m.