

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

Amended Minutes

June 8, 2009

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

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

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Ruth Gentile, 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.

- 1. 5 Suntaug Road (ZB-2009-013) – Variance:** Envision Homes, petitioner, 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, William Bilotta and Brian Murphy to grant the applicant's request for approve the petitioner's request for Leave to Withdraw without Prejudice.
- 2. 90 East Central Street (ZB-2009-031) – Extensions of Time:** Donald O'Neil, representative for the applicant, 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, William Bilotta and Brian Murphy to grant the applicant's request for approve the petitioner's request for Leave to Withdraw without Prejudice.
- 3. 3 Fairfax Road (ZB-2008-028) – Variance:** The Board considered item # 4 (3 Fairfax Road ZB-2009-032) contemporaneously. Hossein Haghaniizadeh, representative for the applicant, presented the plan to bring the existing two-family dwelling into compliance with the zoning ordinance. Mr. Abramoff asked why the applicant was not parking in the front yard. Mr. Ciuffredo asked if the applicant lived in the building and if he had built the apartment and what was the justification for the variance. The response was that the applicant built the structure for his family's use and that the lot was similar in size to others in the area and that it only has a 50 foot frontage. Upon a motion by Leonard Ciuffredo, and seconded by William Bilotta, it was voted 5-0 to close the hearing. Upon a motion by Brian Murphy, and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to approve the requested variance for relief of two parking spaces from the off-street parking requirement with the condition that it be constructed in accordance with the final submitted as-built plan showing landscaping. Upon a motion by Leonard Ciuffredo, and seconded by Lawrence Abramoff, it

was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to grant the petitioner's request to extend the constructive grant deadline to July 8, 2009. Upon a motion by Leonard Ciuffredo, and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to approve the requested fee waiver for \$250.00 for the Special Permit that was applied for in error.

4. **3 Fairfax Road (ZB-2008-032) – Variances:** See item # 3 (3 Fairfax Road ZB-2009-028). Upon a motion by Leonard Ciuffredo, and seconded by William Bilotta, it was voted 5-0 to close the hearing. Upon a motion by Brian Murphy, and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to approve the requested variances for 4.02 feet of relief from the frontage requirement and 285 square feet of relief from the gross dimensional requirement with the condition that it be constructed in accordance with the final submitted as-built plan showing landscaping.
5. **5 Suburban Road (ZB-2009-026) – Special Permit:** Jacqueline Murray, Scott Heffernan, representatives for Omnipoint Communications, presented the plan for the expansion or change of a pre-existing non-conforming use for a personal wireless facility with the installation of six antennas and one GPS antenna mounted to the existing penthouse façade, equipment cabinets installed inside the existing parking garage and a cable tray painted to match the building that connects the antennas and equipment cabinet. Ms. Murray stated that Sprint has had a rooftop facility since 2003. She further stated that there will be an 8-foot chain link fence around the cabinets. Mr. Ciuffredo asked if alternative designs had been considered as the Board had requested earlier. Ms. Murray said that there were other designs considered but they were not as advantageous for this site as the height of the antenna is required in this location to achieve desired coverage. Mr. Bilotta stated that he wants to be assured that the maintenance program will be ongoing and that the area will look good all the time. Mr. Ciuffredo stated that he had not seen the RF levels in any other PWSF application exceed the limits. Mr. Heffernan responded with the calculations represented a worst case scenario where a person could be as close as two feet from the antennas. He stated that there if you live in the apartment directly below the antenna that RF levels would not exceed FCC limits. Mr. Murphy inquired about RF radiation. Mr. Heffernan stated that health related concerns mainly focus on ionizing radiation and that the RF radiation emitted by cell installations is non-ionizing, which increases body temperature when a person is exposed to high levels of this radiation. Ms. Murray stated that there will be precautions by maintenance works to limit exposure to antennas; 1) access to the roof will be restricted and a lockbox to hold access key will be installed at the rooftop door and 2) security barriers will be installed in appropriate areas to prevent excessive RF exposure. Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-1 by David George, Lawrence Abramoff, William Bilotta and Brian Murphy voting yes (Leonard Ciuffredo no) to approve the requested Special Permit for expansion or change of a pre-existing non-conforming use with the following conditions:
 - 1) Access to the roof will be restricted and a lockbox to hold access key will be installed at the rooftop door.
 - 2) Signs be installed on access points

- 3) Security barriers be installed
- 4) Site be inspected annually for maintenance of fencing, cable tray and kept in installed condition
- 5) Facility is constructed in accordance with the final revised site plan submitted and photo simulation package dated 3/27/09 prepared by Omnipoint Communications on file with the City of Worcester and in compliance with all governmental codes.
- 6) That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- 7) 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 shall be for the amount stated in cost estimate affidavit provided and is to be for a period of at least two years and shall be adjusted for inflation upon renewal every two years. Evidence of bond renewal shall be submitted to the Division of Planning & Regulatory Services prior to expiration.
- 8) That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Division of Building and Zoning and Division of Planning & Regulatory Services prior to the issuance of a building permit.

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-0-1 by David George, Lawrence Abramoff, William Bilotta, Brian Murphy and Leonard Ciuffredo (abstaining) to approve the requested waivers for 1) vegetative cover, 2) labeling of distances at grade, 3) labeling of contours, 4) balloon or crane test and 5) landscape plan.

6. 8 Maravista Road (ZB-2009-033) – Variance: Hossein Haghani-zadeh, representative for the applicant, Richard Trifoni presented the plan for the creation of a buildable lot to construct a single-family detached dwelling. He stated that the lot area was sufficient for the new structure and that the hardship was that the existing house was built in the middle of the lot. Mr. Ciuffredo asked if the applicant had provided renderings of the proposed structure. Mr. Konopka was concerned with the drainage of the property and clear cutting of the lot. Mr. Haghani-zadeh said that the proposal does not alter the topography of the area and little change was being proposed and that the drainage will be improved by the construction of the driveway and the addition of the cultech system. Mr. Haghani-zadeh asserted that the lot was large enough to accommodate five buildable lots. Mr. Fontane stated that he believed the lot would, at most, be able to support three buildable lots since a subdivision road would be required to create more than two lots on this parcel – assuming that the planning board approved select waivers from subdivision regulations. Mr. Murphy, Mr. Ciuffredo and Mr. George expressed their opinions that they would not be in favor of the project. Upon a motion by Leonard Ciuffredo, and seconded by Brian Murphy, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to grant the applicant's request for Leave to Withdraw without Prejudice.

7. 39 First Street (ZB-2009-036) – Special Permit: Dan Klasnick and Jason Flanagan representatives for Verizon Wireless, presented the plan for the expansion or change of a pre-existing non-conforming use for a personal wireless facility with the installation of an

equipment shelter on the roof adjacent to the existing penthouse, four panel antennas flush mounted to the proposed equipment shelter, four panel antennas mounted to the northside of the building, four panel antennas mounted to the frame of the existing penthouse on the rooftop, two GPS/GSM antennas mounted to the proposed equipment shelter and a generator mounted to the roof. Mr. Klasnick stated that rooftop access is restricted to only authorized personnel. Mr. Klasnick further stated that the generator is to be used for emergency purposes only and that except for a monthly test, it will not be used, so will not generate any noise. Mr. Ciuffredo asked if the RF report used the same criteria and formulas as other reports the Board has received. Mr. Klasnick answered that the formulas were the same, but conditions for each site are different. Mr. Bilotta stated that he wanted to have a regular maintenance program for the equipment. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to approve the requested Special Permit for expansion or change of a pre-existing non-conforming use with the following conditions:

- 1) Warning signs be installed on access points.
- 2) Site be inspected annually for maintenance of cable tray and kept in installed condition.
- 3) That the structures are built in accordance with the site plan dated 4/22/09, prepared by David A. Chappel and the photo simulation package dated 10/22/08 prepared by Benjamin E. Carol and submitted by Daniel Klasnick, representative for Verizon Wireless on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance
- 4) That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- 5) 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 shall be for the amount stated in cost estimate affidavit provided and is to be for a period of at least two years and shall be adjusted for inflation upon renewal every two years. Evidence of bond renewal shall be submitted to the Division of Planning & Regulatory Services prior to expiration.
- 6) That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Division of Building and Zoning and Division of Planning & Regulatory Services prior to the issuance of a building permit.

Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, William Bilotta, Brian Murphy and Leonard Ciuffredo to approve the requested waivers for 1) security barrier, 2) vegetative cover, 3) labeling of distances at grade, 4) labeling of contours, 5) balloon or crane test and 6) landscape plan.

8. 193 Lake Avenue (ZB-2009-034) – Special Permit: Jonathan Finkelstein and Michael Madulka, representative and petitioner, sought a Special Permit for expansion or change of a pre-existing non-conforming use. Mr. Finkelstein presented the plan which is to open a retail ice cream shop in the former bait shop. He stated that there will be no seating and that all of the activity will be on the outside of the building with a service window. Mr. Ciuffredo was concerned with the traffic and the proximity to a dangerous curve. Mr. Finkelstein stated that the Traffic Engineering Department has been consulted and there will be no parking across Lake Avenue and no parking allowed in front of the abutting property to the north. Mr. Finkelstein submitted the following condition of approval for the Board's consideration that addressed this issue as Exhibit "A" which stated the following: "Notwithstanding anything contained herein this special permit for the operation of a seasonal retail ice cream shop at 193 Lake Avenue is contingent upon the city of Worcester granting of permanent No Parking Tow Zone signs and status being granted for 165 Lake Avenue, 175 Lake Avenue and 188 Lake Avenue, whereby in the event the city of Worcester denies the permanent No Parking Tow Zone signs and status for 165 Lake Avenue, 175 Lake Avenue and 188 Lake Avenue the operation of a seasonal retail ice cream shop at 193 Lake Avenue under a special permit will be automatically prohibited and this special permit will automatically be revoked and not valid." Councilor Palmieri said that he is pleased with the agreement that was made between Mr. Johnson, Mr. Madulka and Mr. Russell and that money has been allocated by the City Council for a flashing light to slow traffic in the area. The Board was concerned about accepting the condition offered since it would require a change in on-street parking regulation for which the Board has no authority to approve. Mr. Fontane stated that the Board could not impose a condition of approval that would require an action beyond the applicants control i.e. City Council approval. However, given that the applicant has willing offered the condition, the Board could choose to include it as a condition of approval and that the record will reflect that the applicant requested the specific condition and agreed that the permit will be invalid if his petition to City Council is not approved. Mr. George asked if the Building Commissioner agreed that this use is an expansion or change of a preexisting use. Mr. Kelly stated that the former bait shop is considered a retail use and the proposed use as a retail ice cream shop is also considered a retail use provided that no seating is included. Mr. Kelly went on to say if seating were included he would then consider it a change of use to a restaurant. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo by, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta and Brian Murphy to close the hearing. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-1 by David George, Lawrence Abramoff, William Bilotta, Brian Murphy and Leonard Ciuffredo (voting no) to approve the requested Special Permit for expansion or change of a pre-existing non-conforming use with the following conditions:

- 1) The use be seasonal only; i.e. open annually from March 1 – November 1,
- 2) Hours of operation, as stated in application, be 10am – 10pm,
- 3) That the use is retail ice cream sales only,
- 4) That no seating will be provided inside or outside.
- 5) No vehicular parking is permitted in the paved area along Lave Avenue immediate adjacent to Building 1 on the eastern side of the building (see Site Plan).
- 6) "Notwithstanding anything contained herein this special permit for the operation of a seasonal retail ice cream shop at 193 Lake Avenue is contingent upon the city of Worcester granting of permanent No Parking Tow Zone signs and status being granted for 165 Lake Avenue, 175 Lake Avenue and 188 Lake Avenue, whereby

in the event the city of Worcester denies the permanent No Parking Tow Zone signs and status for 165 Lake Avenue, 175 Lake Avenue and 188 Lake Avenue the operation of a seasonal retail ice cream shop at 193 Lake Avenue under a special permit will be automatically prohibited and this special permit will automatically be revoked and not valid.”

- 7) Applicant submit for file, the text of Activity in Use Limitation on the property and submit a letter stating how the proposed development will incorporate any conditions or requirements of the Activity in Use Limitation including proof of soil management plan for installing posts or any digging that will disturb AUL area. (see attachment A)
 - 8) That is be constructed in accordance with final revised, submitted site plan and substantially in accordance with the submitted rendering including proposed signage dated Feb. 2, 2009, prepared by J. W. Melick with the following recommended modifications:
 - a) Three (3) planters, 3' in diameter with seasonal, drought resistant plantings, including some flowering plants, be installed 5' on center within five foot setback from sidewalk in paved area adjacent to building 1.
 - b) A “No Parking” sign is to be installed in the paved area adjacent to the proposed retail shop
 - c) Per previous condition of approval, Space #19 is to be eliminated.
 - d) Space labeled as #20 which is off-site be labeled “handicap parking space only”.
 - e) No motion signs or any electronic signs be installed anywhere on site including in the interior of windows on Building 1 without an approved amendment.
 - f) With the exception of A-frame or “sandwich board” signs, no portable signs be installed on site without further approval.
 - 9) Six copies of a revised plan addressing the Board’s conditions of approval be submitted to Division of Planning and Regulatory Services office prior to issuance of building permit.
9. **2 Barnstable Road (ZB-2009-035) – Variances:** Jonathan Finkelstein, Donald Bray and Stephen Hopkins, representatives and petitioner, presented the plan to build a single-family detached dwelling and bring the newly constructed retaining wall into compliance with the requirements of the zoning ordinance. Mr. Bray stated that when the lot was excavated solid bedrock was discovered and then a wall was constructed using decorative concrete blocks that would allow plantings in them. Mr. Finkelstein stated that an enforcement action occurred after the applicant stabilized the wall. He stated that the lot has soil conditions which require the requested variances. Mr. Ciuffredo asked what type of planting were being used and the answer was that the plantings would be permanent. Mr. Hopkins stated that he misunderstood the process and that a wall was a wall and that he made a mistake with the project. Mr. Gates, representative for Indian Lake Watershed, stated that he wanted to see a fence on the top of the wall and maintenance of the plantings. Mr. Kelly stated that the wall is a structure and a building permit will be issued. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, William Bilotta 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, William Bilotta and Brian Murphy to grant the requested variances for 1) relief of 5 feet from the rear yard setback requirement,

2) relief of 1.6 feet from the height requirement, and 3) relief of 15 feet from the exterior side yard setback requirement with the following conditions:

- 1) Plantings shall be in substantial accordance with submitted plans. (Exhibit "A")
- 2) That all planting be continual maintained
- 3) That irrigation system be installed and used to water plantings.
- 4) That a four-foot high fence be installed above the wall in a location appropriate to ensure fall prevention and to the satisfaction of the Building Commissioner.
- 5) That all plantings shall be completed within one year from the date of recording these variances at the Worcester Registry of Deeds.

OTHER BUSINESS

Approval of Minutes: Upon a motion by Brian Murphy and seconded by Leonard Ciuffredo it was voted 4-0 by David George, Leonard Ciuffredo, Lawrence Abramoff and Brian Murphy to approve the minutes from the Board's May 11, 2009 meeting.

Discussion Regarding Proposed Amendment to the Board's Rules and Regulations Related to Application Fees: Mr. Fontane presented the recommended fee schedule changes for FY-2010. He explained that the Board's application fee schedule is based on the principle that larger projects are more complex and require more staff time to review. He indicated that the proposed changes are aimed at generating enough revenue to cover, in an average year, 50% of the costs of services provided. This goal is based on the policy that our work serves two distinct but equally important groups by balancing the rights of those seeking to develop their land with those of the abutting property owners. Therefore, some fees include an increment charge related to the size of the project in addition to a base fee. Moreover, certain types of applications require considerable staff time to review due to the complexity of the use being considered, wireless facilities for example.

Mr Fontane noted that the Board's last fee schedule adjustment was August 1, 2007, which primarily adjusted fees for inflation and corrected structural deficiencies. He further informed that Board that this year's recommendations account for inflation, improve clarity, and make changes that reflect the City's current policy to increase revenue from fee sources. Mr. Fontane explained that staff's findings concluded that, overall, the revenue generated from the fees collected does not cover the cost associated with customer service, clerical support, interdivisional plan review, board support and advertising for Zoning Board applications at the desired level in general and, in particular, for Administrative Appeals. Moreover, he indicated that the Board's Extension-of-Time fee does not cover the cost of the customer service and processing involved.

Mr. Fontane then summarized the FY-2010 fee schedule changes as follows: the proposal increases all base fees and increment charges by approximately 20% and calls for a structural adjustment of the fees associated with Administrative Appeals and Extension-of-Time applications in an effort to capture a greater proportion of the costs associated with customer service, application processing and review. Moreover, to ensure that the Board's fees keep pace with inflation, Mr. Fontane recommended an adjustment for inflation every two years.

Mr. George asked Mr. Fontane how the proposed fees compare with other municipalities. Mr. Fontane said that due to staff cuts his office was not able to conduct a comprehensive survey of municipal application fees, and said that the proposed fee schedule is based on the cost of service

provide not on what other municipalities charge. The Board indicated that it would be satisfied with a cursory internet search of select municipalities. Mr. Fontane agreed.

ADJOURNMENT

Chair George adjourned the meeting at 8:50 P.M.