

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

**April 27, 2009**

**WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM**

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

**Staff Present:** Joel Fontane, Division of Planning & Regulatory Services  
Ruth Gentile, Division of Planning & Regulatory Services  
John Kelly, Department of Inspectional Services  
John Nordberg, Department of Inspectional Services  
Michael Traynor, Law Department  
Jen Beaton, Law Department

**REGULAR MEETING (5:30 PM)**

**CALL TO ORDER**

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

1. **400 Park Avenue (ZB-2009-021) – Variances:** Todd Brodeur, representative for CVS Caremark, Corp., requested a continuance to May 11, 2009 to allow the applicant time to address the items in the memo from DPRS. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the applicant's request for continuance to May 11, 2009.
  
2. **153 West Street (ZB-2008-110) – Administrative Appeal:** The Board considered items #2 (153 West Street), #3 (17 Elbridge Street), #4 (30 Wachusett Street) contemporaneously. Attorney Gary Brackett represented the petitioners, Collis and Curran, Inc, Paul & Mary Zamarro and Carole Arthur and Arthur Resca, owners of the properties. Atty. Brackett said the petitions were filed to appeal the cease and desist orders relative to operation of illegal lodging houses in an RG-5 zone, but refuted the orders contending that all of the properties were dwelling units as defined in the Zoning Ordinance. Mr. Kelly said that he received information from the applicants on the Thursday before the meeting and did not have enough time to review the information and to meet with the applicant. Atty. Brackett stated that he had made repeated attempts to have the meeting with Mr. Kelly as the Board had requested to no avail. Atty. Brackett stated that even Nick Kostopoulos of the Worcester Telegram and Gazette reported that that meeting was going to take place, but Mr. Kelly indicated some confusion as to whether the Board requested that they meet.

Mr. George stated that the Board must decide if the enforcement officer enforced the Zoning Ordinance properly. Mr. Ciuffredo asked Mr. Traynor if these properties were

considered lodging houses. Mr. Traynor replied that it was not the Law Department's role to determine if Inspectional Services was right or wrong, but indicated that he believed that the cease and desist orders are sustainable.

Mr. Kelly stated that the City Manager's Property Review Team conducted a sweep in the area and determined through conversations or mail boxes that some units had more than three unrelated people living in them. Mr. Nordberg stated that the inspectors were given a specific list of properties and that the inspections went door-to-door with the exception of known lodging houses and fraternities. He said they were looking for exterior violations but when it was determined that more than three people were living in a unit, they were identified to be in violation of the zoning ordinance and sanitary code. Mr. George inquired if there was a legal basis for the sweeps. Mr. Traynor responded that it is within the authority of the City Manager, Inspectional Services or the Police Department to review a section of the city for code compliance.

Mr. Abramoff stated that he was uncomfortable with this type of sweep and that he thought it was intrusive. He then inquired whether pre-existing nonconforming use status would apply to these properties. He spoke about how the uses of the properties in question met the intent of the purposes listed in Article I of the Zoning Ordinance. Mr. Abramoff asked Mr. Traynor why the lodging house use is not considered a pre-existing non-conforming use. Mr. Traynor responded, assuming that it is a lodging house, to be a pre-existing non-conforming use it has to be shown that it is a lodging house use that was established lawfully, and then the petitioner must show it is a pre-existing nonconforming use. He further stated that the definition has been in existence in the Zoning Ordinance for many years and that the City has been to court before and it was upheld.

Mr. Bilotta asked when the leases expired and if families have leased these properties. The answer was that the leases run from June 1 to May 31 of any year and that the properties were rented to students, not families.

Mr. Cuiffredo asked why some property owners in previous area sweeps had received warnings and why warnings were not issued for these properties. Mr. Nordberg responded that violations related to trash and unregistered vehicles received warning notifications. He reiterated that no lodging house warnings were issued, the warnings were for exterior violations, such as trash and unregistered vehicles.

Councilor Haller stated that she was on the City Council's Landuse Subcommittee when the amendment in 2007 was ordained and that change was to clarify the intent of the Zoning Ordinance regarding lodging houses and was to clarify that the use for more than three unrelated people is a lodging house. Mr. Fontane stated that the amendment clarified the of renting rooms accessory use and that four or more unrelated persons constitutes a lodging house. Atty. Brackett alluded to a similar case in the past regarding the renting of rooms and inquired if there was any documentation available. Mr. Traynor stated that the definition of family has not changed in the Zoning Ordinance and that the change of the ordinance was a clarification and in line with the way Inspectional Services had been interpreting the ordinance in the past.

Mr. Brackett asserted that the change merely codified the past interpretations of the Inspectional Services Department and that it was a change in the Law that involved closing

a loophole. He also reiterated that some violations in other sweeps had received warnings and that his clients had not received warnings and that they were not able to have a meeting on the subject with the City. He stated that documents were provided and his clients have owned the properties since 2007 and that the use is not a lodging house use, but a dwelling unit with more than three people living in it. He stated his belief that as a matter of law these cease and desist orders would not withstand judicial review and should be reversed by the Code Department. Atty. Brackett further added, how many more cases will there be? Mr. Kelly stated that his job was to enforce the Zoning Ordinance, which is based on Mass. General Laws, which says that four or more unrelated people in a unit are a lodging house.

Mr. Ciuffredo made a motion to overturn the cease and desist order for 153 West Street with the order not be enforced until the present lease agreement is fulfilled 5/31/09. Mr. Bilotta suggested an amendment that property owners be provided a tax abatement for reduced rate of the value of their property. Mr. Fontane told the Board that they do not have the authority to make a condition that affects property taxes. Mr. Freilich stated that he would like to amend the motion to all leases that expire on 12/31/10.

Mr. Freilich also said that he thinks the City Council should review the definitions for all loopholes. He said that he believes that these are good property owners and he does not agree with how the situation was handled. Mr. Traynor advised the Board that it cannot extend a zoning violation for more than a year or rewrite the Zoning Ordinance as part of their decision. He further stated that the Board must limit its conditions to the items before it.

Upon a motion by William Bilotta and seconded by Leonard Ciuffredo, it was voted 3-2 by David George, Leonard Ciuffredo, William Bilotta (Lawrence Abramoff and Andrew Freilich voting no) to close the hearing. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 4-1 by David George, Leonard Ciuffredo, Andrew Freilich, William Bilotta and Lawrence Abramoff (voting no) to uphold the decision of John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et. al., to issue a Cease and Desist Order relative to operation of a lodging house in an RG-5 zoning district. The Board recommended to Mr. Kelly that compliance enforcement be delayed to May 31, 2009 provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, pre-existing, non-conforming use.
- That the current use of the property is a lodging house.

- 3. 17 Elbridge Street (ZB-2009-005) – Administrative Appeal:** See #2. Upon a motion by William Bilotta and seconded by Leonard Ciuffredo, it was voted 3-2 by David George, Leonard Ciuffredo, William Bilotta (Lawrence Abramoff and Andrew Freilich voting no) to close the hearing. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 4-1 by David George, Leonard Ciuffredo, Andrew Freilich, William Bilotta and Lawrence Abramoff (voting no) to uphold the decision of John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et.

al., to issue a Cease and Desist Order relative to operation of a lodging house in an RG-5 zoning district. The Board recommended to Mr. Kelly that compliance enforcement be delayed to May 31, 2009 provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, preexisting, non-conforming use.
- That the current use of the property is a lodging house.

4. **24 Elbridge Street (ZB-2009-006) – Administrative Appeal:** See #2. Upon a motion by William Bilotta and seconded by Leonard Ciuffredo, it was voted 3-2 by David George, Leonard Ciuffredo, William Bilotta (Lawrence Abramoff and Andrew Freilich voting no) to close the hearing. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 4-1 by David George, Leonard Ciuffredo, Andrew Freilich, William Bilotta and Lawrence Abramoff (voting no) to affirm the decision of John Nordberg, Senior Housing Inspector, and Joseph Mikielian, Commissioner of Inspectional Services et. al., to issue a Cease and Desist Order relative to operation of a lodging house in an RG-5 zoning district. The Board recommended to Mr. Kelly that compliance enforcement be delayed to May 31, 2009 provide adequate time for current tenants to relocate.

The Board's findings are summarized as follows:

- That the Senior Housing Inspector is duly authorized to issue enforcement orders.
- That insufficient evidence was provided to demonstrate the current use as a legal, preexisting, non-conforming use.
- That the current use of the property is a lodging house.

5. **21 Coburn Avenue/24 Lake Avenue (ZB-2008-100) – Special Permit:** The Board considered item #6 21 Coburn Avenue/21 Lake Avenue contemporaneously. Richard Seder, representative for the petitioner, Paul Thomas, is seeking a Special Permit for expansion or change of a non-conforming use and a Special Permit to allow a personal services shop in an RL-7 zone. Mr. Seder stated that the Special Permits will bring the building into compliance. Mr. Ciuffredo stated that he has no issue with bringing the building at 21 Lake Avenue into compliance but does not like the parking lot in the residential zone. Mr. Bilotta agreed. Mr. Seder further stated that abutters on Lake Avenue are in favor of this petition and that the applicant knows he must obtain parking plan approval and there will be no signage and he will have lighting and plant Arbor Vitae. Ms. Helen Shea stated that she does not want a zone change and is concerned with increased traffic. Mr. Fontane stated that the Special Permit is for the parking lot for a business use and that any other changes would be subject to an amendment to the Special Permit. He further stated that the Department of Planning and Regulatory Services would not recommend a zone change and would prefer to see the controls of a Special Permit. Mr. Freilich asked if the applicant would accept a condition that there only have 12 parking spaces and expressed concern that the neighborhood was being encroached upon. Mr. Ciuffredo and Mr. George expressed their concern with allowing this use to expand into the residential zone. Mr. Freilich inquired about the four parking spaces said to be there. The majority of the Board agreed that further expansion of parking as proposed would not be appropriate. Mr. George inquired if the applicant would like to reconsider his parking proposal and indicated that if he were to request a withdrawal he could come back to the board again for consideration. Mr George

stated that it would be appropriate to approve the special permit for existing personal service use, of which, all but a small portion of the use is in the Business Limited zone. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the petitioner's request for Leave to Withdraw without Prejudice.

6. **21 Coburn Avenue/24 Lake Avenue (ZB-2008-106) – Special Permit:** See #5. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the following:

**SPECIAL PERMIT: To allow a personal Service Shop in an RL-7 zone.**

7. **5 Suntaug Road (ZB-2009-013) – Variances:** The Board considered item #8 5 Suntaug Road contemporaneously. Dan Worth presented the plan to demolish the existing structure and build a new single-family detached dwelling with an attached garage providing two off-street parking spaces. Variances are required because the new structure is larger than the existing structure. Mr. Bilotta asked who owned the ramp. Mr. Fontane stated that ownership of the ramp was unknown, but the the applicant was not claiming ownership and that the variance was required because there was not enough legal frontage. The applicant stated that the structure was in poor condition and that his hardship is because of size and shape of the lot. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to close the hearing. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to allow the following:

**VARIANCE: 14.8 feet of relief from the rear yard setback requirement.**

**VARIANCE: 14 feet of relief from the front yard setback requirement.**

**VARIANCE: 2,793 square feet from the gross dimensional requirement**

**8. 5 Suntaug Road (ZB-2009-013A) – Variance:** See # 8. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta 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 William Bilotta to allow the following:

**VARIANCE: 27 feet of relief from the frontage requirement.**

**9. 5 Suburban Road (ZB-2009-026) – Special Permit:** Jacqueline Murray, representative for Omnipoint Communications, requested a continuance to May 11, 2009 to allow time to address the items in the memo from DPRS. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the applicant’s request for a continuance to May 11, 2009

**10. 5A & 5B Wigwam Hill Drive (ZB-2009-026) – Variances:** Kevin Parvin, petitioner, presented the plan. He stated that the retaining wall was constructed to create a flat area and to aid with the run off. He further stated that there was an engineering error and that the wall that was built is over six feet in height in a setback area and requires a variance. He said that the building inspector informed him that the wall was out of compliance and a variance would be required. Steve Quinn stated that the wall has helped on his property by stopping a lot of the run off. Richard Boudreau said that since the wall went up he has not problems with water runoff. Mr. Kelly said that since the wall is over four feet, a fence is required on top. 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 William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 4-1 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich , William Bilotta and David George (voting no) to allow the following:

**VARIANCE: 2.59 feet of relief from the rear yard setback requirement.**

**VARIANCE: 0.6 feet of relief from the side yard setback requirement.**

**VARIANCE: 2.61 feet from the side yard setback requirement.**

**11. 1108 West Boylston Street (ZB-2009-024) - Special Permit:** David Sadowski, representative for Dan Germano, petitioner, presented the plan. He stated that they are constructing a four unit multi-family low rise with handicapped accessibility, parking, snow storage area and a rain garden using roof drainage. Also, there was an existing barn on the site and the abutting property has two 6 unit multi-family low rise structures. Mr. Ciuffredo stated that he will not vote for anything that can not be built by-right and that this is a clear case of maximizing for profit. Susan Healy said that Poor Farm Brook is on this property and is concerned with the Asian Longhorn Beetle problem and the six unit structures that have not been completed. Mr. Sadowski stated that any construction on this site is required to have Con Comm approvals. Mr. George stated that he thinks building closer to West Boylston Street would require less impervious area, shorter water utility lines and would have less impact on the rear of the property. Upon a motion by Lawrence Abramoff and seconded by William Bilotta it was voted 5-0 by David George, Lawrence Abramoff,

Leonard Ciuffredo, Andrew Freilich and William Bilotta to allow the petitioner's request for Leave to Withdraw without Prejudice.

**12. 137 Greenwood Street (ZB-2009-025) – Special Permits:** Robert Murphy, representative for Jhonny Ortega, petitioner presented the plan. He stated that he had spoken with the DPW&P and they were in the process of changing the plan. Mr. Fontane stated that the applicant owed back taxes . Upon a motion by Lawrence Abramoff, and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to approve the applicant's request for continuance to May 11, 2009.

## **OTHER BUSINESS**

**Approval of Minutes:** Board discussed and approved the minutes related to the meeting of March 9<sup>th</sup> and 23<sup>rd</sup> and April 6<sup>th</sup>, 2009. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 4-0 by David George, Leonard Ciuffredo, Lawrence Abramoff and William Bilotta to approve the minutes from the Board's March 9, 2009 meeting. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 4-0 by David George, Leonard Ciuffredo, Lawrence Abramoff and William Bilotta to approve the amendments to the minutes from the Board's March 23, 2009 meeting. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 5-0 by David George, Leonard Ciuffredo, Andrew Freilich, Lawrence Abramoff and William Bilotta to approve the minutes from the Board's April 6, 2009 meeting.

**Lodging House Discussion:** The Board discussed staff's memo related to lodging house regulation in the City of Worcester. Mr. Fontane presented staff's memo which provided answers to the questions that the Board had asked at its April 6, 2009 meeting. Councilor Haller stated that there is a piece missing from the lodging house information and that the use is only allowed in a few zones and that the Board should have a map of the areas where lodging houses are allowed. Mr. Abramoff expressed stated that the Board should write a letter to the administration outlining their concerns regarding lodging houses and that it should propose a change to the Zoning Ordinance regarding definitions related to this issue.

**Board Schedule Change:** Mr. Fontane informed the Board that in light of recent budget cuts, the administration implemented a lay off plan that affected every City Department, including the Departments that staff the Board. As part of the City's budget process, staff recommended a number of operational changes related to Board administration including, but not limited to, reducing the number of Board meetings from 22 to 17 per year. Mr. Fontane presented the Board a revised schedule of meeting dates. The Board expressed concern that the meetings would be longer and if the economy picks up it would have an adverse affect on the Board. Mr. George and Mr. Fontane stated that the Board could reassess its schedule at any time if needed. Mr. Freilich stated that he did not foresee the Board meetings getting any shorter in the future and is concerned about reductions to support staff that the volunteer board relies on.

The Board reviewed, discussed and voted to adopt the following meeting schedule.

## **ADJOURNMENT**

Chair George adjourned the meeting at 10:40 P.M.