

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

SEPTEMBER 8, 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 5:35 PM.

REQUESTS FOR WITHDRAWALS, CONTINUANCES, TIME EXTENSIONS

1. **10 Ronald Drive (ZB-2008-064) – Variance:** Attorney Robert Longden, representative for Arthur Demma, petitioner, requested Leave to Withdraw without prejudice for a Variance for 30 feet of relief from the frontage requirement to divide the lot into two lots to construct a single-family detached dwelling on the newly created lot. Sharon Healey, an abutter, viewed it as another continuance and reminded the Board that she had been assured that there would be no more continuances. Chair Ciuffredo explained to Ms. Healey that the petition was being withdrawn and it was not a continuance. He did caution her, however, that the petitioner could reapply at a later date, but it would be considered a new filing and would have to be advertised and abutters notified. 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 grant the request of the petitioner for Leave to Withdraw without prejudice.
2. **65 & 70 James Street (ZB-2008-065) – Variance:** Lawrence Hardy, petitioner, requested Leave to Withdraw without prejudice 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. George inquired about the zoning violation with regard to parking on this site and how this would be addressed. Mr. Kelly explained much of the site legally nonconforming. Mr. Fontane said that staff would follow up with the owners to address it. 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 grant the request of the petitioner for Leave to Withdraw without prejudice.

NEW BUSINESS

3. **19 McKeon Road (ZB-2008-073) – Special Permit:** Attorney Carl Gehring, Michael Creamer, Donald Haes and Chuck Webberly represented the petitioner, Verizon Wireless. Mr. Gehring presented the plan. He stated that Verizon Wireless proposes to co-locate a personal wireless service facility consisting of three antennas, two of which will be side mounted and do not require a Special Permit, and one that will be ballast mounted on the roof that does require a Special Permit. He said they also propose an emergency generator powered by natural gas and two HVAC condenser units on a lower section of the roof. Chair Ciuffredo and Mr. Freilich were concerned about the appearance and so called visual pollution and wondered if other sites had been considered. Mr. Creamer said other sites had been looked at but since this site was in the specific coverage area where needed and since the Zoning Ordinance encourages co-location, this site was deemed to be the most suitable. Mr. Gehring observed that while it may seem that a higher elevation site might be more appropriate, it is not necessarily true to attain the maximum coverage objective. Mr. George questioned whether the area in fact is a poor coverage area and said he had no difficulty with his cell phone while there. Mr. Creamer answered that the gap in coverage that was being referred to was for both voice and data and that the standard that Verizon Wireless is attempting to achieve is to be online 100% of the time. He also stated that the objective is to fill the gap for all data services such as text messaging. 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 Andrew Freilich, 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.
- Existing tree and shrub plan.
- Plan of grade changes.

2. Design Filing Requirements

- Landscape plan
- Balloon Test

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 approve the following:

- **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 be approved by the Division of Planning and Regulatory Services and Division of Inspectional Services.**
- **That the personal wireless service facility color specifications be provided to the Division of Planning and Regulatory Services by manufacturer, color, name, style and dimensions to be used as a standard by other companies.**
- **That testing of the generator occur only on weekdays between the hours of 9:00 A.M. and 5:00 P.M.**
- **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.**

4. **15 Putnam Lane (ZB-2008-074) – Extension of Time - Special Permit:** Attorney Robert Longden, representative for the petitioner, Princeton Development, LLC, stated that the applicant is seeking an Extension of Time for a Special Permit that was originally approved on July 28, 2003 for the construction of a multi-story, one hundred sixty unit apartment building and a four-level parking garage. He stated that on successive occasions (July 24, 2004, December 29, 2004, July 11, 2005, February 13, 2006), the Board granted a six month extension of time and on September 10, 2007, the Board granted a one year extension of time. Mr. Longden said that the decline of the housing market and the clean-up associated with environmental contamination are delaying construction. He further stated that Princeton Development LLC intends to start the project this year or sell the land. He said negotiations are underway at this time for a possible sale of the property. He said the property's existing permits add to the assess value and that maintaining those permits ensure additional tax revenue for the City. He also said the property is more attractive to a potential buyer because it is fully permitted. Chair Ciuffredo asked if the property could be better maintained and specifically mentioned taking down a sign at the intersection of Putnam Lane and Franklin Street as well as removing the poles and netting left from the prior use of the property as a golf driving range. Andrew Chaban, a partner in Princeton Development, LLC, responded that he would see that these things were done. Mr. Chaban said he was unable to give the Board details on the potential sale but said that it was likely that Princeton Development, LLC, would most likely manage the project if there were a sale of the property. 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 Andrew Freilich, it was voted 5-0 to approve the following:

- **Extension of Time - Special Permit: For a period of one year**

The Extension of Time - Special Permit was approved with the following conditions:

- **That the sign on the property at the intersection of Putnam Lane and Franklin Street be removed in its entirety within six months from the date of the Board's final action.**
- **That the poles and netting from the previous golf driving range use be taken down and removed from the property within six months from the date of the Board's final action; and that City of Worcester Department of Public Works and Parks be given the right of first refusal of the poles and netting.**
- **That the applicant agrees not to apply for tax abatements for the duration of the extension of time.**

5. **258 Lake Avenue (ZB-2008-075) – Variance:** Michael McKeown, petitioner, is seeking a Variance for 4.84 feet of relief from the height requirement of an accessory structure in order to replace the existing garage with a new garage to be 19 feet, 10 inches in height. He said the additional space will be used for storage. He indicated that he had spoken with his neighbors and none of them had a problem with his proposal as evidenced by the fact that no one appeared to oppose the petition. 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 David George and seconded by Lawrence Abramoff, it was voted 5-0 to approve the following:

- **Variance: 4.84 feet of relief from the height requirement for an accessory structure**

The Variance was approved with the following conditions:

- **That there be no habitation in the garage.**
- **That there be no indoor plumbing in the garage.**
- **That construction be according to the rendering submitted with the windows and architectural features on the side and rear elevations as marked up and labeled "Exhibit A".**

6. **327-341 Greenwood Street (ZB-2008-76) – Special Permit:** Robert Duff, representative for the petitioner, Worcester Housing Authority, said the WHA is seeking a Special Permit for expansion or change of a pre-existing nonconforming use/structure in order to expand the parking lot located behind 341 Greenwood Street by adding eighteen parking spaces for a total of fifty parking spaces. Mr. Fontane explained the project, consisting of 61 affordable elderly dwelling units with 27 parking spaces, was constructed under a Comprehensive Permit granted by the Zoning Board of Appeals on December 31, 1981. He noted that the additional parking will decrease the off-street parking nonconformity but increase the use of the existing nonconforming access aisle. 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 to approve the following:

- **Special Permit: Expansion or change of a pre-existing nonconforming use/structure**

The Special Permit was approved with the following conditions:

- **That a minimum of five additional trees (minimum 3” caliper) be added to the landscape buffer area in between the front parking area and Greenwood Street, specifically two in front of Building 329 and three in front of Building 341.**
- **That the dumpster be screened.**
- **That construction be in accordance with the final parking plan approved by the Planning Board.**
- **That trees in front of Building 331 and Building 333 that are in poor condition be replaced with new shade trees (minimum 3” caliper).**

7. **10 New Bond Street Lot A (ZB-2008-077) – Variances:** Attorney Patricia Gates, representative for Liberty MA Portfolio, petitioner, is seeking a Variance for 15 feet of relief from the rear yard setback requirement and a Variance for .21 of relief from the Floor to Area Ratio (FAR) to separate the large building by creating Lots A& B by dividing the building along a common wall between the two-story front building and one-story rear building. Ms. Gates requested a continuance to October 6, 2008 because there was an advertising error. She requested it be re-advertised as “.21 of relief” rather than “.21 feet of relief” to avoid any confusion as to what is requested. Mr. Fontane apologized on behalf of staff for the error and agreed to re-advertise. 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 matter to October 6, 2008 so it can be correctly advertised.

8. **10 New Bond Street Lot D (ZB-2008-078) – Variance:** Attorney Patricia Gates, representative for Liberty MA Portfolio, petitioner, is seeking a Variance for relief of 0.1 from the regularity factor to create Lot D which contains a 10,151 square foot building and continue the present use. She said the advertising was also incorrect but it was advertised for more relief than she requested so she felt comfortable going forward with the hearing. Ms. Gates indicated that they are attempting to redevelop the property in sections that can be used by present occupants and can be either sold or leased. Mr. Abramoff asked if someone could explain the term “regularity factor”. Mr. Fontane stated that the administration was concerned that there was a proliferation of lots with strange shapes, particularly in some of the newer subdivisions and infill housing not with this type of commercial redevelopment. He said Table 4.2 of the Zoning Ordinance limits the irregular shape of lots to certain tolerance and there is a mathematical formula for determining if a particular lot meets the regularity factor. He continued that a lot with a regularity factor of 0.4 is considered to be in compliance. Ms. Gates indicated that Lot D would have a regularity factor of 0.3 thus necessitating the request for a variance. 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 by Leonard Ciuffredo, David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to approve the following:

- **Variance: Relief of 0.1 from the regularity factor to allow 0.3 regularity factor**

9. **425 Salisbury Street (ZB-2008-079) – Administrative Appeal:** Chair Ciuffredo recused himself and Vice Chair George assumed the Chair. Attorney Gary Brackett, representative for Frank Fiorillo, Nick Fiorillo and Tracy Krowel, petitioners, said they submitted an Administrative Appeal to appeal the issuance of a building permit and the decision of the Planning Board granting Site Plan Approval to Notre Dame Academy for expansion of the existing brick building, addition of a terrace, accessible ramps and ten parking space as well as upgrades to the drainage system at 425 Salisbury Street. Mr. Fontane distributed to the Board copies of the response of Attorney Robert Longden, representative for Notre Dame Academy, as well as an opinion from Michael Traynor relating to a similar Administrative Appeal for the Wal-Mart at 25 Tobias Boland Way. Mr. Fontane noted that, while the opinion is not specific to 425 Salisbury Street, the process by which the Board should consider this appeal is the same. Chair George said the Board needed to time to read and digest these documents and felt a continuance of the hearing was warranted. Mr. Murphy reminded the Board that he will not be present at the September 22, 2008 meeting. Chair George asked Mr. Brackett if he were willing to request a continuance to the October 6, 2008 meeting. Mr. Brackett responded that he would be willing, however, he wanted the Board to hear his arguments and then continue the hearing. He also said that Mr. Longden's response should have been delivered sooner so that it could have been included in the Board's packets. Mr. Longden said he had not received a copy of the appeal when it was filed and only learned of it when he returned from vacation. He said it took time to prepare a response and he had submitted it to DPRS as soon as he could. The Board, after some discussion, decided it would rather have time to review the documents they had just received and asked Mr. Brackett if he would request a continuance to October 6, 2008. The Board also requested that any documents relative to the issue be submitted in time for inclusion in the packets one week before the meeting. Mr. Brackett requested a continuance to October 6, 2008. Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 4-0 by David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to continue the hearing to October 6, 2008 at the request of the applicant.
10. **425 Salisbury Street (ZB-2008-080) – Administrative Appeal:** Chair Ciuffredo recused himself and Vice Chair George assumed the Chair. Attorney Gary Brackett, representative for Frank Fiorillo, Nick Fiorillo and Tracy Krowel, petitioners, said they submitted an Administrative Appeal to appeal the response of the Acting Building Commissioner relative to a request for zoning enforcement for expansion of the existing brick building, addition of a terrace, accessible ramps and ten parking space as well as upgrades to the drainage system at 425 Salisbury Street. Mr. Fontane indicated that the documents distributed to the Board with regard to Item #9 above were relevant to this Administrative Appeal as well. Chair George said the Board needed to time to study and consider these documents as they relate to this appeal as well and felt a continuance of the hearing was warranted. Chair George asked Mr. Brackett if he were willing to request a continuance to the October 6, 2008 meeting. Mr. Brackett agreed and requested a continuance. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 4-0 by David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to continue the hearing to October 6, 2008 at the request of the applicant.

OTHER BUSINESS

The Board again expressed its concern about the lack of appointments to fill the Board's two vacant positions. They inquired about the schedule for advertising and its frequency. Mr. Fontane explained the process and schedule. The Board indicated that the application process should be conducted quarterly until all positions are filled.

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 7:45 P.M.