

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

August 11, 2008

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
David George, Vice-Chair
Andrew Freilich
Lawrence Abramoff
Brian Murphy

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Judy Stolberg, Division of Planning & Regulatory Services
John Kelly, Division of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

REQUESTS FOR WITHDRAWALS, CONTINUANCES, TIME EXTENSIONS

1. **10 Ronald Drive (ZB-2008-064) – Variance:** The petitioner requested a continuance to September 8, 2008 due to a scheduling conflict. Sharon Healey, an abutter, objected to the continuance saying they had been attending Conservation Commission, Planning Board and Zoning Board of Appeals meetings for months with no resolution. Attorney Brian Beaton said this was the first continuance request for this item and that the matter was previously postponed in order to have five Board members present for the hearing. Chair Ciuffredo assured Ms. Healy that the Board would not grant another continuance. Mr. George concurred. Upon a motion by David George and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to continue the hearing to September 8, 2008.
2. **1 Envelope Terrace (ZB-2008-066) – Special Permit and Variance:** Verizon Wireless, petitioner, requested a continuance to August 25, 2008 in order to address issues raised by staff. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to continue the hearing to August 25, 2008.

CONTINUED ITEMS

3. **1 Oxford Place (ZB-2008-057) – Special Permit and Variance:** Attorney Todd Brodeur, representative for the petitioner, Darlene Domian, said she is seeking a Special Permit for residential conversion to four dwelling units and a Variance for relief of four parking spaces

from the off-street parking requirement. He indicated that they do not need the Variance for parking relief any longer because they had revised the plan to meet the parking requirement. He said, at the request of the Board, they had met with neighbors and representatives of the Crown Hill Neighborhood Association, and had agreed on all issues except for the condition that the dwelling be owner-occupied. He said the owners live in Somerville and work in Boston and do not plan to move into the City. He said they had purchased the property at a foreclosure auction as an investment and have spent approximately \$90,000.00 for repairs and upgrades to the building. He said they had purchased the house as a three-family but were aware that there was a fourth unit that was not permitted and they were trying to bring the building into compliance. Ms. Domian said they had hired a management company that would be responsible for the property. Mark Tumeinski, an abutter as well as clerk of the Crown Hill Neighborhood Association, expressed concerns relative to street density issues, such as traffic, noise and littering, parking difficulties and the fact that, since most of the homes in the area are owner occupied, it would be a deviation from the character of the neighborhood if this property were not owner occupied. Randy Bloom said the precedent had been set when a condition of approval for an additional unit at 14 Oxford Street was that the house be owner occupied. Janet Merrill said she was the owner of that property and had no problem with that condition for her property and thought a similar condition should be set for 1 Oxford Place. City Councilor Barbara Haller said she understood that Ms. Domian did not create the illegal fourth unit, but had purchased the property knowing the fourth unit was not permitted. Mr. Abramoff asked if the fourth unit could be combined with the other unit on the first floor. Ms. Domian said she did not have the financial means to do that. Mr. Freilich asked how many units were occupied and Ms. Domain answered that three were currently occupied. Mr. Brodeur reiterated that the concerns raised can be addressed. However, Ms. Domian is unwilling to occupy one of the units. She said she had assumed that she could get the fourth unit permitted after seeking relief. Mr. Freilich asked how long she had owned the property and Ms. Domian responded that she purchased the property in January, 2008. Mr. Freilich asked Mr. Kelly if any complaints had been received since Ms. Domian has been the owner of the property. Mr. Kelly said there had been no complaints. Ms. Haller said there had been party issues and car repair issues. She noted that Ms. Domian appeared to be a responsible owner. However, experience has shown that absentee landlords do not properly oversee their properties. Ms. Haller questioned the message that would be sent by approval and said the message would be construct what you will and then come for approval. Chair Ciuffredo and Mr. George both said they were not in favor. Mr. Brodeur noted that, if the Board were going to deny the petition, they would agree to the owner occupied condition even though Ms. Domain would not actually live there. She stated she would leave one unit vacant until such time that she opted to live there. She said that unless she could make the fourth unit compliant, she cannot refinance the property. Mr. Murphy said he would be disinclined to approve the Special Permit with conditions that won't be complied with. Mr. Brodeur requested Leave to Withdraw without prejudice the Variance for relief of four parking spaces from the off-street parking requirement since the plan had been revised to meet the parking requirement. Upon a motion by David George and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by David George and seconded by Andrew Freilich, it was voted 4-1 (David George voted no) to approve the following:

- **Special Permit: Residential conversion into four dwelling units**

The Special Permit was approved with the following conditions:

- **That the property is owner occupied.**
- **That a licensed management company be retained to be available 365 days per year with 24-hour telephone access for neighborhood complaints.**

Upon a motion by David George and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the request for Leave to Withdraw without prejudice the following:

- **Variance: Relief of four parking spaces from the off-street parking requirement**

4. **1279-1283 Pleasant Street (ZB-2008-049) – Special Permit:** Attorney Todd Rodman, representing Robert Stake, petitioner, said he is seeking a Special Permit to allow a food service use including consumption of alcoholic beverages. He said there are two buildings, one three-family dwelling and a vacant one-story storefront building. The latter would be used as a sports bar with a total occupancy of 24 people. He indicated that there are fourteen parking spaces on the site, six of which are dedicated to the residential use leaving eight spaces for the sports bar. Since twelve spaces are required for the proposed use of the vacant building, the owner has entered into an agreement to lease four spaces for parking for the sports bar. He stated the hours of operation would be noon to 12:30 a.m. daily. He said no cooking would be done on the premises, however, he has an agreement with a nearby pizza establishment to deliver pizza and other food items to the sports bar. Melissa Genatossio, whose property directly abuts the property in question, expressed concerns relative to safety, traffic, noise, smoking outdoors and questioned whether it was an appropriate use for the area. Deb Lapriore said parking on Prouty Lane was a concern. Mr. Stake indicated that they would keep doors and windows closed. He also said he did not plan on having loud music playing. He said he envisioned a small neighborhood bar with limited hours of operation. Chair Ciuffredo asked how much Mr. Stake planned to invest in the business. He said he was looking at a \$75,000.00 investment. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 to approve the following:

- **Special Permit: To allow food service including consumption of alcoholic beverages**

The Special Permit was approved with the following conditions:

- **That lease agreement for four additional parking spaces is provided.**
- **That hours of operation are to be noon to 12:30 a.m. daily.**
- **That occupancy be limited to 24 people.**
- **That there be no outdoor seating.**

- **That all plantings be completed prior to issuance of Occupancy Permit.**
- **That doors are not to be propped open at any time.**
- **That there be no food related exterior exhausts.**
- **That there be a smoking area that is to be enclosed within a stockade fence.**
- **That approval is subject to Amendment to Definitive Site Plan approved by the Planning Board.**

5. **90 East Central Street (ZB-2008-051) – Amendment to Special Permit and Amendment to Variances:** Attorney Donald O’Neil, representing James Belletete, petitioner, is seeking an Amendment to Special Permit for expansion or change of a pre-existing nonconforming use/structure, Amendment to Variance for 3,021 square feet of relief from the gross dimensional requirement, Amendment to Variance for 40 feet of relief from the frontage requirement and Amendment to Variance for relief of two parking spaces from the off-street parking requirement in order to extend and/or modify the one year trial period imposed by the May 14, 2007 Special Permit and Variances decision of the Zoning Board of Appeals to convert the existing structure from a single-family dwelling to a two-family dwelling. Mr. O’Neil said there was confusion because he assumed the trial period would not begin until the work was completed and an Occupancy Permit had been issued. He noted that it would be difficult to have a trial period if the second unit were not occupied. He said the Building Permit had been obtained in April, 2008 and he had advised his client not to start the work until the Board approved the amendments. He asserted the trial period should be one year from the date of occupancy and that if, during that time, no complaints had been received by the Division of Inspectional Services, the decision becomes final. Mr. Fontane said the original filing was to rectify an illegal apartment and he thought one year was ample time to complete the necessary work to make it compliant and fully permitted. Mr. Kelly reminded Mr. O’Neil that the Building Permit should be amended to convert the single-family dwelling to a two-family dwelling because the Building Permit that was issued was for construction of a deck and stairway to provide another means of egress. Upon a motion by Lawrence Abramoff and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the following:

- **Amendment to Special Permit: Expansion or change of a pre-existing nonconforming use/structure**
- **Amendment to Variance: 3,021 square feet of relief from the gross dimensional requirement**
- **Amendment to Variance: 40 feet of relief from the frontage requirement**
- **Amendment to Variance: Relief of two parking spaces from the off-street parking requirement**

The Amendment to Special Permit and Amendments to Variances were approved with the following conditions:

- **That all required building permit work must be completed by December 31, 2008 for the conversion from a single-family dwelling to a two-family dwelling.**
 - **That the trial period of one year is from the date of the Board's final action.**
6. **65 & 70 James Street (ZB-2008-065) – Variance:** Daniel Harden presented the petition for a Variance for relief of 381 parking spaces from the off-street parking requirement in order to bring the site into compliance with off-street parking requirements and to combine the parking for both structures since they are held under common ownership. Mr. Harden maintained that the current uses do not have simultaneous parking demands and explained that the church uses are weekend uses, the office uses are daytime uses and the nightclub use is an evening use. He stated that the parking lots are never full. Staff had indicated that landscaping was needed for the site. However, Mr. Harden said the site has contamination that was recently under review by the Army Corps of Engineers and no soil disturbance is allowed. He said the property underwent remediation as did the abutting properties. He said they were able to cap the area by using an extra thick paving because the toxicity levels are low. Landscaping, including planting boxes, he said, are not allowed because of the excavation required and because they cannot risk runoff from the watering that would be necessary for the survival of the plantings. Mr. Fontane said staff was unaware of the issues presented and needed time to study the documentation submitted by Mr. Harden. Chair Ciuffredo asked if they had been able to secure additional parking through leasing and Mr. Harden responded that they would be able to provide twenty-three spaces on the adjoining property once the Army Corps has completed remediation. He said that there are no other nearby sites that can be used for parking. Mr. George told Mr. Harden that some alternatives for landscaping should be considered or, if it is not possible, he would like to see proof that it cannot be done. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to continue the hearing to September 8, 2008.
7. **22 Catharine Street (ZB-2008-063) – Variances:** Stephen Hart, representative for East Side Community Development Corporation, explained to the Board that they are seeking a Variance for 5 feet of relief from the frontage requirement, a Variance for 2,029 square feet of relief from the gross dimensional requirement, a Variance for relief of two parking spaces from the off-street parking requirement and a Variance to allow parking within the front yard setback in order to demolish the existing structure and to construct a two-family dwelling. He said the existing structure has been abandoned for ten years and has suffered substantial damage from exposure to the elements. He said the structure is on the MACRIS list and a Demolition Delay Waiver from the Historical Commission is required before demolition can occur. He said the Historic Commission toured the building on July 31, 2008 and will make a decision relative to the Demolition Delay Waiver at its August 14, 2008 meeting. Mr. Fontane told the Board that if the Historic Commission approves the waiver, demolition can proceed as soon as permits are obtained. However, if the Commission denies the waiver, the petitioner would have to wait for twelve months before demolishing the building or explore other avenues such as rehabbing the structure or selling the property. Mr. Hart said it was the intention of the East Side Community Development Corporation to provide an affordable home ownership opportunity that would be owner-occupied with one rental unit. He indicated that rehabilitation of the current structure would be cost prohibitive. Chair

Ciuffredo reminded Mr. Hart that the CDC needs to address landscaping issues when it proposes this type of in-fill housing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the following:

- **Variance: To allow parking within the front yard setback**
- **Variance: 5 feet of relief from the frontage requirement**
- **Variance: 2,029 square feet of relief from the gross dimensional requirement**
- **Variance: Relief of two parking spaces from the off-street parking requirement**

The Variances were approved with the following conditions:

- **That one 3” caliper tree (from suggested list in the Zoning Ordinance) be planted on Catharine Street**
- **That each side of the driveway be green space and not be paved.**
- **That the open space on either side of the driveway be labeled on the revised site plan.**
- **That decorative fencing be installed by the East Side Community Development Corporation along the front of the property. Said fencing must be an open design and be 4 feet in height.**
- **That approval is subject to the rendering submitted.**

8. **58 Suffolk Street (ZB-2008-068) – Variances:** Attorney Donald O’Neil, representative for Pandian Arumugan, petitioner, explained to the Board that they are seeking a Variance for 9.49 feet of relief from the frontage requirement for Lot A, a Variance for 9.49 feet of relief from the frontage requirement for Lot B, a Variance for 8.8 feet of relief from the frontage requirement for the existing three-family dwelling and a Variance for 4 feet of relief from the side yard setback requirement for the existing three-family dwelling in order to divide the two lots, bring the existing three-family dwelling into compliance and construct a zero lot line single-family semi-detached dwelling on Lots A&B. He said after the land is divided, each lot would still have substantial size. Mr. George said he was concerned about the parking and would like to see hammerhead turns, preferably using grass pavers instead of asphalt for the driveway for each of the semi-detached units. Chair Ciuffredo noted that he is not in favor of the petition because of the vast number of existing homes for sale in the city presently and stated his belief that new construction impedes the sale of these homes in the present market. Upon a motion by David George and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by David George, it was voted 4-1 by David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy (Leonard Ciuffredo voted no) to approve the following:

- **Variance: 8.8 feet of relief from the frontage requirement for the existing three-family dwelling**

- **Variance: 4 feet of relief from the side yard setback requirement for the existing three-family dwelling**
- **Variance: 9.49 feet of relief from the frontage requirement for Lot A**
- **Variance: 9.49 feet of relief from the frontage requirement for Lot B**

The Variances were approved with the following conditions:

- **That a hammerhead turn using grass pavers be added to each of the single-family semi-detached dwelling units.**
- **That approval is subject to the rendering submitted.**

9. **121 Providence Street (ZB-2008-063) – Special Permit Amendment:** Attorney Francis Parisi and Ben Orichi, RF Engineer, represented the petitioner, MetroPCS, who is seeking an Amendment to Special Permit to allow a personal wireless service facility in order to construct a personal wireless service facility consisting of six antennas, three of which will be mounted to the façade of the existing mechanical penthouse at a height of 68 feet above ground level and three of which will be mounted on the façade of the building at a height of 56 feet above ground level and to install telecommunications equipment on the roof of the building. Mr. Parisi said MetroPCS would be the sixth carrier to locate on the site. Chair Ciuffredo asked why the application is for an Amendment to Special Permit and Mr. Fontane responded that a Special Permit had been granted in 2005 to T-Mobile for the use. Mr. Freilich commented that the site looked terrible with the numerous antennas and said the companies need to do a better job of camouflaging the equipment at these co-location sites. He also said the City should set a limit on how many antennas can be located on one building. Mr. Fontane said the current Zoning Ordinance encourages co-location of personal wireless service facilities and that is why they are generally clustered. Mr. Orichi said the ambient radiation is well within the limits set by the Federal Communication Commission. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the following application requirement waivers requested by the petitioner:

1. Vicinity Plan.
 - Vegetative Cover.
 - Proposed security barrier.
 - Distances at grade from the proposed PSWF to each building on the vicinity plan.
 - Contours at each two feet AMSL for the subject property and adjacent properties within 300 feet.
2. Sight Lines and Photographs
 - Security Barrier
3. Design Filing Requirements

- Colors of proposed PWSF represented by a color board and color of building
- Landscape plan
- Balloon Test

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the following:

- **Amendment to Special Permit: To allow personal wireless service facility**

The Special Permit was approved with the following conditions:

- **That the personal wireless service facility colors match as closely as possible the exterior color of the building and the antennas be painted gray.**
- **That a bond amount be established to the satisfaction of the Director of Planning & Regulatory Services, prior to operation, to ensure funds are available for the removal of the personal wireless service facility if abandoned. Said bond is to be for a period of at least two years and shall be renewable and adjusted for inflation upon renewal.**

10. **10 Wrentham Road (ZB-2008-069) – Variance:** Attorney Francis Parisi and Ben Orichi, RF Engineer, represented the petitioner, MetroPCS, who is seeking a Variance for 7 feet of relief from the height requirement for structure mounted personal wireless service facilities in order to construct a personal wireless service facility consisting of three antennas which will be mounted at 52 feet inside a stealth flue which will extend above the existing mechanical penthouse and install telecommunications cabinets inside the building in a basement mechanical room. Mr. Parisi stated a Special Permit for expansion or change of a pre-existing nonconforming use/structure was granted on June 9, 2008. He said Joseph Mikielian Commissioner of the Division of Inspectional Services, determined that a Variance was also necessary since the structure will extend 17 feet above the height of the existing structure. While Mr. Parisi said he did not agree with that determination, he did file a petition requesting the relief. Mr. Freilich commented that more information relating to the hazards that may or may not result from the location of such facilities and the rapidly expanding use of cell phones needs to be explored. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-1 by Leonard Ciuffredo, David George, Lawrence Abramoff and Brian Murphy (Andrew Freilich voted no) to approve the following:

- **Variance: 7 feet of relief from the height requirement for structure mounted personal wireless service facilities**

OTHER BUSINESS

Mr. Fontane informed the Board that at the next meeting, he would discuss additional research regarding cell phone safety and would discuss the memo providing information gathered by Joel Kolkman, an intern working in the Division of Planning and Regulatory Services, which relates to the proliferation of personal wireless service facilities and cell phone use and any effects that may result from long term use.

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 10:00 P.M.