

**MINUTES OF THE PROCEEDINGS OF THE
PLANNING BOARD OF THE CITY OF WORCESTER**

**February 6, 2008
WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM**

Planning Board Members Present: John Shea, Chair
Scott Cashman, Vice Chair
Anne O'Connor, Clerk
Margaret Guzman
Nicole Xifaras Parella

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Robin Bartness, Division of Planning & Regulatory Services
Judy Stolberg, Division of Planning & Regulatory Services
Michael Traynor, Law Department
K. Russell Adams, Department of Public Works
Jody Kennedy-Valade, Department of Code Enforcement

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair Shea called the meeting to order at 5:45 PM.

APPROVAL OF MINUTES

Upon a motion by Margaret Guzman and seconded by Nicole Xifaras Parella, the Board voted 4-0 (Scott Cashman abstained) to approve the minutes of the January 23, 2008 meeting.

UNFINISHED BUSINESS

- 1. 100 Wall Street (PB-07-143) – Definitive Site Plan Approval:** John Shea recused himself. Charles Scott, representative for the applicant, Kitner Construction, recapped by saying that the applicant is requesting Definitive Site Plan Approval for the construction of a 90-unit multi-family dwelling atop a two deck garage. He reiterated that the intention of the applicant is to construct a building that can achieve the highest practical LEED (Leadership in Energy & Environmental Design) certification available. He indicated that all the comments from the January 23, 2008 meeting had been addressed and the limited traffic study had been submitted as well. Mr. Adams advised that the Traffic Division had reviewed and was satisfied with the findings in that limited traffic study. Ms. Valade said it appeared that the two loading spaces appeared to interfere with parking in the surface area. Ms. Bartness agreed and said the entirety of the loading space cannot interfere with parking or access. Mr. Scott said he could move the loading spaces to make them conform to the Zoning Ordinance. George Valarie expressed concerns about water pressure and sewer capacity in the area. Chair Cashman said those were issues better directed to the Water Operations Division of the Department of Public Works. Mr. Valarie then asked what kind

of dwelling units would be at the site and the income levels of people living in them. Chair Cashman responded that it was an inappropriate question and not a matter before the Board. Ms. Bartness enumerated comments in her memo dated February 6, 2008. Upon a motion by Margaret Guzman and seconded by Nicole Xifaras Parella, the Board voted 4-0 to approve the Definitive Site Plan with the following conditions:

- **Correct RG-7 label and change to RL-7.**
- **In the zoning legend on sheet C2, instead of providing what is “existing” on the plan, label what is provided or proposed for this development compared to what is required for this development in the RG-5 district. The “existing” should be featured on the existing conditions plan only.**
- **Remove signature block from cover sheet.**
- **Remove “existing” items from sheet C2 to provide for better clarity on the layout plan. Existing items should be labeled on the existing conditions plan only.**
- **The two loading spaces near the surface parking area be moved to another location so as not to interfere with parking or access to the garage.**
- **Change label for handicap spaces from HP to HC.**
- **Label line delineating loading space at entrance as “painted line” to provide the ability for vehicles to be able to drive into the garage and turn around instead of backing out onto the street, which is prohibited.**
- **There are three (3) parking spaces labeled 9 x18 when they are only 8 x 18 in the SE corner of the second level of the garage. Because there are other 10 X 18 spaces in the same row, these spaces can be made to conform. Correct on the plan and re-label applicable spaces.**
- **Retaining walls over four (4) feet need safety fences. An additional fence is needed at the top of the Wall Street side (the landscaping wall closest to the building). Add label to plan.**
- **Exterior materials are shown on sheet E4 but not on E3. E4 is not labeled as to which elevation it is. Sheet E3 elevations do not match the ones shown on E4. Provide one set of correct elevations with materials labeled.**
- **Provide a corrected colored rendering of the project.**
- **Label garage access from the surface parking area.**
- **Lighting plan is incomplete. The lighting plan should show light measures to the property line and beyond to show that there is no more than one-foot candle of light spillage onto adjacent residential properties.**
- **Trees must be a minimum of 3-inch caliper. Plan indicates 2-3”.**
- **All work must conform to the standards contained in the City of Worcester, Department of Public Works & Parks, Engineering Division, Construction Management Section, STANDARD SPECIFICATIONS & DETAILS, most recent edition.**
- **Subject to the Zoning Enforcement Officer’s determination that the parcel complies with all the relevant provisions of the Zoning Ordinance.**
- **The appropriate soil erosion and sediment control measures, including hay bales and silt fences, shall be installed and maintained throughout construction by the applicant to the satisfaction of the Director of Code Enforcement.**
- **Six copies of the revised plan must be submitted to the Planning and Regulatory Services Division prior to release of the decision.**

2. **144 Granite Street (PB-07-145) – Special Permit for Wind Energy Conversion Facility (WECF):** Kevin Schulte, representative for Sustainable Energy Developments, Inc., said that the applicant, Mary Riordan, Headmaster, Holy Name Central Catholic Jr. /Sr. High School, is seeking a Special Permit for a Wind Energy Conversion Facility, to construct a WECF on school property. Mr. Schulte said the proposed WECF would meet the present and future energy needs of the school. He said the location is 20% further away from the nearest occupied building than is required. He indicated that there will be on site monitoring as well as remote monitoring of the facility. Mr. Fontane reminded the Board that it has the authority to waive one or more of the application requirements if it determines the information is not needed to consider a specific request for a Special Permit at the time of its approval. He said the applicant is requesting the following waivers:

- *Standard drawings and structural engineering analysis.* The applicant has not completed the structural documents related to the custom tower structure they have purchased.
- *FAA determination of “no hazard to air navigation”.* The FAA has approved three alternative locations and heights at 144 Granite Street, however, the specific location and height proposed in this application for Special Permit has not yet been approved by FAA. The applicant has submitted a new request for FAA approval under Wind Turbine Study # 2008-ANE-93-OE.
- *Certification of conformance with FCC regulations.* The applicant indicates that no communication signal will be emitted from the Wind Turbine or its structure. As part of the FAA approval process the FCC is notified and assesses the whether the production of electromagnetic interference from wind turbine will interfere with the performance of air traffic control systems and what mitigation is necessary, if any.

Mr. Fontane also suggested some proposed conditions of approval. Mr. Traynor opined that some of the proposed conditions were redundant because they are requirements of the Ordinance and need not be included as conditions of approval. He indicated that under Recommendations & Proposed Conditions of Approval in Joel Fontane’s memo dated February 4, 2008, numbers 3.a., 4.a., b., d., e., and f. be omitted. One of the proposed conditions is for a bond to be posted at the time of construction that equals the estimated cost associated with the removal of the WECF should decommissioning fail to be completed as required under Section 13(M) of the Ordinance. William J. Mulford, representative of the Diocese of Worcester, spoke in support of a request by the Diocese to waive the bond requirement. Chair Shea said waiving the bond requirement would put the City at risk. Ms. Guzman said this was the first application for a WECF and waiving the bond is the wrong way to start the process. She maintained that while not predicting failure of this project or any future WECF, the Board has an obligation to ensure the protection of the City. Mr. Fontane told the Board the bond is not a requirement of the Zoning Ordinance but the Board does have the authority to impose that condition on the petitioner. Stephen Quist was concerned that the Diocese of Worcester would profit from the sale of any excess energy not utilized by the school and questioned the tax exempt status of the entity if it sold any of it. Chair Shea said that was a matter not under the purview of the Board. Philip Anas asked if there would be a noise issue. Mr. Schulte said it would be inaudible at his home. Scott Cashman was concerned about the 134 foot setback from the school building and why that

particular location on the site had been chosen. Mr. Schulte said there were two overhead utilities near the site and the location chosen was the most appropriate. Mr. Cashman reiterated his concern about the school. Upon a motion by Anne O'Connor and seconded by Margaret Guzman, the Board voted 5-0 to close the hearing. Upon a motion by Anne O'Connor and seconded by Margaret Guzman, the Board voted 5-0 to approve the Special Permit with the following findings:

- 1. The proposed use is in harmony with the general purpose and intent of the City of Worcester Zoning Ordinance for the following reasons:**
 - **The project will fulfill present and future energy needs of the Holy Name Catholic Central Schools in a manner that is both environmentally sound and cost effective. It will protect natural resources in the immediate area as well as on a global scale by reducing carbon emissions and resources that are invested in electricity transmission over long distances.**
- 2. The specific site is an appropriate location for the proposed use for the following reasons:**
 - **The site is appropriate because it has sufficient land area and a strong wind resource.**
- 3. The proposed use as developed will not adversely affect the neighborhood for the following reasons:**
 - **The turbine will be approximately 798 feet from the nearest neighborhood. The sound study that was performed showed the predicted maximum sound emissions fall well below the Massachusetts Department of Environmental Protection requirements of the permit. The shadow flicker study was performed in a conservative manner, not regarding the effect of trees, clouds, etc. This study showed that there would be minimal effect on the closest neighboring properties.**
- 4. Adequate and appropriate facilities will be provided for the proper operation of the proposed use for the following reasons:**
 - **The turbine will have an automatic shutdown and braking system in case of an emergency situation. There will be constant monitoring by both the turbine itself and remotely at an off-site location to be done by Sustainable Energy Developments. There are also utility required redundant electrical protections within the turbine. There will be sufficient signage regarding emergency contact telephone numbers.**
- 5. The proposed WECF does not derogate from the purposes and intent of the WECF Article and the Zoning Ordinance for the following reasons:**
 - **Sustainable Energy Developments, Inc. and representatives of the school and the Roman Catholic Diocese of Worcester participated in the hearing process related to the adoption of Article IV, Section 13 – Wind Energy Conversion Facilities. The design of the project is indicative of a quality, well-sited wind project that will serve as a model for others across the Commonwealth of Massachusetts. It is located in a manner that is**

environmentally benign and provides no nuisance to neighbors as demonstrated by the sound, shadow flicker and environmental impact studies provided. The project will employ a wind turbine technology with a long history of effective operation as well as a warranty and maintenance plan to ensure continued long term operations and economic benefit to the school.

6. The proposed design, installation and operation of the WECF will meet the requirements of the WECF Article for the following reasons:

- The site exceeds the requirements of the Zoning Ordinance with regard to noise, shadow and visual impact. The minimum setback requirement from the nearest occupied buildings is 650 feet and the wind turbine will be sited nearly 800 feet from neighbors or about 20% further than the requirement. The chosen wind turbine also fits within the technical parameters of the Zoning Ordinance with regard to total height of the wind turbine as well as distance between the blade and the ground. The only parameter not met is the distance from occupied buildings on the property, however, the Roman Catholic Diocese of Worcester and the school have established a detailed plan to mitigate any risks with regard to siting a wind turbine in close proximity to a building, including a management plan to shut the wind turbine down in during an icing event.

7. The acoustical assessment provided adequately predicts resulting sound levels as may be measured in accordance with the provisions of the WECF Article for the following reasons:

- Sustainable Energy Developments, Inc. commissioned a study to be done by a professional acoustical engineer, which includes a scope of work that meets requirements of both the Zoning Ordinance and the Department of Environmental Protection standards according to the report.

8. Reasonable efforts have been made to minimize shadow flicker for the following reasons:

- A major component of the decision for turbine placement was to minimize the affect of shadow flicker on the nearby neighborhoods. Studies were commissioned to confirm that the affect of shadow flicker on the surrounding areas will be minimal and have a short duration.

9. The maintenance plan proposed adequately provides for the ongoing safe operation of the WECF for the following reasons:

- The proposed three-tier maintenance plan will consist of remote monitoring, onsite personnel and regular contracted maintenance services. This approach will allow for efficient and reliable diagnostic and maintenance services therefore creating operational safety. If there were to be anything wrong with the turbine, multiple measures will be

employed including remote turbine shutting down. The regular scheduled maintenance of the turbine will detect and correct problems before they manifest. The tower consists of tubular steel and is impossible to climb from the outside.

10. There will not be any substantial adverse affect on the environment or wildlife for the following reasons:

- Sound Energy Developments, Inc. contracted with Louis Berger Group, Inc. to carry out wildlife and avian impact studies that concluded that the project would have minimal impact on wildlife and avian species for a variety of reasons. The project is comparatively small and would not affect wildlife and avian species. The site is not in close proximity to Massachusetts Audubon Important Bird Areas or areas with high populations of wildlife.

The Special Permit was approved with the following conditions:

- That this special permit shall not be valid until the applicant provides evidence, in writing, to the satisfaction of the Code Director:
 - (1) That the owner of the above ground utility transmission lines approves the applicant's plan to replace the overhead utility transmission lines, within the required setback (289' radius), with buried conduit as noted on the revised site plan dated January 25, 2008.
- That prior to the issuance of a building permit to construct the proposed WECF:
 - (1) A peer review, paid for by the applicant, of all structural documents related to the WECF be conducted by a third party structural engineer registered in Massachusetts, and that said engineer certify the overall safety of design and conformance with all applicable laws, to the satisfaction of the Director of Code Enforcement.
 - (2) That a determination from the Federal Aviation Administration of no hazard to air navigation, at the height and location proposed, is submitted to the Director of Code Enforcement and that the WECF complies with all applicable Federal Aviation Administration regulations.
- That:
 - (1) The applicant ensures that the owner / operator of the WECF properly maintains the WECF according to manufacturer's recommendations and specifications at recommended intervals as set forth in "Attachment H" and memo dated January 29, 2008 from Mc Manus and Riordan.
 - (2) That at the time of construction the applicant post a bond equal to the estimated cost (\$164,612) associated with the removal of the WECF should decommissioning fail to be completed as required under Section 13(M) – Abandonment, Discontinuation of Use or Repair.

The Board also voted the following waivers:

- **Standard drawings and structural engineering analysis.**
- **FAA determination of “no hazard to air navigation.**
- **Certification of conformance with FCC regulations.**
- **Waiver of participating landowner’s occupied building setback (required 328’, proposed 134’).**

3. **Zoning Ordinance Amendment – Article IV, Section 10 – Adult Entertainment**

Establishments: David Moore, City Solicitor, explained that the proposed amendment would eliminate most of the buffer zones in the BG-6.0 zone downtown that prohibit adult entertainment uses as well as impose a 90-day timeframe in which to take final action on a Special Permit application. The new buffer zones would only be around liquor pouring establishments, other adult entertainment uses and the main branch of the library. The current buffer zones essentially preclude adult entertainment uses in almost the entire BG-6.0 zone in the downtown area and he explained that it would most likely be declared unconstitutional by the court. Mr. Moore reminded the Board that this is an amendment to the text and not the Zoning Map. He cited a memo from Police Chief Gemme concerning the multiplier effects of criminal activity when adult entertainment uses are located in close proximity to liquor pouring establishments. In the memo he maintains the secondary effects of increased criminal activity are harmful to the city. Attorney Carolyn Conway, representing Brendan Robichaud, said the amendment was drafted for the sole purpose of stopping Mr. Robichaud from opening an adult entertainment establishment at his 271 Main Street nightclub. Dr. Randy Fisher, a paid consultant speaking in opposition to the proposed ordinance amendment, said he studies the secondary affects and disputed the findings of the three studies referenced by the City. He said the Hecht Study rehashes other studies with no original data and too short summaries. He said the Garden Grove study compares expansions of adult entertainment businesses but does no comparisons between adult entertainment uses and bars and taverns. He also said the studies themselves do not support the conclusions they arrive at. Matthew Brunelle, Director of the Nativity Middle School on Irving Street, one of the areas where adult entertainment would be allowed under the proposed amendment, questioned the propriety of having such uses in close proximity to schools. He also said the secondary effect doctrine has been recognized by the Supreme Court which ruled it has merit in 2002. Steve Carpenter said the proposed amendment opens up more sensitive areas of the city for adult entertainment uses. Yvonne Baker said the city does not need a strip club located on Main Street. Marc Tumeinnski said adult entertainment uses pose too high a risk to residential neighborhoods and are not conducive to downtown revitalization. Dr. Tom Johnson disputed Dr. Fisher’s conclusions and said there were too many variables. City Councilor Barbara Haller asked what criteria the Board would use to make its decision. Mr. Traynor responded the Board could consider siting criteria and addressing the secondary affects of a concentration of certain uses in one area. Justin Dewitt said if the use is not allowed on Main Street, it will be allowed near residential areas. Dr. Gladys Suarez said she has worked for years on programs to address violence against women and though she understood the need for the Board to follow the law, she urged sensitivity to the human issues in the areas that would permit such uses near residential areas. Fr. Richard Reidy asked the Board to keep the buffer zones that protect residential areas, churches, schools, etc. from adult entertainment uses. Ann Flynn said she understood the rational for the buffer zone around the main branch of the library but she supported a buffer zone around schools and day care centers as well. A letter dated February 6, 2008 from Deborah Packard, Executive Director, Preservation Worcester, was received stating its position that adult

entertainment is inappropriate in residential and/or historic districts as well as the Lincoln Square area, the Irving and Linden Street area and the Summer Street area. A letter from John Sousa, Trustee, Two Eighty Five, Inc., owner of the property at 287 Main Street, stating opposition to the locating of a strip club in their premises, was received. Mr. Cashman said he thought the proposed amendment was a haphazard response to litigation and he could not support it. Ms. Guzman said if the court deems the existing ordinance unconstitutional and there is nothing in place, there would be serious problems for the city. She said the proposed amendment was a fairly mild alternative. Mr. Cashman said he would have liked to see a more comprehensive approach and was particularly concerned about the Chatham and Irving Street area where adult entertainment use would be allowed under the proposed amendment. Ms. O'Connor said the existing ordinance basically prohibits free speech and said the proposed amendment seems to be a good compromise while prohibiting a concentration of adult entertainment uses in one specific area. Ms. Xifaras Parella said it was a difficult decision to make for everyone. Upon a motion by Margaret Guzman and seconded by Nicole Xifaras Parella, the Board voted 5-0 to close the hearing. Upon a motion by Margaret Guzman and seconded by Anne O'Connor, it was voted 3-2 (Scott Cashman and Nicole Xifaras Parella voted no) to recommend approval of the proposed amendment with the following changes:

- **Subsection C, first paragraph, second line, redact “such any” and insert “any such”.**
- **Subsection C, second paragraph, third line, insert “private way” after “public way”.**
- **Subsection E, first line, insert “governing special permits” after “ordinance”.**
- **Subsection F, third line, insert “or private” after “public” and insert “, off-street parking area,” after “street.”**

4. **687 Millbury Street (PB-08-01) – Amendment to Definitive Site Plan Approval:** Mark Santora represented the applicant, Huy Nguyen, who is seeking to amend a previously approved site plan by modifying the parking layout and making changes to the parking lot and landscaping for a building with five apartments and five commercial retail store fronts. Ms. Bartness informed the Board that the application does not include all the changes made to the plan and she added that more changes are required. Chair Shea advised the applicant that the construction was not according to the plan that had been approved. Since so many revisions were required on the plan, Mr. Shea asked the applicant if he would like to request a continuance. Mr. Nguyen was concerned about the delay and asked if he could proceed with work inside the building. Chair Shea responded that he could not. After some discussion as to a date for a continuance, Mr. Santora sought a continuance to February 20, 2008. Upon a motion by Margaret Guzman and seconded by Nicole Xifaras Parella, the Board voted 5-0 to continue the Amendment to Definitive Site Plan Approval to February 20, 2008 for plan revisions.
5. **852 West Boylston Street (PB-08-02) – Parking Plan Approval:** Kevin Quinn represented the applicant who is seeking to convert the existing two-family dwelling into a restaurant use with the commercial venture on the first floor and retention of one dwelling unit on the second floor. Mr. Adams said the restaurant use would require a grease trap. Ms. Kennedy-Valade said there appeared to be a rear yard setback issue that would require a Special Permit from the Zoning Board of Appeals. Ms. Bartness addressed labeling issues on the plan as well as clarification of the use (retail or restaurant) to determine the number of required parking spaces. Joshua Lee Smith asked about the type and location of lighting in

the parking lot. Chair Shea informed him that lighting would not be allowed to spill over onto abutting property. Mr. Smith also questioned whether parking for the residential use will be reserved on the lot. Mr. Quinn indicated that the residential access would be via Vendora Road and the restaurant access would be via West Boylston Street. Elizabeth and Jim McDonald were concerned about the proliferation of businesses in the area and its affect on traffic and safety. They requested a privacy fence along the property line that divides their property and the 852 West Boylston Street property. Aaron Murray was also concerned about traffic and safety in the area. Upon a motion by Anne O'Connor and seconded by Margaret Guzman, the Board voted 5-0 to continue the Parking Plan Approval to March 5, 2008 for plan revisions.

6. **1 Wigwam Hill Drive (PB-08-03) – Amendment to Definitive Site Plan Approval:** Seth Toch represented the applicant who is seeking to amend a Definitive Site Plan to construct a single-family dwelling. He indicated the intent of the amendment is to construct a smaller dwelling on the lot. In addition to the smaller dwelling, changes include a smaller driveway, a two-car garage instead of a one-car garage, reduction in deck size and changes to the location of the dwelling on the lot which resulted in reductions to the front yard and side yard setback relief granted by the Zoning Board of Appeals. Upon a motion by Anne O'Connor and seconded by Margaret Guzman, the Board voted 5-0 to approve the Amendment to Definitive Site Plan with the following conditions:

- **Label height of retaining wall and if over 4' will require a fence.**
- **Label number of bedrooms.**
- **Label square footage of proposed structure.**
- **Label structure “single-family detached dwelling”.**
- **Legend contains symbols for existing and proposed trees and shrubs but these plantings are not shown on the plan.**
- **All work must conform to the standards contained in the City of Worcester, Department of Public Works & Parks, Engineering Division, Construction Management Section, STANDARD SPECIFICATIONS & DETAILS, most recent edition.**
- **Subject to the Zoning Enforcement Officer’s determination that the parcel complies with all the relevant provisions of the Zoning Ordinance.**
- **The appropriate soil erosion and sediment control measures, including hay bales and silt fences, shall be installed and maintained throughout construction by the applicant to the satisfaction of the Director of Code Enforcement.**
- **Six copies of the revised plan must be submitted to the Planning and Regulatory Services Division prior to release of the decision.**

OTHER BUSINESS

Proposed Expansion Montvale Local Historic District: Mr. Fontane informed the Board that he had transmitted copies of the Preliminary Report of the Proposed Expansion of the Montvale Local Historic District to the Board as required by State law. Attorney Robert Longden distributed to the Board a document explaining the opposition of the American Antiquarian Society to the proposed expansion. Upon a motion by Margaret Guzman and seconded by Anne O'Connor, the Board voted 5-0 to acknowledge receipt of the Preliminary

Report of the Proposed Expansion of the Montvale Local Historic District. Ms. Guzman stated her opposition to the proposed expansion.

Southgate Street – Discontinue and Remove Portion From Official Map: Upon a motion by Margaret Guzman and seconded by Anne O'Connor, the Board voted 5-0 to recommend approval of the petition and to recommend the petition be assigned a Priority 1 designation for the street alteration based on the recommendation of the Department of Public Works.

APPROVAL NOT REQUIRED (ANR) PLANS:

1. **ANR 6614:** Upon a motion by Anne O'Connor and seconded by Margaret Guzman, the Board voted 5-0 to endorse ANR # 6614, Glen Street.
2. **ANR 6615:** Upon a motion by Margaret Guzman and seconded by Anne O'Connor, the Board voted 5-0 to endorse ANR # 6615 Eastern Avenue.
3. **ANR 6616:** Upon a motion by Margaret Guzman and seconded by Anne O'Connor, the Board voted 5-0 to endorse ANR #6616 Goldthwaite Road.
4. **ANR 6617:** Upon a motion by Scott Cashman and seconded by Nicole Xifaras Parella, the Board voted 5-0 to endorse ANR #6617 Washburn Street.

ADJOURNMENT

Chair Shea adjourned the meeting at 9:35 PM.