

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

JUNE 12, 2006

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Jerry Horton, Vice-Chair
Matthew Armendo
Thomas Hannigan
Morris Bergman
David George

Staff Present: Richard Trifero, Division of Code Enforcement
Joel Fontane, Division of Planning and Regulatory Services
Robin Bartness, Division of Planning & Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
Lara Bold, Division of Planning & Regulatory Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

Chair Leonard Ciuffredo called the meeting to order at 5:30 PM.

CONTINUATIONS

- 1.) **416B Hamilton Street (Z-06-69) Variances:** Jesse Catino, petitioner, presented the petition. Mr. Catino indicated that he was working with an engineer to redesign the garage and requested Leave to Withdraw without Prejudice. Upon a motion by Jerry Horton and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Morris Bergman and David George to grant the petitioner's request for Leave to Withdraw without Prejudice relative to the requested Variance for 10 feet of relief from the 15-foot height requirement for accessory structures and the requested Variance for 245 square feet of relief from the square footage requirement for accessory structures.
- 2.) **50 Green Hill Parkway (Z-06-77) Special Permit/Variance:** Leila Bessa, petitioner, and Maydee Morales, representative for the petitioner, presented the petition. Ms. Morales stated that the petitioner had requested an estimate for the construction of a driveway for six off-street parking spaces from two contractors, as requested by the Board. She also stated that the petitioner had only received one estimate so far. Ms. Bartness, indicated that lot appears to be large enough for six parking spaces but stated that the plan submitted by the petitioner's contractor has incorrect dimensions and does not provide enough information. Ms. Bessa confirmed that she received a fax from staff with an example of

what the plan should look like. Chair Leonard Ciuffredo asked that the plan submitted by the contractors show the location of the house in relation to the driveway as well as the dimensions of the driveway and the parking spaces. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to continue the public hearing until July 24, 2006 with the condition that the applicant submit a letter to extend the constructive grant deadline to August 15, 2006.

- 3.) **6 Second Street (Z-06-72) Special Permit:** Philip Kenneway, petitioner, presented the petition. Staff indicated that the relief requested is less than what was initially advertised; therefore, the item did not have to be readvertised. Mr. Kenneway stated that although the plan submitted stated “proposed two-family”, his intent was to build an additional single-family dwelling with garage space on the first floor. Ms. Bartness clarified that the applicant seeks to build a duplex with a zero lot line. She also stated that the proposed addition does not fit in with the neighborhood and that such additions do not reflect the intent of the zoning ordinance. Chair Leonard Ciuffredo indicated that he was not in favor of the proposed addition. Mr. Fontane stated that staff was beginning to work on an official policy regarding additions to existing dwellings and that staff’s recommendation is that such additions do not reflect the intent of the zoning ordinance. Morris Bergman suggested the applicant may want to employ legal counsel to assist with the petition. Ms. Bartness expressed concern with ambient light issues. Matthew Armendo stated that the proposed addition was too big, that it overshadows the original dwelling, and doesn’t fit in with the neighborhood. Jerry Horton suggested that the Board may be more amenable to granting relief for a single-family dwelling on the additional lot even though it would require Variances. Ms. Bartness stated that the applicant would need 5 feet of relief from the frontage requirement and 1,910 square feet of relief from the gross dimensional requirement, but that the house should also meet the rear, side and front yard setback requirements. Mr. Kenneway stated that he was not aware of that option and stated that he would like to withdraw his petition and reapply. Upon a motion by Matthew Armendo and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Morris Bergman, and David George to grant the petitioner’s request for Leave to Withdraw without Prejudice relative to the requested Special Permit for expansion or change of a pre-existing, nonconforming use and the requested Special Permit to allow single-family attached (townhouses) in an RL-7 zone.

NEW HEARINGS

- 4.) **22 Sturgis Street (Z-06-91) Special Permits:** Brian Malone, petitioner, presented the petition. Mr. Malone indicated he was seeking to convert his house from a single-family dwelling to a two-family dwelling, because the structure was originally set up as a two-family dwelling as indicated by the presence of a kitchen upstairs as well as downstairs. He also stated that the house has been consistently assessed as a single-family dwelling. Ms. Bartness stated that the City supports this type of residential conversion especially since the applicant is creating additional off-street parking. Ms. Bartness clarified that the addition of parking spaces to the property triggers the need for a Special Permit for expansion or change of a pre-existing, nonconforming structure as well as the Special Permit for residential conversion, even though the footprint of the building would not change. Morris

Bergman stated that, in the future, the petitioner should seek relief first before undertaking any renovation work for similar properties. Upon a motion by Matthew Armendo and seconded by Jerry Horton, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and Morris Bergman to approve the requested Special Permit for residential conversion from a single-family dwelling to a two-family dwelling and the requested Special Permit for expansion or change of a pre-existing, nonconforming structure.

- 5.) **9 Falcon Street (Z-06-93) Variance:** Richard and Laura Elias, representatives for George and Elizabeth Elias, petitioners, presented the petition. Ms. Bartness questioned whether the item was properly before the Board since the Architectural Access Board states that handicap accessible structures, such as ramps, are exempt from zoning requirements in commercial districts and wondered if the same rules would be applicable to residential structures. Mr. Elias showed Board members the plan for an addition to the side of the house which includes a handicap ramp, a side porch (mudroom) and a foyer. Mr. Trifero, stated that the proposed foyer may trigger the need for the Variance and asked the Board for time to review the matter further. David George stated that he would like to see the fee refunded if the applicants do not need relief. Morris Bergman suggested that the Law Department review the matter. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to continue the item until the June 26, 2006 meeting to allow staff sufficient time to research the necessity of the Variance for the proposed addition.
- 6.) **106 Barnard Road (Z-06-95) Variance/Special Permit:** Aleksander Dhima, petitioner, presented the petition. Mr. Dhima indicated that he had received a building permit to rebuild his porch in October 2005, and that he had subsequently been instructed by a building inspector to seek relief for the same porch in March 2006 because it encroaches into the front yard setback. Mr. Dhima stated that the new porch is larger than the previous porch, and that it extends approximately one foot farther into the front yard setback than the previous porch. He also stated that he had included the dimensions of the proposed porch with his building permit application. Morris Bergman stated that the porch was consistent with other front porches in the neighborhood. Mr. Dhima stated that he did not have a copy of the plan he submitted with his building permit application with him. Morris Bergman suggested that since the applicant had not received a cease and desist order that the Board look favorably upon the petition. Ms. Bartness suggested that instead of a cease and desist order, the applicant may have been told to apply for relief from the Board. Mr. Trifero stated that the building permit was issued before he was Acting Director of Code Enforcement and that he could review the building permit, if necessary. Upon a motion by Jerry Horton and seconded by Thomas Hannigan, the Board voted 5-0 to close the public hearing. Upon a motion by Jerry Horton and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and Morris Bergman to approve the requested Variance for 13 feet of relief from the front yard setback and the requested Special Permit for expansion or change of a pre-existing, nonconforming structure.

- 7.) **9 Polito Drive (Z-06-96) Variance:** William Wood, petitioner, presented the petition. Mr. Wood stated that the extra dry storage space above the proposed garage would be for his wife's teaching materials. He also acknowledged that staff had recommended constructing a garage with a larger footprint and less height, which would not require a Variance, but he felt that aesthetically a taller structure with a smaller footprint would be better for the neighborhood. Mr. Wood also indicated that his house is the last dwelling on a dead end street and that he would not put plumbing in the garage. Thomas Hannigan suggested using a single membrane roof to prevent leaking. Ms. Bartness suggested the applicant could also attach the garage to the house and match the roofline, which would allow the applicant to build a higher garage than the proposed detached garage. Mr. Wood indicated that he had other storage alternatives and that flooding is not a regular problem on his lot. Matthew Armendo stated that the applicant has not shown a unique hardship. Upon a motion by Thomas Hannigan and seconded by Matthew Armendo, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 2-3 by Leonard Ciuffredo and Thomas Hannigan (Matthew Armendo, Jerry Horton, and David George opposed) to approve the requested 5 feet of relief from the 15-foot height requirement for the proposed garage with storage space above. Therefore, the motion did not pass, and the petition was denied.
- 8.) **52 Darrow Street (Z-06-97) Variance:** Maureen Richard, petitioner, presented the petition. Ms. Richard stated that she hoped to build a 24' x 24' addition for a two-car garage with a room above it. Ms. Bartness stated that the location of the original duplex was situated to exactly meet the rear yard setback requirements and that a deck already encroaches six feet into the rear yard setback. Matthew Armendo stated that the proposed addition would be too large in relation to the existing building and would be clearly visible from neighboring properties. Ms. Richard indicated that she also wanted the proposed addition because it would remove the inclined driveway. She indicated that she would be willing to make the structure symmetrical with the other side of the duplex. David George expressed concern with the asymmetry of the proposed addition. Upon a motion by Matthew Armendo and seconded by Jerry Horton, the Board voted 5-0 to close the public hearing. Upon a motion by Jerry Horton and seconded by Matthew Armendo, it was voted 0-5 (Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Thomas Hannigan, and Morris Bergman opposed) to approve the requested Variance for 9 feet, 7.2 inches of relief from the rear yard setback requirement. Therefore, the motion did not pass, and the petition was denied.
- 9.) **1068 West Boylston Street (Z-06-98) Special Permit:** James and Ellen Gardner, petitioners, presented the petition. Mr. Gardner stated that he and his wife would like to buy and sell used cars for their current customer base. He also indicated that they would want to sell no more than 10 cars at a time. He also stated that there are currently between 5-20 cars parked on the lot for the current auto body business and that there is parking for customers on the rear and side yards of the property. Mr. Gardner explained that the 10 cars would be located at the front of the property facing West Boylston Street and that he and his wife were open to the Board's suggestions or conditions of approval. John Bourke expressed concern with traffic issues, lighting of the site, the number of cars that would be on the site and the impact of the proposal on his ability to sell his house. Ms. Gardner

stated that the hours of operation would not change. Phyllis Sullivan also expressed concern with the impact of the proposal on the real estate value of her home which is across the street from the site and stated that there are already many cars on the site. Mr. Gardner clarified that the hours of operation for motor vehicle sales would be 7:30 a.m. to 5:30 p.m., no nights, no weekends, and that there would be no additional lights added to the property. He also explained that, currently, there are no vehicles for sale on the property. Lori Burke stated that the use was formerly a car wash, which she preferred because it was quiet. Angela Halleran stated that there are many vehicles on the lot already. She also expressed concern with wetlands, cars parked on the easement in the rear of the lot, the lack of space for a buffer, and the impact of a used car lot on her property value. Mr. Gardner indicated that he had owned the property since March 9, 2006. David George reminded the applicant and abutters that the Board could approve Special Permits with conditions. Ms. Bartness suggested that the BL-1.0 zone is meant primarily for business uses convenient to the neighborhood and that car sales is not the most appropriate use for this area. Matthew Armendo stated that he was not opposed to granting relief with conditions. Ms. Halleran expressed concern that any conditions imposed on the Special Permit would have to be monitored by the neighbors and would, thus, be a burden on the neighbors. Jerry Horton suggested that the neighbors and applicants discuss the project and particularly discuss the easement issue, landscaping and buffers, hours of operation, lighting, the number of cars and where they are located on the lot. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to continue the public hearing until June 26, 2006 to allow the applicants and neighbors sufficient time to discuss the project and resolve some of their issues.

10.) 766 Main Street (Z-06-99) Special Permit: Michael Liu, representative for the YMCA, petitioner, presented the petition. Ms. Bartness requested that the Board condition approval upon the parking plan approved by the Worcester Planning Board. Upon a motion by Matthew Armendo and seconded by Jerry Horton, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and Morris Bergman to approve the requested Special Permit for expansion or change of a pre-existing, nonconforming use with the following condition:

- That the proposed structure be built in accordance with the approved parking plan brought before the Worcester Planning Board.

11.) Gilman/New Streets (Z-06-100) Variance: Tammy Vescera, petitioner, presented the petition. Upon a motion by Matthew Armendo and seconded by Jerry Horton, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and David George to approve the requested Variance for 4 feet, 9 inches of relief from the frontage requirement for the proposed single-family dwelling.

12.) 35 Colton Street (Z-06-102) Variances: Don O'Neil, representative for Brian and Paul Daigneault, petitioners, presented the petition. Mr. O'Neil stated that the relief was necessary to build on the lot and that existing lots in the neighborhood had similar frontage and area deficiencies. Upon a motion by Jerry Horton and seconded by Matthew Armendo,

the Board voted 5-0 to close the public hearing. Upon a motion by Jerry Horton and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, and Morris Bergman to approve the requested Variance for 400 square feet of relief from the gross dimensional requirement and the requested Variance for 4 feet of relief from the frontage requirement for the proposed single-family dwelling.

13.) 166 & 172 Stafford Street (Z-06-103) Special Permit: Sam DeSimone, representative for 85 Green Street, LP, petitioner, presented the petition. Mr. DeSimone indicated that the petitioners have not secured tenants for the property yet, but would like to upgrade the property for use as general office and/or warehousing and distribution space. He also stated that he had spoken with neighbors and staff and, although not required, the petitioners had agreed to add landscaping along Lavallee Terrace and the northern property line and seasonal planting boxes in the front of the property. He also explained that the site has enough parking spaces even if the building is used entirely for office uses. Michael Carry spoke in favor of the petition. David George expressed concern that the Board had no information regarding the proposed breakdown of the uses. Mr. DeSimone stated that if the Special Permit was approved, the applicants were only proposing uses allowed in office general, office professional and warehousing/distribution as set forth in Article IV, Table 4.1 of the Zoning Ordinance to occupy the space. Mr. Fontane stated that the Board could condition approval of the Special Permit upon certain uses but could not condition it to a specific applicant or tenant since Special Permits run with the land. He also stated that a Special Permit for the parcel was preferred over the proposed zone change for the area. Ms. Bartness suggested the following conditions for the site: 1.) Limit the hours of operation for any warehousing from 7:00 a.m. to 7:00 p.m. 2.) Remove the chain link fence and erect a wood stockade fence along Lavalee Terrace and the north property line 3.) Screen the utility area 4.) Use all-season plantings in the planter boxes 5.) Place all-season planter boxes along Eureka Street, and 6.) Remove the chain link fence along Stafford and Eureka Streets because no fencing is necessary on those two streets. Ms. Bartness stated that most other issues would be addressed through the Planning Board's review. Morris Bergman stated that he did not want to burden the applicant. Ms. Bartness stated because the Planning Board cannot condition approval of the Parking Plan on improved landscaping that it is suggested that this Board do so. Upon a motion by Thomas Hannigan and seconded by Matthew Armendo, the Board voted 5-0 to close the public hearing. Upon a motion by Thomas Hannigan and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, and David George to approve the requested Special Permit for expansion or change of a pre-existing, nonconforming use/structure with the following conditions:

- The hours of operation for any freight/warehousing or distribution uses will be limited from 7a.m. to 7 p.m.
- The applicant will provide a wood stockade fence and proposed landscaping along Lavalee Terrace and along the northern property line of the site.
- The uses will be limited to office general (#17), office professional (#18), and wholesale business or storage (#27) as described in Article IV, Table 4.1 of the City of Worcester Zoning Ordinance.
- The utility area will be screened.

- All season planter boxes will be placed along Stafford and Eureka Streets.

14.) 66 Whipple Street (Z-06-104) Special Permit/Variance: Upon a motion by Jerry Horton and seconded by Matthew Armendo, the Board voted 5-0 to table the hearing.

15.) 612 Mill Street (Z-06-105) Special Permit: Jonathan Finkelstein, representative for Nassif Enterprises, Inc., petitioner, presented the petition. Mr. Finkelstein stated that Mr. Nassif received a Special Permit for auto sales for two cars by the Zoning Board on April 26, 2004, and subsequently received a license from the Police Department for eight cars, at which time he began displaying eight cars. Mr. Finkelstein indicated that Mr. Nassif received a cease and desist order from the Code Department and, thereafter, reduced the number of cars to two cars and added landscaping. Chair Leonard Ciuffredo indicated that he was not in favor of an expansion of auto sales at this location. Matthew Armendo stated that he had originally voted for two cars and did not think additional cars were appropriate for this site. Ted Zander expressed concerns with any additional lighting or signage. Morris Bergman suggested that the area would not be suitable for many other uses. Mr. Finkelstein stated that an additional six cars to the site would not generate a substantial change in traffic patterns and stated that the site is essentially burdened by the two-family dwelling. Donald Courtney, Frank Faffa, Carlos Granger, Jean Depari, and Margaret Abboud spoke in favor of the petition. Jonathan Finkelstein stated that the site has a 4-6 foot retaining wall which screens the adjacent properties. Mr. Finkelstein stated that visitors to the business currently park in the tenants' parking spaces when they come look at cars. Mr. Nassif indicated that there is space for snow storage in the back of the lot. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to close the public hearing. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo and Morris Bergman to approve the requested Special Permit for motor vehicle sales in a BL-1.0 zone with the following conditions:

- The applicant may have no more than six cars on display at any one time.
- There can be no more than three vehicles facing Mill Street at any one time; all other vehicles for sale should be located elsewhere on the lot.
- There can be no additional signage or lighting added to the site.

16.) 443 Lincoln Street (Z-06-106) Variance: Don O'Neil, representative for Cousins Together, LLC, petitioner, presented. Mr. O'Neil stated that the petitioner seeks to rehabilitate the existing Sunoco gas station into a proposed Quiznos Sub Shop. He also indicated that the site has enough parking spaces for the proposed use. Ms. Bartness stated that the Department of Public Works did not have any comments regarding the access aisle width, and that the Division of Planning and Regulatory Services supported the reuse of the property with the existing 21' drive aisle. Upon a motion by Thomas Hannigan and seconded by Jerry Horton, the Board voted 5-0 to close the public hearing. Upon a motion by Thomas Hannigan and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Thomas Hannigan, and David George to approve the requested Variance for 3 feet of relief from the 24-foot aisle width requirement for the proposed conversion of the existing building into Quiznos Sub Shop.

- 17.) **92 Shrewsbury Street (Z-06-107) Special Permit:** Steven Greene, petitioner, presented the petition. Mr. Greene stated that, at the time of filing, the petitioners filed as optionees, but indicated that they now have a lease agreement. Gerald Ezeroni, representative for Brew City restaurant, expressed concern with the lack of parking. Ms. Bartness indicated that the site's previous lack of parking is a protected, nonconforming use and stated that through the Planning Board's parking relief granted through the Flexible Parking Overlay District standards, the petitioners are providing sufficient spaces for the new seating. Mr. Fontane added that the restaurant could potentially fit more vehicles on the site with valet parking. Mr. Greene indicated that the restaurant was planning an investment of \$1.6 million. He also stated that the second floor of the restaurant would be the location of the new seating, and that the restaurant would occasionally have live entertainment such as a piano player. Upon a motion by Matthew Armendo and seconded by Thomas Hannigan, the Board voted 5-0 to close the public hearing. Upon a motion by Thomas Hannigan and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and Morris Bergman to approve the requested Special Permit for expansion or change of a pre-existing, nonconforming use.
- 18.) **26 Boyd Street (Z-06-108) Variances:** Don O'Neil, representative for Nicholas Grande, presented the petition. Mr. O'Neil stated that the existing garage would be taken down and parking would be provided underneath the proposed dwelling units. He also stated that the neighborhood is a mix of single and two-family dwellings and duplexes. Morris Bergman stated that the proposed duplex doesn't fit in with the character of the neighborhood. John Lamarkia expressed concern with increased rental units in the area and questioned whether a two-car garage would be adequate. Mr. O'Neil clarified that the units would be sold separately and would provide two parking spaces per unit as required by the zoning ordinance. David Hill stated that the duplex would not fit into the character of the neighborhood and was concerned about parking. Upon a motion by Thomas Hannigan and seconded by Matthew Armendo, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 0-5 by (Leonard Ciuffredo, Jerry Horton, Thomas Hannigan, Matthew Armendo, and David George opposed) to approve the requested Variance for 472 square feet of relief from gross dimensional requirement for Lot 1 and the requested Variance for 529 square feet of relief from the gross dimensional requirement for Lot 2. Therefore, the motion did not pass and the petition was denied.
- 19.) **66 Whipple Street (Z-06-104) Special Permit/Variance:** Upon a motion by Jerry Horton and seconded by Matthew Armendo, the Board voted 5-0 to reconvene the hearing for 66 Whipple Street. Neither the petitioner, nor any representative for the petitioner, was present. Robert Lauria spoke in opposition to the requested relief for parking, stating that many houses on the street already has a difficult parking situation, especially in the winter. He also stated that Whipple Street has recently experienced increased traffic due to the changes on Route 146. Beth Stevens stated that most houses on the street do not have driveways and that the parking situation is difficult during all seasons. Ms. Bartness stated that the proposed addition without parking makes the site more nonconforming. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by Jerry Horton and seconded by David George, it was

voted 0-5 (Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Thomas Hannigan, and David George opposed) to approve the requested Special Permit for expansion or change of a pre-existing, nonconforming use, the requested Special Permit to allow multi-family low rise in an RL-7 zone, and the requested Variance for relief from two off-street parking spaces. Therefore, the motion did not pass and the petition was denied.

OTHER BUSINESS

- 20.) **Constructive Grant Extension Letters:** Matthew Armendo suggested that staff bring standard forms to give to applicants regarding extension of constructive grant deadlines.
- 21.) **Approval of the Minutes:** Upon a motion by Thomas Hannigan and seconded by Matthew Armendo, the Board voted 5-0 to approve the May 22, 2006 minutes.

ADJOURNMENT

Chair Leonard Ciuffredo adjourned the meeting at 9:25 p.m.