

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

January 26, 2009

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

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

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

UNFINISHED BUSINESS

- 1. 35 Central Street (PB-2008-102) – Special Permit:** Attorney Robert Longden, representative of Exchange Associates Real Estate Trust, the applicant, presented the plan proposing to repave and re-stripe the existing parking lot. All parking spots are angled and full-size (9 by 18 feet), and the interior traffic flow is one-way. Mr. Longden made a disclaimer that Exchange Associates Real Estate Trust is owned by his company, Bowditch & Dewey, and the parking lot is used in large part by the employees and clients of his company, as well as by people using City services in the area.

Mr. Longden stated that the 35 Central Street parking lot has been in use for at least 30 years and is a former site of the Bank of America, but currently only has a bank kiosk. He indicated that as a result of re-striping, the number of parking spaces will increase from approximately 20 to 32 spaces. Mr. Longden said that no changes are proposed to the 30 Exchange Street parking lot which is held in common ownership with the 35 Central Street lot. 30 Exchange Street is also separated from 35 Central Street parking lot by a fence and a retaining wall, and is operating as a separate entity and holds a separate parking license.

Mr. Ciuffredo asked about the status of the Parking Plan for the property with the Planning Board. Mr. Longden responded that he postponed the item with the Planning Board to February 4, 2009 in order to first obtain a Special Permit with the Zoning Board of Appeals.

Mr. Ciuffredo asked if the applicant was amenable to the planters placed on site per staff suggestion. Mr. Longden responded that the site is tight and does not allow for much

landscaping, but that he is amenable to planters in the area adjacent to the Central Street and to the bank kiosk. He stated that the parking lot is small, and therefore planters or plantings in interior of the parking lot would make it too difficult to plow the site.

Mr. Ciuffredo asked where snow storage area would be located, and Mr. Longden showed it to him on the plan.

Mr. Bilotta asked if the two designated handicapped parking spaces comply with the American Disability Act as to the number of spaces needed and their dimensions. Mr. Longden responded that they comply.

Mr. Fontane recommended that the applicant installs 2-3 container planter boxes along Central Street where hatched lines are shown and additional 2 container planter boxes within interior parking area where hatched lines are shown on plan. Recommended species included small decorative tree species, evergreens, or hardy seasonal plantings. Mr. Longden repeated that he can not place planters in the middle of the parking lot, but that he can would be amenable to placing one or two in the hatched area along Central Street and near the Kiosk. Chair George asked him to indicate the placement of the planting and snow storage areas on the Parking Plan which was then saved as an Exhibit A in the file.

Mr. Bilotta asked if a condition of the approval could be placed on the petitioner with regards to the landscape maintenance. Mr. Kelly said that per the Zoning Ordinance, the petitioner will be required to maintain the planters and it will be enforced per Ordinance. Mr. Longden confirmed that the planters will be maintained.

Mr. Fontane indicated to the Board that the staff's comments about the landscaping and fencing pertain to both parking lots (35 Central Street and 30 Exchange Street) since they are held in common ownership.

Mr. Ciuffredo raised a question as to whether the parking lot is the best use of the land. He stated that while the City put a lot of resources into area revitalization and the petitioner has the right to use his land as he sees fit, the use of the land is acceptable, but not the best. Chair George suggested that in the future the use of the area might become denser thus prompting the owner to convert the current parking lot into a parking garage. Mr. Abramoff added that keeping the two lots separately might also provide an opportunity for different uses in the future.

Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy 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 three (3) container planter boxes and four (4) snow storage areas are indicated on the plan per Exhibit A;**

- That six (6) revised sets of the plans, reflecting conditions above, be submitted to the Division of Planning & Regulatory Services prior to issuance of the Building Permit;
- That the construction be in substantial accordance with the final revised plan.

NEW BUSINESS

2. **142 West Street (ZB-2008-107) – Administrative Appeal:** Attorney Garry Brackett represented Broggi Realty Series LLC, the applicant. He requested that the Board considers items #2 (142 West Street), #3 (26 Elbridge Street), and #4 (24 Elbridge Street) contemporaneously. The Board agreed. Present at the hearing was Mary Hubbe of Broggi Realty Series, LLC.

Mr. Brackett referred to a letter that Mr. Kelly sent to him dated December 29, 2008. Mr. Ciuffredo said that he did not have it in his packet, but had a letter from Mr. Kelly to Mr. Brackett dated November 20, 2008. Mr. Kelly clarified that a scrivener's error in the November 20, 2008 letter to Mr. Brackett was amended by a December 29, 2008 letter where a corrected applicable Zoning Ordinance section was provided (Article 4, Section 2, Table 4.1). Chair George said that he believed the change was minor. Mr. Fontane indicated that all four Administrative Appeals were received in a timely fashion.

Mr. Brackett distributed to the Board a copy of a page from the Worcester Zoning Ordinance with definitions (highlighting "dwelling unit" definition) as well as a letter from the Assistant Attorney General's office to the Town of Milford Town Clerk, Re: Milford Special Town Meeting of February 13, 2006 – Case #3730 (Exhibit C). He briefly summarized the letter to the Board by saying that Attorney General struck down an amendment to the Milford Town Zoning By-Law relating to the definition of "family" that was very similar to the Worcester definition. Mr. Brackett also mentioned Moore v. City of East Cleveland, 431 U.S. 494, 499 (1977) case (Exhibit C) and paraphrased the court's opinion that the City of East Cleveland's definition of family is unreasonably restrictive. Mr. Brackett added that the properties were legally used in accordance with the Zoning Ordinance prior to the February 2007 amendment.

Mr. Freilich was displeased with the fact that Mr. Brackett had presented a new piece of evidence at the meeting instead of submitting it with his application so that the Board would have enough time to review it. Chair George agreed with Mr. Freilich. Mr. Fontane stated that Exhibit C was not part of the Administrative Appeal application. Mr. Brackett countered by saying that his argument about the unconstitutionality of the family definition in the Zoning Ordinance was in the application under section 4a, to which staff responded in one sentence. Mr. Ciuffredo stated that he does not want to proceed with the hearing when a Supreme Court case is referenced. Mr. Bilotta asked if it was possible to ensure in the future that an item is not heard before the Board if not enough time is given to the Board to review provided materials. Upon a question by Chair George, Mr. Brackett indicated that this information is central to his argument and that the Law Department did not address the issue he raised regarding the definition of "family." Mr. Fontane indicated that the enforcement action was taken based on the definition of "Lodging House," not "family." The Board voted (5-0) to request a legal opinion regarding the relevance of the Assistant Attorney General's opinion and the cases he cited therein to its consideration of these appeals. Chair George reminded Mr. Brackett that if he wants to submit new materials to the Board, he should do so at least one week before the meeting.

Mr. Freilich asked if it was possible to consolidate items #2, #3, and #4 into one item on the agenda for the next meeting, since they will be taken contemporaneously by the Board. Mr. Kelly responded that a few differences exist between the three items, such as the zone in which they are located and the type and size of the dwellings. Mr. Freilich then agreed that it is better to list these items separately.

Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to grant the request of the petitioner for 142 West Street (ZB-2008-107), 26 Elbridge Street (ZB-2008-108), and 24 Elbridge Street (ZB-2008-109) for a continuance to February 9, 2009.

1. **26 Elbridge Street (ZB-2008-108) – Administrative Appeal: See Item #2.**
2. **24 Elbridge Street (ZB-2008-109) – Administrative Appeal: See Item #2.**
3. **153 West Street (ZB-2008-110) – Administrative Appeal:** Attorney Garry Brackett represented Collis and Curran, Inc., the applicant. He stated that the item had the same enforcement order as the previous three items (142 West Street, 26 Elbridge Street, and 24 Elbridge Street) and that he would use similar argument defending his applicant's position before the Board. Consequently, Mr. Brackett requested a continuance of the item to February 9, 2009. Upon a motion by Andrew Freilich and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to grant the request of the petitioner for 153 West Street (ZB-2008-110) for a continuance to February 9, 2009.

OTHER BUSINESS

Approval of Minutes: Upon a motion by Andrew Freilich and seconded by Lawrence Abramoff, it was voted 4-0 by David George, Lawrence Abramoff, Andrew Freilich and Brian Murphy to approve the minutes from the December 15, 2008 meeting.

Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 3-0 by David George, Leonard Ciuffredo, and Brian Murphy to approve the minutes from the January 12, 2009 meeting.

Administrative Appeal: The Board again raised the question with regards to petitioners bringing in new materials to the meeting. Mr. Fontane indicated that staff attempts to get an accurate and complete application from each petitioner and informs applicants that the Board typically continues items when new information is presented at a meeting. He said that the Board will receive the entire package again to ensure that everyone gets all of the information.

ADJOURNMENT

Chair George adjourned the meeting at 6:30 P.M.