

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

October 19, 2009

WORCESTER CITY HALL, 455 MAIN STREET, ESTHER HOWLAND ROOM

Zoning Board Members Present: David George, Chair
Leonard Ciuffredo
Lawrence Abramoff, Vice Chair
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
Jen Beaton, Law Department

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

- 1. 00, 15, 35 Tobias Boland Way (PB-2009-058) Variance:** John Kucich, representative for Madison Worcester Holdings LLC, sent a letter requesting a continuance to November 2, 2009 for a variance of 12 feet, 11 inches from the height requirement for a free-standing pylon sign. Upon a motion by Leonard Ciuffredo and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George, to grant the applicant's request for a continuance to November 2, 2009 and extend the constructive grant deadline to November 25, 2009.
- 2. 8 Beckman Street (ZB-2009-066) – Variances:** Robert Longden, representative for Sebouh Mardirossian, sent a letter requesting a continuance to November 2, 2009 for the variances for relief of 1 foot of from the frontage requirement and relief of 930 square feet from the gross dimensional requirement. 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 grant the applicant's request for a continuance to November 2, 2009.
- 3. 323 Bridle Path (ZB-2009-059) (ZB-2009-068) – Special Permit & Variance:** William Ducharme, petitioner, sent a letter requesting a continuance for a Special Permit for expansion or change of a pre-existing non-conforming use and a variance for relief of 20 feet from the rear yard setback requirement. 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 applicant's request to

continue the hearing to November 2, 2009 and extend the constructive grant deadline to November 24, 2009.

4. **10-12 Boyden Street (PB-2009-071) – Administrative Appeal:** Attorney Gary Brackett and Paul Giorgio, representative and owner, presented the Administrative Appeal. Atty. Brackett said the petition was filed to appeal the cease and desist order for unit 2 at 10 Boyden Street, dated September 3, 2009, relative to the operation of an illegal lodging house in an RG-5 zone and the order to get a Special Permit for a lodging house. He referred to the definition of a dwelling unit as containing four components, living, sleeping, eating and bathing facilities. He further referred to the definition of a lodging house under the Zoning Ordinance as a dwelling or that part of a dwelling where sleeping accommodations are let, with or without kitchen facilities, to four (4) or more persons not within the second degree of kindred to the person conducting it. He also said that the Zoning Ordinance defines a family as one (1) or more persons occupying a dwelling unit and living as a single housekeeping unit, not including a group of more than three (3) persons who are not within the second degree of kinship. He stated that this is a dwelling unit, citing the above definition, with four individuals and the fact that there is one more person living in the unit than allowed under the Zoning Ordinance does not constitute a lodging house and therefore he believes the enforcement is invalid. He stated that there was an amendment to the zoning ordinance in February, 2007 that caused an inconsistency in the ordinance where, in the past, as a matter of right, a dwelling unit could be occupied by three unrelated persons as a family unit and then they could rent to two more unrelated persons. Atty. Brackett asserted that the ordinance was not constitutional. Mr. George said that the Board is not deciding on the constitutionality of the Zoning Ordinance. He further stated that the 2007 amendment did not apply as this is a project that was completed in August, 2009. Mr. Ciuffredo pointed out that Mr. Giorgio had applied for a Special Permit for a lodging house in January, 2009 and then withdrew the application. Mr. Giorgio stated that he was given false information regarding the Special Permit and then a representative from Graves Engineering told him that he did not need the Special Permit and he withdrew the application.

Mr. Nordberg stated that there has been an educational program by the city and the College of the Holy Cross to inform students, parents and owners about the lodging house requirements and that no more than three unrelated adults could live in a unit. He stated that Mr. Giorgio was provided notice of this. Mr. Nordberg said that Mr. Giorgio was called last fall and informed that some of his properties were in violation of the Zoning Ordinance regarding lodging houses and when his properties were re-inspected he moved students around so that the properties were in compliance for the inspection. He further said that complaints were received by Inspectional Services from the Worcester Police Department that there were more than three unrelated adults living in the units at 10 Boyden Street. He said that he was denied entry to the unit, but that students told him there were four students living in unit 2. He, also, said that he has given out violations to the Zoning Ordinance for the illegal operation of a lodging house to other owners, including those not renting to students.

Ms. Beaton stated that the Zoning Ordinance defined a lodging house under the zoning ordinance as four or more persons not within the second degree of kindred to the person conducting the lodging house living in the same unit. She stated that the definition of family is not part of the review and that the Board must determine if the order issued is supported by the Zoning Ordinance.

Mr. Kelly said that the structure is a modular building. He said the plans showed four (4) bedrooms and then they were modified to indicate three (3) bedrooms and a den. He also stated that the Certificate of Occupancy has the condition that no more than three unrelated people are allowed to live in the unit. He said that he told Mr. Giorgio he would have to apply for a Special Permit for a lodging house, if he wanted to rent to more than three unrelated people.

Mr. Brackett stated that the issue has been in Housing Court and that an injunction has been denied. He said that he was instructed to take this to the Zoning Board of Appeals and then to Superior Court.

Ron Charest stated that Mr. Giorgio came to the College Hill Neighborhood Association meeting and informed them that he was demolishing the two single-family dwellings and he was constructing a multi-family building with four bedroom units. He said that 55 gallon drums have been put on the street so that the students will dispose of their alcohol cups. David Glazier said that the College Hill Neighborhood Association and the city created a neighborhood plan that stressed home ownership of single-family homes and that the lodging house is in direct opposition to the character of the neighborhood and the quality of life. Ron Jablonski stated that he believes that Paul Giorgio does not care about the neighborhood and that the units have four bedrooms and he is renting to four people. Lisa Abare was concerned that the construction at 10 Boyden Street has ruined her property at 8 Boyden Street. She stated that the retaining wall has caused water to run into her yard and that she has complained to Inspectional Services. Councillor Haller stated that she attended a meeting of the College Hill Neighborhood Association and that Mr. Giorgio was in attendance and he was informed that three adults are allowed in a unit and she believes that he knows he is in violation of the Zoning Ordinance and stated that she hoped the Board would uphold the cease and desist order.

Mr. Freilich questioned if the Administrative Appeal is upheld, will the petitioner be allowed to apply for a Special Permit. Mr. Fontane confirmed that he can apply for the Special Permit at any time. The Board discussed the "Suggested Findings of Fact" in the staff memo dated October 13, 2009. Mr. Freilich asked if it was possible to accept the findings that the staff memo suggested and then add that the applicant could apply for a Special Permit for a lodging house in the RG-5 zone at anytime regardless of the outcome of the Administrative Appeal. The Board asked about holding off on enforcement until the leases run out. Ms. Beaton stated that it would not be appropriate for the Board to impose a condition that would allow a Zoning Ordinance violation to continue into the future for a year. She further stated that any relocation of students would be mandated at Housing Court. Mr. Brackett stated that there are five dwelling units and wanted a confirmation on how many Special Permits would be required. Mr. George stated that was a separate matter and Atty. Brackett should speak with staff.

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 Andrew Freilich and seconded by Leonard Ciuffredo, it was voted 0-5 to overturn the cease and desist order issued on September 3, 2009 ordering the property owner to cease and desist the illegal lodging house at 10 Boyden Street. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-

0 to uphold the cease and desist order issued on September 3, 2009 ordering the property owner to cease and desist the illegal lodging house at 10 Boyden Street.

Board member, Andrew Freilich, left the meeting due to personal obligations.

- 5. 659 Southbridge Street (ZB-2009-070) – Special Permits & Variance:** Stephen Charamella, owner, requested a postponement to November 2, 2009 for the Special Permits to allow more than 25% compact spaces, to allow a professional office in an RG-5 zone, to modify parking and loading requirements to allow a 15 foot access aisle width and a variance for relief of 3 feet from the landscaping buffer requirement. Upon a motion by Leonard Ciuffredo and seconded by William Bilotta, it was voted 4-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, and William Bilotta to grant the applicant's request for a postponement to November 2, 2009.
- 6. 9 Hazel Street (ZB-2009-067) – Variances:** James McCullough, owner and petitioner presented the plan for a variance for relief of 15 feet from the frontage requirement and relief of 485 square feet from the gross dimensional requirement. He stated that the plan is to demolish the existing single-family detached dwelling and construct a new, larger two-story single-family detached dwelling with a one car garage in a different location on the lot. The structure will comply with all dimensional setback requirements but the lot is still lacking in frontage and gross dimensional requirements for this zoning district. He presented the rendering for the structure. He further stated that the road is scheduled to be paved. The board expressed their desire to see a landscape buffer between houses. The board pointed out that the rendering showed the garage on the right side of the house while the plan showed the parking on the left side of the house. The board requested a mock up of the plan depicting the correct structure and driveway configuration. Sharon Wright presented photos of the existing buffer between the houses. She also stated that the water problems she had in the past have been mitigated and she does not want them to return due to the new construction. Mr. McCullough stated that there would be no grade change and that perimeter drains and an E-1 sump pump would be installed and attached to the city sewer system. Mr. Abramoff asked if a water problem occurred what would be the remedy. Mr. Kelly informed that board that it is a violation of the building code to allow water to runoff onto another property. Mr. Ciuffredo asked if the sump pumps would be connected to a generator and if there was a requirement for backup generators. Mr. Kelly stated that he would have to research if generators are required. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 4-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, and William Bilotta to close the hearing. Upon a motion by Lawrence Abramoff, and seconded by William Bilotta, it was voted 4-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, and William Bilotta to approve the requested variances for relief of 15 feet from the frontage requirement and relief of 485 square feet from the gross dimensional requirement with the following conditions: 1) plot plan submitted with the driveway on the right side of the house, 2) front door to face Hazel Street, 3) no parking in the front yard setback, 4) two 2.5" caliper, ALB-resistant shade trees be planted, one in the front yard and one in the rear yard, 5) house must remain a single-family dwelling, 6) storm water management must be met, 7) drywell installed and a generator installed, if required and 8) construction is in substantial accordance with the final revised plot plan and rendering and a note added to plot plan stating that each side of the driveway is to remain as green space and not be paved.

OTHER BUSINESS

Approval of Minutes: Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo it was voted 4-0 by David George, Lawrence Abramoff, William Bilotta and Leonard Ciuffredo to approve the minutes from the Board's September 21, 2009 meeting.

Other: Mr. Ciuffredo stated that he thought the Board had good comments regarding the issue of lodging houses and that there is ambiguity in the Zoning Ordinance regarding subleasing of rooms. He stated that the administration through the City Council should adopt a better policy regarding the status of unrelated people living together. The Board agreed.

ADJOURNMENT

Chair George adjourned the meeting at 7:50 P.M.