

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

**February 3, 2010
WORCESTER CITY HALL – LEVI LINCOLN ROOM**

Planning Board Members Present: Anne O’Connor, Chair
Scott Cashman, Vice Chair
Stephen Rolle, Clerk
Andrew Truman
Satya Mitra

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Lara Bold, Division of Planning & Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
Jody Kennedy-Valade, Department of Inspectional Services
K. Russell Adams, Department of Public Works & Parks
Michael Traynor, Law Department
Jennifer Beaton, Law Department

REGULAR MEETING (5:30 PM)

CALL TO ORDER:

Chair O’Connor called the meeting to order at 5:37 PM.

APPROVAL OF MINUTES:

The minutes from the January 13, 2010 Planning Board meeting were held.

POSTPONEMENTS/CONTINUATIONS:

- 1. 222 June Street & 55 Botany Bay Road – Amendment to Zoning Map, RS-7 to RL-7 (ZA-2009-007):** Robert Longden, representative for 222 June Street, LLC, and Botany Bay Properties, LLC, petitioner, requested a continuance of the hearing to the February 24, 2010 meeting in order to provide additional information to the Board regarding the petition. John Ford, an abutter, requested permission to submit a letter on behalf of some neighborhood residents, expressing opposition to the proposed zone change. Chair O’Connor requested clarification from City Solicitor Michael Traynor as to whether or not the Board could accept such a letter. Mr. Traynor stated that there was an official continuance request before the Board; therefore, the Board needed to decide first whether or not to approve such request. He further indicated that if the continuance request was approved, the Board could not accept testimony on the petition, as the hearing had not been opened. In addition, he indicated that Mr. Ford may consider submitting the letter to the Division of Planning and Regulatory Services, whom in turn would forward the letter to the Planning Board members prior to the next meeting. Mr. Ford indicated that he had decided to give the letter to Ms. Bold, whom accepted it. Upon a motion by Mr. Rolle and

seconded by Mr. Cashman, the Board voted 5-0 to approve the request for a continuance to the February 24, 2010 meeting.

- 2. 500 Lincoln Street – Definitive Site Plan (PB-2009-090):** Mark Donahue, representative for RFP VI Hotel Worcester-O, LLC, petitioner, requested a continuance of the public meeting to the February 24, 2010 meeting in order to allow additional time to address changes to the site plan requested by Joseph F. Borbone on behalf of DPWP, in a letter dated January 29, 2010. Upon a motion by Mr. Cashman and seconded by Mr. Rolle, the Board voted 5-0 to approve the request for a continuance to the February 24, 2010 meeting.

Public Hearing:

- 3. Malden Woods Subdivision – Amendment to Definitive Subdivision (PB-2009-087):** Chair O'Connor asked the audience if the petitioner was present; however, no one responded or came forth. Ms. Bold informed the Board that this hearing had been continued from the January 13, 2010 meeting to allow DPRS staff additional time to properly notify the abutters of the public hearing on this application. In addition, Ms. Bold indicated that the petitioner had been notified in writing of the continuation of public hearing on his petition. Mr. Adams stated although the applicant had requested a new sunset date of three (3) years from the last meeting date to January 13, 2013, and although the previous DPWP memorandum dated January 6, 2010 recommended a subdivision sunset date to January 13, 2011, he indicated that upon further review of the application submitted and the realization that the subdivision has more than five (5) lots, DPWP was recommending a new sunset date to February 13, 2015. Mr. Cashman expressed concern that the petitioner had not been present at the January 3, 2010 meeting, was not in attendance at the current meeting, and the Definitive Subdivision had expired on November 17, 2009. He further indicated that any possible approval of the application by the Board would actually be a retroactive approval; therefore, inconsistent with the Zoning Ordinance of the City of Worcester, and the rules and regulations of the Planning Board. In addition, Mr. Cashman indicated that his concern also stemmed from the fact that he was not a member of the Planning Board when this project was approved, and may not be member of the Board on the recommended new sunset date of February 3, 2015. Ms. Bold acknowledged that the applicant had not submitted an Amendment to Definitive Subdivision application until December 15, 2009; however, she also indicated that upon realizing that the applicant had not submitted Amendment to Definitive Subdivision application prior to the expiration date, she sent him a letter on November 27, 2009 to apprise him of this project's standing. Mr. Fontane acknowledged that any possible approval of the proposed Amendment to Definitive Subdivision would in fact be retroactive; however, he indicated that from staff's perspective, if there are no applicable policy changes, it is therefore an approvable plan. Mr. Cashman asked if the applicant had paid a new fee, and Mr. Fontane confirmed that the applicant paid the required fee. Mr. Fontane stated that if the Planning Board were to deny the Amendment to Definitive Subdivision, the applicant would be required to submit a new application plan and pay a full fee. He also indicated that in this case, the Subdivision work had not commenced due to the economic downturn; therefore, he stated that the five (5) years of the new sunset date would allow the applicant to complete all phases of the subdivision as previously planned. Mr. Mitra asked if the petitioner was legally required to be present at the hearing. Ms. Beaton stated that the petitioner was not legally required to be present at the hearing, but indicated that it was preferable for him to be present in order to respond to the Board's concerns. Mr. Fontane stated that although DPRS staff makes efforts to contact applicants when an approval expiration date is fast approaching, the end results of these efforts vary from person to person. Mr. Mitra asked if the five (5) years requested by the applicant and recommended by staff were so that the applicant would not need to have to come back every so often. Mr. Adams stated that if the subdivision was approved today, the

Board would approve it for five (5) years. He also stated that should the proposed Amendment to Definitive Subdivision be denied, the applicant could submit a new application and the potential approval would also be for five (5) years. In addition, Mr. Adams stated that DPWP could not confirm if the approved waivers have changed. Mr. Cashman asked if there were any waivers granted to the applicant in association to this project. Ms. Bold responded that she would be research such information and inform the Board at a later date. Mr. Fontane stated that the work completion dates are set as landmarks to encourage developers to complete work by such dates. He also indicated that in the case of Meadow Brook Subdivision, staff worked closely with the applicant to ensure that the revised plans met current code regulations. Upon a motion by Mr. Rolle and seconded by Mr. Cashman, the Board voted 5-0 to continue the hearing to February 24, 2010 to allow additional time to contact the applicant and request that he be present to answer questions from the Board.

Public Meeting:

4. **845 and 865 Main Street – Definitive Site Plan (PB-2009-083):** Robert Branca and Kenneth Strom, representatives for the petitioner, J&M Batista Family, LP, presented the petition. Mr. Branca stated that the petitioner was seeking Definitive Site Plan approval to construct a drive-through lane for the existing use, construct an escape lane, reconfigure existing curb cuts, reconfigure the parking area to increase the number of parking spaces from sixteen (16) to twenty-three (23), add retaining walls, improve landscaping, lighting and pedestrian access, and relocation of the trash enclosure. He also indicated that in order to implement the project as proposed, the petitioner had submitted a zone change petition and had requested relief from the Zoning Board of Appeals for twenty-two (22) feet access aisle and reduced width escape lane. Mr. Branca acknowledged that cars would not be able to pass through the narrowest five (5) foot portion of the escape lane if other cars were located in the drive through lane. Mr. Strom indicated that the site would improve pedestrian and vehicular safety to the site, create a positive impact in the neighborhood, and enhance the physical setting of the area by building a new retaining wall, repave the school ground adjacent to the project, remove overgrown brush and add new landscaping. He further indicated that the petitioner had entered into an agreement with the Catholic Bishop of Worcester whereby the Bishop would provide the frontage area needed in order to construct a drive-through lane that meets the dimensional requirements. In addition, he indicated that the new and improved parking lot would have excess parking spaces, than the fifteen (15) required spaces. Ms. Bold indicated that the petitioner had met with DPRS staff, and indicated that the site plans submitted incorporated the recommendations suggested by staff. She also stated that if the proposed project was approved, the petitioner should submit revised plans that included parking summary requirements indicating that fast food drive through service requires 1 space for every 60 SF, instead of 1 space for every 40 SF as shown in the current parking summary. In addition, she indicated that the revised plans should show the date of approval and any conditions of approval, of the requested Special Permit, if granted, by the Zoning Board of Appeals. Mr. Truman asked Mr. Branca who would own the retaining wall, and Mr. Branca responded that it would be owned by the petitioner. Ms. Bold indicated that the application had been signed by the Catholic Bishop of Worcester as well, as requested by staff, since they are owners of the school adjacent to the site. Mr. Rolle asked Mr. Strom to clarify the width of the escape lane. Mr. Strom indicated that the width of the escape lane was twelve (12) feet, but indicated that it tapered to ten (10) feet towards the point of service. Mr. Cashman requested clarification regarding the location and use of the trash container. Mr. Strom indicated that the trash container would be located next to the building and would be enclosed to minimize a negative visual impact from Hammond Street, and to remove it from the RG-5 zone where it is not permitted. Mr. Rolle asked for clarification regarding pedestrian accessibility to the site. Mr. Strom indicated that pedestrian access would be provided from Hammond Street because Main Street was very steep and to create an ADA accessible walkway would require

partial removal of the existing retaining wall. Mr. Adams asked if the improvements to the site included installation of a grease trap device to comply with health code regulations. Mr. Branca stated that the site already had a grease trap device installed in the kitchen. Upon a motion by Mr. Cashman and seconded by Mr. Truman, the Board voted 5-0 to approve the Definitive Site Plan with the following conditions:

- Revise the parking summary requirements to indicate the following: fast food drive through service requires 1 space for every 60 SF, instead of 1 space for every 40 SF as shown in the parking summary.
- Submit six copies of a revised plan showing an updated parking summary showing the date of approval and any conditions of approval, if granted, of the requested Zoning Board of Appeals relief.

NEW BUSINESS

Public Hearing:

5. 845 and 865 Main Street – Amendment to Zoning Map, RG-5 to BL-1.0 (ZA-2002-002): Robert Branca and Kenneth Strom, representatives for the petitioner, J&M Batista Family, LP, presented the petition. Mr. Branca stated that the petitioner was seeking approval to amend the zoning map by extending the BL-1 zoning district southerly to include the entire parcel at 845 Main Street and a portion of 865 Main Street. Mr. Fontane indicated that this parcel has been split-zoned BL-1 and RG-5 since at least 1991. Mr. Fontane also stated that the approval of the petition would allow for the expansion of the current food service use and construction of a drive-through access with an escape lane as presented in the concept plan. He indicated that a number of parcels on streets perpendicular to Main Street in this area are also split-zoned BL1 and RG-5 due to the fixed-width simplifying assumption used to create these zoning districts. Mr. Fontane stated that he was recommending that the Board recommend that the City Council approve the requested zone change, provided that is amended to include a five (5) foot zoning buffer along the entire length of the southern edge of the proposed zone change for the following reasons: (a) the vast majority of the 845 Main Street is already zoned BL-1, and this change would facilitate further development of the parcel, (b) the uses allowed in the BL-1 zoning district would be compatible with abutting parcels along Main Street and, provided that there is a zoning buffer, it would be physically and visually buffered from the abutting residential uses, and (c), the inclusion of a five (5) foot buffer along the southerly edge would ensure that the accessory dumpster is not located close to the residential use at 4 ½ Hammond Street. Upon a motion by Mr. Cashman and seconded by Mr. Truman, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Cashman and seconded by Mr. Rolle, the Board voted 5-0 to recommend that City Council approve the requested zone change with the following amendment:

- Include a five (5) foot zoning buffer along the entire length of the southern edge of the proposed zone change.

6. Rustic Drive Extension Subdivision – Amendment to Definitive Subdivision (PB-2009-089): Joan Green, petitioner, presented the petition. Ms. Green indicated that she was seeking Amendment to Definitive Subdivision approval to extend the sunset date, which would allow her to complete work on the subdivision. Mr. Adams stated that DPWP was recommending approval of the sunset date to February 3, 2013, and a new work completion date of September 1, 2010. Ms. Bold indicated that the Planning Board approved a Definitive Subdivision for an eight (8) lot subdivision (Rustic Drive

Extension) on April 26, 2000 and subsequent amendments to the Definitive Subdivision on 1/26/2005 and 11/30/2005. She also indicated that on February 20, 2008, the Board approved a waiver of the Subdivision Regulations and amendment to Definitive Subdivision to extend the sunset date for one year to February 20, 2009. However, she acknowledged that the petitioner did not submit a request for an additional extension after that date. She indicated that DPRS had contacted the owner to remind her that the Subdivision approval had expired. In addition, Ms. Bold stated that given the fact that the subdivision is 90 % completed, DPRS was recommending that Amendment to Definitive Subdivision be approved in order to move the project forward. Therefore, she asked the Board to consider approving the request for a waiver of the provisions of Section VI (I) (2), Worcester Subdivision Regulations with respect to sunset date, the extension of the Amendment to Definitive Subdivision to establish a new sunset date of February 3, 2013, the establishment of a work completion date of September 1, 2010, and the establishment of a work completion date for landscaping of September 1, 2010. In addition, Ms. Bold recommended that the landscaping plan include ALB- resistant tree species, and indicated that the petitioner be required to submit a construction work schedule. Kathleen Bisson, an abutter, expressed concern regarding runoff problems triggered by this project, which, in her opinion, has caused severe damage to her property. Specifically, she indicated that certain sections of the subdivision were not graded correctly and all the trees removed, which in turn caused severe runoff problems to adjacent properties. She also indicated that the runoff problems have been exacerbated by the petitioner's refusal to install a vegetative buffer, which was one of the conditions of approval for the Definitive Site Plan. She further stated that, to date, she has spent over \$7,000.00 addressing the runoff problems cause by the development, which included the building of a retaining wall. She also stated that there the sewer lines and easement were located incorrectly on her property. In addition, she indicated that she has made efforts repeatedly during the last few years to contact the petitioner by telephone and in writing to address these matters, but indicated that her calls and letters have been ignored by the petitioner. Ms. Kennedy-Valade stated that she would request that an inspector from the Division of Inspectional Services be sent to the site on February 4, 2010 to inspect the site and determine if the Definitive Subdivision conditions of approval had been implemented as required. Chair O'Connor stated that most of the issues identified by Ms. Bisson appeared to be legal matters which were beyond the jurisdiction of the Planning Board, and may need to be addressed by a court judge; therefore, she encouraged Ms. Bisson to seek legal counsel for further assessment of the issues identified. Mr. Adams indicated that he has contacted the petitioner several times during the last 2 years on behalf of Ms. Bisson to address the runoff problems. He also acknowledged that the grading of the land may not be accurate as built, and stated that the current conditions of the road did not meet DPWP standards; therefore, he indicated that DPWP would not accept Rustic Drive Extension as a public road until the petitioner has met such standards. Ms. Bold stated that DPRS would defer to DPWP given its proximity to the sewer easement and the Law Department regarding the installation of the landscaping plan. Mr. Adams indicated that if the landscaping plan is not installed as required such matter should be referred to DIS, as it would become an enforcement matter. However, he indicated that, typically, the installation of landscaping plans, which includes the planting of new trees, is completed during the last phase of a subdivision. Chair O'Connor asked Mr. Traynor if the Planning Board could add the installation of the landscaping plan as a condition of approval of the Amendment to Definitive Site Plan. Mr. Traynor indicated that the present petition did not preclude the Planning Board from adding the installation of the landscaping as a condition of approval. Mr. Truman asked Mr. Traynor if the Planning Board could address the issue of the sewer lines being located in Ms. Bisson's land in the present petition. Mr. Traynor indicated that the Board could not; however, he indicated that it would have to be addressed prior to the City accepting a sewer easement. Mr. Adams stated that although the petitioner was required to install a vegetative buffer, he indicated that such landscaping would not address effectively the runoff problems on site. Mr. Adams asked Ms. Green to submit a construction schedule indicating when the sidewalls would be

constructed and the final grading completed. Upon a motion by Mr. Cashman and seconded by Mr. Truman, the Board vote 5-0 to close the hearing. Upon a motion by Mr. Rolle and seconded by Mr. Mitra, the Board voted 5-0 to approve a waiver of City of Worcester Subdivision Regulations Section VI (I)(2) with respect to sunset date and to approve the Amendment to Definitive Subdivision to extend the sunset date to February 3, 2013 with the following conditions.

- The landscaping buffer (arbor vitae) between the applicant's land and Ms. Bisson's land must be planted by September 1, 2010.
- The landscaping plan is to include ALB- resistant tree species.
- The applicant must submit a new work schedule by March 3, 2010.

7. 102 Russell Street – Extension of Time – Definitive Site Plan (PB-2009-089): Dimitrios Vasiliadis and Christina Andrianopoulos representatives for the Greek Orthodox Community of Worcester, petitioner, presented the petition. Mr. Vasiliadis stated that the petitioner was seeking an extension of time for Definitive Site Plan to allow additional time to reach its fundraising goal to construct an addition to the existing building and resurface and re-stripe the parking lot. He also stated that the new addition will become a family center, and indicated that the resurfacing and re-stripping of the parking lot will enhance and facilitate the use of the parking lot by parishioners. In addition, Mr. Vasiliadis indicated that the petitioner has not been able to commence construction of the project due to the current recession. Ms. Bold indicated that DPRS was in support of the extension of time request for one year. Upon a motion by Mr. Cashman and seconded by Mr. Truman, the Board voted 5-0 to approve the requested extension of time for Definitive Site Plan to February 3, 2011.

OTHER BUSINESS:

8. 1300 Grafton Street Subdivision: Mr. Adams stated that per Mr. Campbell's January 12, 2010 request, DPW&P is recommending a bond release for the remaining bond amount: \$30,000 because all work has been completed. Upon a motion by Mr. Truman and seconded by Mr. Cashman, the Board voted 4-0 for a full release of the remaining \$30,000 bond.

9. Carriage House Lane Subdivision: Upon a motion by Mr. Rolle and seconded by Mr. Cashman, the Board voted 5-0 to continue this item to the February 24, 2010 meeting per the request of DPWP.

10. Rustic Drive Extension – Establish a Work Completion Date: Upon a motion by Mr. Rolle and seconded by Mr. Mitra, the Board voted 5-0 to establish a new work completion date of September 1, 2010.

11. ANR Plans:

- **AN-2010-004, Dane Avenue/Otto Avenue:** Upon a motion by Andrew Truman and seconded by Stephen Rolle, the Board voted 5-0 to endorse ANR Plan AN-2010-004
- **AN-2010-005, Rodi Circle:** Upon a motion by Andrew Truman and seconded by Satya Mitra, the Board voted 5-0 to endorse ANR Plan AN-2010-005.
- **AN-2010-006, Pearlbush Path:** Upon a motion by Andrew Truman and seconded by Stephen Rolle, the Board voted 5-0 to endorse ANR Plan AN-2010-006.

ADJOURNMENT:

Upon a motion by Mr. Cashman and seconded by Mr. Truman, the Board voted to adjourn the meeting at 7:02 pm.