

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

March 23, 2009

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

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

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Judy Stolberg, 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. **878 Southbridge Street (ZB-2009-009) – Special Permit:** This item was on the agenda to allow the petitioner an opportunity to seek Leave to Withdraw without prejudice. The Board had reconsidered its vote on March 9, 2009 to deny the requested Special Permit to change a residential use to a nonresidential use. Jason Bibeau, owner of the property, seeks to convert the apartments in an existing two-family dwelling into office space asked if he could make some additional arguments in an attempt to change Board members minds. All Board members stated they had no intention of changing their votes and explained to Mr. Bibeau the merits of asking for Leave to Withdraw without prejudice rather than have the Special Permit denied. Mr. Bibeau still wanted an opportunity to persuade the Board to vote favorably on his request for a Special Permit and reiterated his statement from the March 9, 2009 meeting that he and his associate would work in the office but there would be no customers coming to the premises. He added that he would not have any signage and for all intents and purposes, it would look like a residence. Mr. Abramoff asked if Mr. Bibeau were to live there, could he have a home office. Mr. Kelly responded that as long as the office used 25% or less of the area, he could do so. Mr. Ciuffredo alluded to a proposed zone change in the Southbridge Street area. Mr. Fontane indicated that a petition was before the City Council's Economic Development Subcommittee would change the zoning of property nearby from RG-5 (Residence, General) to BG-4.0 (Business, General). Mr. Ciuffredo indicated that the use Mr. Bibeau is proposing is an allowed use in a BG-4.0 zoning district and he could perhaps petition the City Council to change the zoning of his area in the future. After further consideration, Mr. Bibeau opted to request Leave to Withdraw without prejudice. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard

Ciuffredo, Brian Murphy and William Bilotta to approve the request for Leave to Withdraw without prejudice.

2. **39, 45 & 48 Water Street (ZB-2009-010) – Special Permits:** Attorney Stephen Madaus represented Canal Lofts Limited Partnership and introduced Gilbert Winn, Jay Szymanski and Steven Chouinard, developer, architect and engineer respectively. He informed the Board that the applicant proposes the redevelopment of the Chevalier Furniture building at 48 Water Street into 64 dwelling units and the creation of 64 off-street parking spaces in a combined parking lot at 39 & 45 Water Street. He said the use is allowed in the BG-3.0 (Business, General) zoning district in which the property is located. He indicated that it is also located within the Blackstone Canal Overlay District (BCOD) which allows the re-use of this type of building with no parking requirements. He said the project had already received a Demolition Delay Waiver from the Historical Commission to allow certain exterior changes for the redevelopment of the property into residential dwellings because the building, formerly known as the Hill Envelope Factory, was constructed in 1890 and is listed on State and National Registers of Historic Places. He said the Definitive Site Plan for the project had been approved by the Planning Board on March 18, 2009. Mr. Szymanski said the renovations will meet National Park Service standards. Mr. Madaus said the Planning Board had opted to let the snow storage area remain in the northern portion landscaped area. Mr. Chouinard noted that the landscaping on the site will include 31 trees and 130 shrubs. Mr. Bilotta asked if consideration had been given to locating businesses on the street level rather than residences. Mr. Madaus said the economics of the project work as designed. Mr. Winn indicated that a previous developer wasn't able to make the project work as mixed use because funding for mixed-use projects has dried up given the current state of the economy. He said they have been able to avail themselves of housing funds which make the project viable as residential use only. Mr. Bilotta was concerned that windows on the ground floor are so close to the street. Mr. Szymanski answered that they are pretty much locked into the current window pattern because of the historical nature of the property and the patterns are better suited to residential use rather than commercial use. Mr. Freilich asked if they were adding a fifth floor to the building. Mr. Szymanski said there would be a fifth floor but it would be within the existing building envelope and the height of the building would not be increased, just the number of stories. Mr. Freilich asked if there were any other off-street parking in the immediate area. Mr. Fontane noted that the two parking lots in question were used by Chevalier Furniture and other businesses in the area. He said that no zoning violation will occur as a result of the project because of its location within the Blackstone Canal Overlay District which has no parking requirements. Allen Fletcher, President of the Canal District Alliance, spoke in favor of the project and thought the addition of more housing would give more stability to the area which already consists of mixed-uses. Paul Giorgio was concerned about snow storage but was assured that the 6-foot height of snow piles will not be exceeded. He had also been concerned about the residential component in the area because, as had been seen in the Shrewsbury Street area, business and residential uses are not always in harmony. He said the fact that there will be no bedrooms on the Water Street side of the building was reassuring. He also cited Mr. Winn's willingness to improve the streetscape as an important factor. Salim Lehoud spoke in support of the project and said the introduction of more residents was good for the area. He also spoke about the importance of streetscape improvements. He did caution, however, that street level residents may complain about noise, particularly late in the evening when businesses are closing and people are emptying onto the street. Chair George said anyone who chooses to live on street level should be

aware that street noise is sometimes problematic. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to close the 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: To allow 50% of off-street parking spaces to be compact spaces
SPECIAL PERMIT: Modification of landscaping requirements for parking/loading

The Special Permits were approved with the following conditions:

- **That the approval be tied to the final Definitive Site Plan approved by the Planning Board on March 18, 2009.**
- **That the height of snow piles in the snow storage area cannot exceed six feet.**

NEW BUSINESS

3. **161 West Mountain Street (ZB-2009-020) – Special Permit:** Brian Wilson, representative for the petitioner, MetroPCS, presented the petition for a Special Permit for expansion or change of a pre-existing nonconforming use/structure to allow a personal wireless service facility in an RS-7 zone. He said the facility is the same type as the AT&T and T-Mobile facilities presently on the building. He elaborated that they propose to erect three wireless pole-mounted antennas enclosed in one “stealth” flue and telecommunication cabinets on a steel frame on the rooftop of the multi-family building. Mr. Freilich asked why there is no attempt to mask the facilities and said more thought should be given to camouflaging them. Mr. Wilson responded that there is a cost consideration and said these facilities are exorbitantly expensive to construct. Mr. Freilich also asked why they are not located in the middle of the roof where the view would be more limited. Mr. Wilson responded that the signal lessens away from the edge of the building and the facility would have to be taller. Mr. Murphy asked how expensive it is to make the facility look like a chimney. Mr. Wilson said upward of \$10,000.00 over and above the \$40,000.00 cost for the actual facility itself. Mr. Abramoff said he would rather see the style and design matched to what is currently in place rather than have a “hodgepodge” of totally visually incompatible facilities that would detract from the look of the building. Mr. Ciuffredo noted that when the Board pushed for co-location, it sought fewer locations with multiple facilities. He added that sometime in the future, consideration should be given to having parapets installed on the rooftops as a way of hiding the facilities. Chair George asked about the color of the cabinets and was told by Mr. Wilson that they would be a putty color. Mr. Freilich suggested putting together a list of acceptable designs that could serve as guidelines for personal wireless service facilities. Mr. Fontane said a Zoning Ordinance amendment could be considered in the future but, in the meantime, the Board could ask for alternate designs if it chose. Upon a motion by Andrew Freilich and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to approve the following application requirement waivers requested by the petitioner:

1. **Show vegetative cover on the subject property and immediately abutting adjacent properties. (Article IV, Section 12, (D) (7) (d) (iii) (aa))**
2. **Label distances, at grade, from the proposed Personal Wireless Facility to each building on the vicinity plan. (Article IV, Section 12, (D) (7) (d) (iii) (aa))**
3. **Label contours at each two feet AMSL (Above Mean Sea Level) for the subject property and adjacent properties within 300 feet. (Article IV, Section 12, (D) (7) (d) (iii) (aa))**
4. **Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed Personal Wireless Service Facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. (Article IV, Section 12, (D) (7) (d) (iii) (gg))**

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, 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 to allow a personal wireless service facility in an RS-7 zone

The Special Permit was approved with the following conditions:

- **That prior to issuance of the Building Permit, a Noise Filing Requirement letter is submitted indicating that the proposed personal wireless service facility is in full compliance with the Zoning Ordinance.**
- **That a bond for the removal of the personal wireless service facility if abandoned is set prior to the issuance of a Building Permit. Said bond is to be for a period of at least two years and shall be adjusted for inflation upon renewal every two years. Applicant will be requested to submit an affidavit letter with an estimate of the bond to the Division of Planning & Regulatory Services for review by the Law Department.**
- **That the applicant submits an affidavit letter agreeing to match the paint of the proposed flue and mechanical equipment as closely as possible to the existing materials in the immediate proximity.**

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 1-4 by Andrew Freilich (David George, Lawrence Abramoff, Leonard Ciuffredo and Brian Murphy voted no) to approve the fee waiver requested by the petitioner. The motion failed and the fee waiver was denied.

4. **12 Park Villa Avenue (ZB-2009-012) – Variance:** Ricky Sampson, petitioner and owner of the property, is seeking a Variance for 10 feet of relief from the frontage requirement to demolish the existing structures and construct a single-family detached dwelling. Chair George asked if the lot meets all other dimensional requirements and Mr. Sampson answered that it does. He said the new house would be 160 square feet larger than the existing house. Mr. Sampson said he had received the staff memo prepared by Ruth Gentile, dated March 16, 2009, and indicated that he could not provide a street tree because of power lines. He also

did not think it was necessary to put windows on the sides of the house because he needed to utilize the wall space inside the house for furniture placement and closet space. Mr. Abramoff informed Mr. Sampson that the tree in question can be placed on the front lawn and can be a flowering tree. He expressed strong sentiment for having the tree be a condition of approval. He also said that blank walls do not fit with the character of the neighborhood and there needs to be windows on the sides of the house. Mr. Ciuffredo asked Mr. Sampson if he would be living in the house and he said he would not and had a buyer waiting to purchase it. Mr. Ciuffredo also felt there should be windows incorporated on the side of the house. Another comment from Ms. Gentile's memo mentioned fencing for the off-street parking spaces next to 14 Park Villa Avenue. Mr. Sampson did not want to include fencing and Mr. Abramoff agreed with him saying it would look nicer without the fence. Mr. Fontane said the tree can be planted in the front yard and the term "street tree" referred to the species listed in the Zoning Ordinance (with the exception of Maples which are susceptible to the Asian Longhorn Beetle infestation) and not the location. He also said the tree should be 3" caliper. Russell Vickstrom said the new house would certainly be better than the existing house. Grace Clark agreed and said she was not opposed. Mr. Kelly agreed to sit with Mr. Sampson to decide on window locations and mark up the rendering for inclusion as "Exhibit A". They came to a consensus and "Exhibit A" was submitted for the file. 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 hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to approve the following:

VARIANCE: 10 feet of relief from the frontage requirement

The Variance was approved with the following conditions:

- **That a 3" caliper tree from the species list (with the exception of Maples which are susceptible to the Asian Longhorn Beetle infestation) in the Zoning Ordinance be planted in the front yard.**
- **Windows as drawn on "Exhibit A" be incorporated into the design of the house.**

5. **5 Suntaug Road (ZB-2009-013) – Variances:** Dan Wolf, representative for the petitioner, Envision Homes, is seeking a Variance for 3 feet of relief from the frontage requirement, a Variance for 14.8 feet of relief from the rear yard setback requirement, a Variance for 14 feet of relief from the front yard setback requirement and a Variance for 2,793 square feet of relief from the gross dimensional requirement to demolish the existing structure and construct a single-family dwelling with an attached garage. Lara Bold's memo dated March 16, 2009 states that Suntaug Road is a private street that extends 223 feet east from Lake Avenue as shown on the Official Map and referenced in the City street listing. The petitioner is contending that the property has 62 feet of frontage and has applied for 3 feet of frontage relief. However, Ms. Bold's memo continues, City records indicate that the lot only has ~38 feet of frontage and that relief of 27 feet is needed. In any case, the amount of relief requested is insufficient. Mr. Wolf maintains that the right-of-way goes to the water's edge. Mr. Fontane said only a portion of the way is on the Official Map. He said he conferred with Mr. Kelly and Michael Traynor, Deputy City Solicitor, and suggested the following options to the petitioner: (1) Utilize the 81G process to get the paved portion included and extend the way; or (2) Apply for additional relief from the frontage requirement. He advised the Board

that it cannot grant more relief than what has been advertised. Mr. Wolf argued that the first page of the City of Worcester Street Listing has a disclaimer that there may be errors or omissions. Mr. Fontane countered that it is the document that we use. Mr. Fontane said the petitioner could try to find proof that the way served two or more landowners as of June 9, 1953. Mr. Murphy opined that it appears that the petitioner either has to seek additional relief or use the 81G process. Mr. Fontane suggested the hearing be continued to April 27, 2009 to determine if the petitioner needs to re-apply or modify the application. Mr. Bilotta said he would like to know who owns the boat ramp. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 5-0 to continue the hearing to April 27, 2009 at the request of the petitioner.

6. **1124 Pleasant Street (ZB-2009-015) – Special Permit:** Attorney Morris Bergman, one of the principals of Lenox Investments, owner of the property, and Debbie Maruca-Hoak and John Layte from Tatnuck Pet, LLC presented the petition. Mr. Bergman said a Special Permit to allow a pet store in a BL-1.0 zoning district is being sought in order to operate a pet store for the sale of small animals, such as hamsters, etc., birds, reptiles and fish. He added that the premises had been vacant for two years and was difficult to rent because it is such a large space. Ms. Maruca-Hoak submitted a document signed by neighbors stating they had no objections to the pet store. She also submitted an Inspection Report from the Massachusetts Department of Food and Agriculture Bureau of Animal Health which states that a license will be issued when approval is granted by the city for the sale of animals at the 1124 Pleasant Street location. Mr. Layte said they would be purchasing the small animals, birds and reptiles from a fully licensed wholesaler on Barber Avenue in the city. Chair George asked if there were any special requirements for ventilating the premises. Mr. Layte said fans were installed for ventilation. Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and Brian Murphy to close the hearing. Upon a motion by Brian Murphy 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: To allow a pet store in a BL-1.0 zoning district

Mr. Freilich left the meeting.

7. **91-93 Alvarado Avenue (ZB-2009-014) – Special Permit and Variance:** Attorney Joe Boynton represented the petitioner, G&N Services, LLC. He explained that his client had purchased the property which had been marketed as having ten dwelling units, but discovered after the purchase that the permitting was for nine units not ten. Mr. Boynton said the owner would like to bring the multi-family dwelling into compliance with the Zoning Ordinance and be able to rent the tenth unit. He added that his client has been leaving one unit vacant at all times, although it is not always the same unit, since discovering it was not permitted for ten units. He said a meeting was held with the neighbors who are satisfied with G&N Services' investment in the property to improve the premises and bring it into compliance. Mr. Ciuffredo said the ZBA had erred in 1984 when it approved the Special Permit to allow the conversion of an existing 6-unit dwelling to a 9-unit multi-family low-rise dwelling in an RL-7 zoning district. He asked how much the new owner had invested to maintain the property to date. Giuseppe Folco responded that to date he had expended \$40,000.00 to make the property compliant. Mr. Ciuffredo asked if he anticipated any further expenditures and he said he did not contemplate any further capital investment. Mr. Murphy asked how

the number of units could have been missed at the time of the purchase. Mr. Boynton said the previous owner marketed it as ten units and there are, in fact, ten units in the building. He indicated that zoning opinions are not always done unless the lender requires one and that, typically, that is when a situation like this would come to light. Mr. Murphy said he was loathe to reward bad behavior, however, he understood it was not the new owner who illegally added the tenth unit. Chair George said there clearly was a zoning violation that should have been caught at the time of purchase. Mr. Boynton reminded the Board that the property was purchased from an owner who was denied an Amendment to Special Permit and added the tenth unit anyway. Mr. Abramoff asked if there were any zoning violations presently and if the tenth unit would burden the neighborhood. Mr. Kelly said there were no complaints since G&N Services, LLC has assumed ownership. He noted that there were several complaints against the previous owner. Mr. Boynton pointed out that the neighbors are actively involved and were not present to offer any objections. He said that they had abandoned plans to add six additional units which had sparked neighborhood opposition previously. Mr. Abramoff said he, too, does not want to reward bad behavior, but having healthy housing stock outweighs that consideration especially since the behavior was not perpetrated by this owner. Mr. Fontane reminded the Board that the owner will have to seek Definitive Site Plan approval from the Planning Board if the Special Permit were approved. Joseph Charpentier asked if the Variance for gross dimensional relief included the two lots under common ownership and Mr. Boynton answered affirmatively. Mr. Charpentier said he was sure other neighbors would be present if they had any objections and explained that the only reason he came was that he could not attend the neighborhood meeting that was held. Mr. Ciuffredo asked if any consideration had been given to combining one of the one-bedroom apartments with one of the two-bedroom apartments to create a three-bedroom apartment. Mr. Kelly said it could be done if they were proximal to each other. Mr. Ciuffredo advised that he would not vote to approve the petition. Chair George said he had a problem with the petition as well. Mr. Boynton argued that there is no neighborhood opposition. Mr. Abramoff opined that this is the type of landlord we should be supporting. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to close the hearing. A motion by Leonard Ciuffredo and seconded by William Bilotta to approve the Special Permit and Variance was withdrawn when Mr. Boynton requested Leave to Withdraw without prejudice. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Brian Murphy and William Bilotta to approve the request for Leave to Withdraw without prejudice.

ADJOURNMENT

Chair George adjourned the meeting at 8:55 P.M.