

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

October 17, 2016

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

Zoning Board Members Present: Vadim Michajlow, Vice-Chair
Timothy Loew
George Valeri
Joseph Wanat
Robert Haddon, Alternate Member
Thomas Dillon, Alternate Member

Zoning Board Members Absent: Lawrence Abramoff, Chair

Staff Present: Stephen Rolle, Division of Planning and Regulatory Services
Domenica Tatasciore, Division of Planning and Regulatory Services
Michael Antonellis, Division of Planning and Regulatory Services
John Kelly, Department of Inspectional Services
David Horne, Department of Inspectional Services

Call to Order – 5:30 pm

Approval of the Minutes – August 29, 2016

Upon a motion by Mr. Valeri and seconded by Mr. Wanat the board voted 5-0 to approve the minutes from August 29, 2016.

Requests for Continuances, Extensions of Time, Postponements, Withdrawals

1. 41 Piedmont Street (ZB-2016-040)

Variance: For relief from the front-yard setback dimensional requirement for a multi-family dwelling in an RG-5 zoning district (Article IV, Section 4, Table 4.2)

Variance: For relief from the exterior side-yard setback dimensional requirement in an RG-5 zoning district (Article IV, Section 4, Table 4.2, Note 7)

Variance: For relief from the parking requirement for a multi-family dwelling (Article IV, Section 4, Table 4.4)

Special Permit: Extension, alteration, or change to a privileged non-conforming structure/use (Article XVI, Section 4)

Petitioner: Vader Realty, LLC

Present Use: Presently on the property is a commercial structure and associated site improvements.

Zone Designation: RG-5 (Residence, General) zoning district

Petition Purpose: The applicant seeks to convert the existing non-conforming structure into a multi-family dwelling and to provide off-street parking and associated site improvements.

Public Hearing Deadline: 10/17/16

Constructive Grant Deadline – Variance: 11/30/16

Mr. Haddon seated to vote as an alternate member of the ZBA.

Upon a motion by Mr. Valeri and seconded by Mr. Loew the board voted 5-0 to approve the requested Leave to Withdraw without Prejudice.

Unfinished Business

2. 124-126 Chandler Street (ZB-2016-032)

Administrative Appeal: Of the denial of a building permit application issued by the Commissioner of the Department of Inspectional Services (Article II, Section 6, A, 1) for a proposed change in use from a medical supply warehouse into a tire sales & repair use.

Petitioner: Gilberto Ledesma

Present Use: Presently on the premises is a medical supply warehouse.

Zone Designation: BG-3.0 (Business, General) & Commercial Corridors Overlay District (CCOD-E)

Petition Purpose: The petitioner is appealing the denial of a building permit application issued by the Commissioner of the Department of Inspectional Services on June 14, 2016 asserting that a proposed change in use from a medical supply warehouse to a tire sales and repair use is not allowed in the Commercial Corridors Overlay District.

Public Hearing Deadline: 10/17/16

Attorney Jonathan Finkelstein represented the petitioner and stated that the owner leased space across the street from his former location to operate his business. Two months prior to acquiring the property, it was placed into the CCOD overlay district adopted by the City Council. Attorney Finkelstein had made a petition to have the property removed from the CCOD and City Council rejected that petition.

Attorney Finkelstein contested that the use is allowed in the zone and that the business of selling tires within CCOD is allowed because it is not motor vehicle sales and repair, it is retail sales.

Attorney Finkelstein submitted Exhibit G.

Attorney Finkelstein stated that retail sales with fabrication and assembly is allowed and that tire sales enterprises and facilities always mount and balance tires. Retail sales are the primary use and the assembly is an accessory use. Also, that an accessory use can be a use not otherwise allowed in conjunction with a use that is allowed and is customarily incidental to the allowed use. Mr. Ledesma was previously conducting vehicular break work and is aware that activity must cease within the new location.

Attorney Finkelstein took issue with the proposed findings of fact.

Mr. Rolle stated that the front portion of the building, parking and access is all located within the CCOD overlay district; if servicing and mounting the tires is integral, then it is not accessory and the use is a motor vehicle service and sales use.

Mr. Kelly stated that Inspectional does not agree that it is an accessory use.

Mr. Valeri stated motor vehicle repair includes affixing tires to cars.

Attorney Finkelstein stated that selling and replacing car radios is not a motor vehicle sale and repair and that this use is similar.

Mr. Michajlow opened the hearing to the public.

Paul Qualia, Chandler Street Business Association, stated that the establishment of the CCOD overlay district was a long process that he has taken time to inform all business owners of the new district. There is an excess of auto-motor businesses in the area that monopolies the corridors. Mr. Ledesma has continued to do break work and that by overturning the commissioner's decision will have impacts throughout the city.

Maricia Rodriguez-Quello stated that they use the services of Mr. Ledesma because it is very convenient and previously they would have to leave Worcester to obtain tires. The owner employs his own family and provides jobs to the city and invests into the city.

Jo Hart stated her support of the petitioner.

Santa Gimini stated her support of the petitioner.

Arthur Moradian stated that the CCOD overlay district was announced many times and he spoke in favor of the commissioner's decision.

Greg Lano spoke in favor of the commissioner's decision.

Attorney Finkelstein stated that the petition is not to challenge the CCOD overlay district but to challenge the interpretation of the ordinance.

Mr. Wanat stated that the duty of the board is to interpret and enforce the ordinance.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, the board voted 5-0 to close the hearing.

Mr. Rolle stated that staff would be willing to strike number 13 in the suggested Findings of Fact.

Mr. Dillon seated to vote as an alternate member of the ZBA.

Upon a motion by Mr. Wanat, and seconded by Mr. Valeri, the board voted 3-2 to uphold the Building Commissioner's decision regarding the denial of a building permit for 124-126 Chandler Street. Joseph Wanat, George Valeri and Thomas Dillon voted in favor of the motion, and Timothy Loew and Vadim Michajlow voted in opposition to the motion. Therefore, the decision of the Building Commissioner to deny the building permit was upheld.

List of Exhibits

- Exhibit A: Administrative Appeal Application; received July 14, 2016; prepared by Attorney Jonathan Finklestein.
- Exhibit B: Building Permit Denial Letter, dated June 14, 2016 for property at 124-126 Chandler Street, signed by Bruce LaBoffa and John Kelly (included in application materials).
- Exhibit C: Planning Board Decision and related exhibits, dated February 3, 2016.
- Exhibit D: Committee on Economic Development notice of vote; dated March 22, 2016.
- Exhibit E: City Council notice of vote; dated April 12, 2016.
- Exhibit F: MACRIS listing for 126 Chandler Street

3. 102 Shore Drive (ZB-2016-043)

Special Permit: To allow a Roof-mounted Personal Wireless Service Facility in a MG-1.0 Zone (Article IV, Section 2, Table 4.1, General Use #15)

Petitioner: Cellco Partnership, d/b/a Verizon Wireless

Present Use: Presently located on the premises is a ~48,000 SF commercial structure and associated parking.

Zone Designation: MG-1.0 (Manufacturing, General) zoning district

Petition Purpose: The applicant seeks to install infrastructure associated with a roof-mounted personal wireless service facility, along with associated site improvements including antennas, generators, conduit, and equipment shelters, etc., and site work.

Public Hearing Deadline: 11/4/16

Attorney Earl Duval represent the petition and stated that Verizon wireless intents to install roof mounts and utilities on the ground. Attorney Duval gave an overview of the current and proposed coverage as a result of the proposal and stated there are no existing towers to provide antennas, so an analysis was done to locate tall structures within the area, which is how this location was selected. Attorney Duval provided photo simulations of the proposal and described in detail what is shown including a stockade fence. There will be an emergency backup generator to only be utilized in the event of a power outage. There will be no signs except for a no trespassing sign and contact information. There will also be a locked equipment area and cabinets will be alarmed with system tied to headquarters with the ability to dispatch law enforcement.

Mr. Michajlow asked about the waiver of non-contact of commercial providers. Attorney Duval stated that this would only be needed if a new tower were to be constructed.

Mr. Duval submitted written requests of waivers, which included:

1. Article IV, Section 12, C.2.c. - Camouflaging using screening, landscaping and placement within clusters of trees.
2. Article IV, Section 12, D.1.b. – Camouflage by vegetation.
3. Article IV, Section 12, D.2. – Equipment shelters.
4. Article IV, Section 12, D.7.d.iii.aa. – Siting Filing Requirements.
5. Article IV, Section 12, D.7.d.iii.cc. - Siting Filing Requirements.
6. Article IV, Section 12, D.7.d.iii.cc. - Siting Filing Requirements.
7. Article IV, Section 12, D.7.d.iv.gg. – Design Filing Requirements
8. Article IV, Section 12.D.9 – Co-Location
9. Article IV, Section 12, D.7. d.iii. aa – Site Filing Requirements
10. Article IV, Section 12, D.7.d.iv.ff – Design Filing Requirements

Mr. Valeri asked about the location of the antennas. Attorney Duval stated that the antennas will be on the roof off the building and gave details about the proposed enclosures.

Mr. Valeri inquired about the proposed fence. Attorney Duval stated that the proposed fence will be located behind the existing building.

Mr. Wanat inquired about security measures. Attorney Duval gave an overview of the security of the site.

Mr. Haddon was seated to vote as an alternate member of the ZBA.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, the board voted 5-0 to close the hearing.

Upon a motion by Mr. Wanat and seconded by Mr. Valeri the board voted 5-0 to approve the petition subject to conditions of approval as noted on the staff review memo and to approve the requested waivers as noted in the staff review memo and also a waiver of the requirement for certified acoustical engineer to certify plans found in Article IV, Section 12.D.7.d.v.c.

List of Exhibits

Exhibit A: 102 Shore Drive Special Permit Application and associated exhibits; received August 31, 2016; prepared by Applicant's agent, Attorney Earl W. Duval.

Exhibit B: Verizon – Worcester North 3 MA, 102 Shore Drive; dated April 7, 2016 and revised on June 8, 2016; prepared by Hudson Design Group, LLC.

Exhibit C: Comments from Fire Department; dated September 12, 2016.

Exhibit D: Request for waivers submitted by Attorney Duval.

4. 25 Eastham Street (ZB-2016-044)

Variance: For relief from the dimensional requirements for an accessory structure in a RL-7 Zone (Article IV, Section 8, B.10.)

Petitioner: Sheila Duval

Present Use: Presently on the premises is single-family dwelling and associated site improvements.

Zone Designation: RL-7 (Residence, Limited) zoning district

Petition Purpose: The petitioner seeks to construct a detached accessory structure, to be used as a garage, along with associated site improvements.

Public Hearing Deadline: 11/13/16

Constructive Grant Deadline – Variance: 12/18/16

Sheila Duval presented per petition and stated that she intends to construct a garage on her property, of which she has ample land for a detached garage to left hand side of the home as seen from the street. She requested a 5 foot variance in height to provide for a pitch of the roof.

Mr. Antonellis gave an overview of the application and stated that if the garage were attached to the home, it could match the 35 foot height restriction. Mr. Antonellis asked if the petitioner would consider rain barrels to capture increased stormwater.

Mr. Michajlow opened the hearing to public comment. No one present to be heard.

Mr. Dillon was seated by the Vice Chair to vote on this petition.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, the board voted 5-0 to close the hearing.

Upon a motion by Mr. Wanat and seconded by Mr. Valeri the board voted 5-0 to approve the petition requested waiver to label abutters within 300 feet and label trees in excess of 9 inches on the plan of land, and also to approve with conditions as noted on the staff review memo.

5. 8 (aka 18) Grafton Street (ZB-2016-045)

- Special Permit:** To modify the dimensional requirements of a permanent, accessory, roof sign with channel letters in a BG-6.0 zoning district and the USOD & DSOD (Article IV, Section 6)
- Special Permit:** To allow a permanent, accessory, roof sign with channel letters within the DSOD and the USOD (Article IV, Section 6)
- Petitioner:** Grafton Acquisitions, LLC
- Present Use:** Presently on the property is an 8 story high-rise residential structure and a two-story accessory structure, used for residential and commercial purposes, along with associated site improvements.
- Zone Designation:** BG-6.0 (Business, General) zoning district and located within the Union Station View Corridor Sign Overlay District (USOD), Downtown/Blackstone Canal Sign Overlay District (DSOD), and the Commercial Corridors Overlay District, Downtown Subarea (CCOD-D)
- Petition Purpose:** The applicant seeks to install a ~420 SF permanent, accessory, roof-mounted sign with channel letters and associated site improvements.

Public Hearing Deadline: 11/24/16

Daniel Benoit, of Benoit Design Group, presented the petition along with Megan Bradley.

Mr. Benoit stated that the intention is to construct a roof side for branding and marketing purposes and have received approval of the National Parks Service; the sign will not obstruct any views of Union Station.

Ms. Tatasciore stated the requested relief and the proposed dimensions of the sign relative to the ordinance restrictions. The sign will not be a motion or digital sign but will be illuminated by interior LED lights.

Mr. Loew asked if the color scheme is fixed. Mr. Benoit stated that this will be the only color scheme as it is associated with the brand.

Mr. Dillon was seated by the Vice Chair to vote on the petition.

Mr. Michajlow opened the hearing to the public. No one present to be heard.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, the board voted 5-0 to close the hearing.

Upon a motion by Mr. Wanat and seconded by Mr. Loew the board voted 5-0 to approved the petition with conditions of approval as noted on the staff review memo.

Other Business

6. Communications

7. Signing of Decisions from prior meetings

Adjournment - The board adjourned at 7:12 pm.