

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

December 21, 2009

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN 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

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

- 1. 21 Caro Street (ZB-2009-078) – Administrative Appeal:** Gary Brackett, representative for Paul J. and Michele Meaney, sent a letter requesting Leave to Withdraw without Prejudice for the Administrative Appeal. 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 grant the petitioner's request for Leave to Withdraw without Prejudice.
- 2. 23 Caro Street (ZB-2009-079) – Administrative Appeal:** Gary Brackett, representative for Paul J. and Michele Meaney, sent a letter requesting Leave to Withdraw without Prejudice for the Administrative Appeal. 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 grant the petitioner's request for Leave to Withdraw without Prejudice.
- 3. 1059 Millbury Street (ZB-2009-070) – Amendment to Special Permit and Amendment to Variance:** John-Markus Pinard representative for T Mobile Northeast LLC, petitioner, is seeking an Amendment to Special Permit and Amendment to a Variance to allow a personal wireless service facility and a variance for relief of 50 feet from the height requirement. Mr. Pinard submitted a letter seeking a continuance to January 4, 2010 as more time was needed to provide staff with requested information. Upon a motion by Lawrence Abramoff and seconded William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner's request to continue the hearing to January 4, 2010 and extend the constructive grant date to February 10, 2010.

4. **39 Jolma Road (ZB-2009-080) – Amendment to Special Permit and Amendment to Variance:** Paul Reed, representative for Clear Wireless, LLC, requested a continuance to January 4, 2010 for the Amendment to Special Permit and Amendment to a Variance to allow a personal wireless service facility and a variance for relief of 50 feet from the height requirement. He stated that more time was needed to provide staff with requested information. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George to grant the request to continue the hearing to January 4, 2010 and extend the constructive grant deadline to March 3, 2010.
5. **651-667 West Boylston Street (ZB-2009-083) – Special Permit:** Chris Tully, representative for Fidelis Corporation, requested a continuance to January 4, 2010 for a Special Permit for the expansion or change of a pre-existing non-conforming use/structure regarding length, rear yard setback and landscaping. The Board requested that Mr. Tully provide information regarding his standing for the petition and for the abandonment of the use. Mr. Fontane stated that there are 16 parking spaces on the westerly side of the property that are also on another parcel and that the issue must be resolved. Mr. Ciuffredo requested that the DPW&P traffic engineer respond to the request and not just issue a “no comment” statement. He further requested traffic information for the site from the year 2000 for accidents and other traffic problems. Mr. Tully stated that he received an email from Ali Khorasani that said there was an average of 7-8 accidents annually for the years 2006-2008. Upon a motion by Leonard Ciuffredo and seconded William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the petitioner’s request to continue the hearing to January 4, 2010.
6. **5 Suburban Road (ZB-2009-087) – Special Permit:** Paul Reed, representative for Clear Wireless, LLC, requested a continuance to January 4, 2010 for the Special Permit for expansion or change of a pre-existing non-conforming use for a personal wireless service facility. The board requested that staff review the RF information that was provided and clarify why the RF levels are below 1% for this facility and others on the same location had much higher figures. He stated that more time was needed to provide staff with requested information. Upon a motion by Leonard Ciuffredo and seconded by Lawrence Abramoff, it was voted 5-0 by Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich, William Bilotta and David George to grant the petitioner’s request to continue the hearing to January 4, 2010.
7. **845 Main Street (ZB-2009-093) Special Permit:** Upon a motion by William Bilotta 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 request to continue the hearing to January 4, 2010.

The Board voted 5-0 to recess.

Upon a motion by Lawrence Abramoff and seconded by William Bilotta the Board voted 5-0 to reconvene the meeting.

8. **5 Bedford Avenue (ZB-2009-091) Variances:** Thomas Doucette, representative, for petitioners Andrea and Andrew Doucette, presented the plan for Variances for relief of 250

square feet from the gross dimensional requirement and 2.5 feet from the frontage requirement. Mr. Doucette stated that he had not provided renderings for the project due to the expense. He further stated that the lot was purchased from the city and that the owner was informed that the lot did not meet the zoning requirements and that relief from the Zoning Board of Appeals would be required prior to building a structure. Mr. Ciuffredo and Mr. Abramoff were concerned that there is a lot of vacant housing in the city and that this relief may not be a good fit for the area. The Board was concerned that there was no rendering and informed the applicant that their support of the petition would be based on a rendering and how the structure looks on the lot including setbacks, driveways, landscaping and distances from the street. Mr. Freilich stated that the structure should face Bedford Street. Mr. Doucette said that the structure would be within the setbacks and that the lot would be back on the tax rolls. Upon a motion by Leonard Ciuffredo and seconded by William Billotta, it was voted 5-0 by Lawrence Abramoff, Andrew Freilich, David George, Leonard Ciuffredo and William Billotta to approve the petitioner's request to continue to January 25, 2010 to allow time to submit the requested rendering.

- 9. 34 Thorne Street (PB-2009-092) – Special Permit:** Jonathan Finkelstein, representative for Jayne Witkie presented the plan for a Special Permit for expansion or change of a pre-existing non-conforming use and a Special Permit to allow a professional office in an RG-5 zoning district. Mr. Finkelstein stated that the applicant had purchased the property through a bank foreclosure and wants to open a real estate office. He stated that the hours of operation of the office would be from 8 AM to 6 PM, six days a week and that there will be no increase in traffic. Mr. Ciuffredo stated that there is a business zone one block away and there are no other businesses in the area and that he is not in favor of encroaching more into the residential area. Mr. Freilich asked if the garage would be habitable and if the applicant would be living in the residential unit. He stated that he did not think he could vote for the application as it would be the first business in the area. Mr. Finkelstein said that the two residential units would have more impact on the parking in the area than the business with one residential unit. Mr. George stated that he was not persuaded that the findings of fact had been met for the Special Permit. Mr. Finkelstein asked if the Board would consider conditions that would allow the Special Permits to be granted and there was a discussion about various conditions of approval. 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 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, Andrew Freilich and William Bilotta to approve the requested Special Permit for expansion or change of a pre-existing non-conforming use and a Special Permit to allow a professional office in an RG-5 zoning district with the following conditions: 1) the approved Special Permit cannot be transferred to another owner if the property is sold, 2) the Special Permit is valid for one year from date of final action, 3) renewal of the Special Permit will require an Amendment to the Special Permit with reports from Worcester Police Department and Inspectional Services, 4) green space must remain as depicted on the plan dated 12/2/09 and labeled Exhibit "A", 5) no additional impervious surface can be created, and 6) sign for business cannot be larger than 12" x 14".

- 10. 442 Southwest Cutoff (ZB-2009-081) – Amendment to Special Permit:** Paul Reed, representative for Clear Wireless LLC, petitioner, is seeking an Amendment to Special Permit to allow a personal wireless service facility. Mr. Ciuffredo asked how many other

carriers were on the existing tower and if a structural analysis would be required. Mr. Reed stated that there were four existing carriers and that a structural analysis and general maintenance to the towers is required. Mr. Ciuffredo was concerned with the RF study and the low numbers that were reported at ground level. Mr. Fontane stated that staff would verify the report and recalled that previous reports were for a person standing directly in front of the equipment. Mr. Freilich questioned if the applicant could speak to the effects of radiation and whether it was cancer causing. Marsha Congers stated that she did not have an expert with her that could speak to the subject and was unaware that was necessary as long as the facility is within FCC guidelines. Mr. Freilich stated that he was concerned with the safety of the citizens of Worcester and asked if there was any health hazard. The answer was that there is no scientific data showing that cell phones cause cancer. Mr. Mayo stated that the crews that work on the cell phone equipment wear RF monitoring badges and that the towers are getting stronger and the RF is being lowered. 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 waivers: 1) City Wide Map showing location of other wireless carriers, 2) Label Distances and Contours on a Site Map, 3) Colors of the proposed PWSF represented by color board, 4) Vegetative cover landscape plan:, 5) Balloon Test, 6) Noise Filing Requirements, 7) Plan to measurable scale and property lines for subject property and 8) Approval letter from the Massachusetts Department of Public Health. 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 requested Special Permit for Expansion or Change of a Pre-existing non-conforming use/structure and an Amendment to Special Permit to allow a personal wireless service facility with the following conditions: 1) 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.

- 2) 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 the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- 3) It is constructed in substantial accordance with the Site Plan and renderings prepared by Chappel Engineering (dated 10-14-2009), and the photo simulation submitted by Clear Wireless LLC, on file with the City of Worcester, and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- 4) That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.

11. 10 Wrentham Road (ZB-2009-082) – Special Permit: Paul Reed, representative for Clear Wireless LLC, petitioner, is seeking a Special Permit for expansion or change of a pre-existing non-conforming use to allow a personal wireless service facility. Mr. Abramoff questioned the difference between a panel antenna and a backhaul antenna. The answer is that the panel antenna is for transmission to and from cell phones and a backhaul antenna is for the point to point connectivity of the network. Mr. Abramoff asked for clarification of the noise level at the base of the building. Mr. Reed stated that the facility meets all noise level requirements at the property line. Mr. Fontane stated that there are two provisions to regulate, one is for ground mounted equipment and the other is for noise at the property line and that the noise study should be clarified prior to the issuance of a building permit. Mr. Reed said that the noise engineer was going to take more readings and that sound remediation would be performed, if necessary. Mr. Freilich was concerned that the radiation would be facing into the houses on the hill in back of the condominium complex. Mr. Ciuffredo was concerned with the accessibility of the roof. 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 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 grant the following waivers: 1) City Wide Map showing location of other wireless carriers, 2) Label Distances and Contours on a Site Map, 3) Colors of the proposed PWSF represented by color board, 4) Vegetative cover landscape plan:, 5) Balloon Test, 6) Noise Filing Requirements, 7) Plan to measurable scale and property lines for subject property and 8) Approval letter from the Massachusetts Department of Public Health. 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 approve the requested Amendment to Special Permit for expansion or change of a pre-existing non-conforming use to allow a personal wireless service facility with the following conditions:

- 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.
- That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.
- 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 the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- It is constructed in substantial accordance with the Site Plan and renderings prepared by Chappel Engineering (dated 10-14-2009), and the photo simulation submitted by Clear

Wireless LLC, on file with the City of Worcester, and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

- Access to roof remain locked.
- Warning signs for RF levels be installed
- Warning signs be installed for equipment area.
- Maintenance program for landscaping and fencing be done every 6 months.
- Building permit be subject to sound testing that demonstrates compliance with the Zoning Ordinance, no more than 50 db at the base of the building.

12. 67 Millbrook Street (ZB-2009-088) – Special Permit: Paul Reed, representative for Clear Wireless LLC, petitioner, is seeking a Special Permit to allow a personal wireless service facility. 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 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 waivers: 1) City-wide map, 2) Label distances and contours, 3) Colors of the proposed PWSF represented by a color board, 4) Show vegetative cover landscape plan, 5) Balloon test, 6) Noise Filing Requirements, 7) Federal environmental filing requirements, 8) Proposed security barrier, 9) Plan to measurable scale and property lines for subject property, and 10) Approval letter from Massachusetts Department of Public Health. 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 requested Special Permit to allow a personal wireless service facility with the following conditions:

- 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.
- That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.
- The structure is constructed in substantial accordance with the application dated October 30, 2009 and December 11, 2009, site plan and the photo simulation package, dated October 30, 2009, prepared by Chappell Engineering Associates, LLC and submitted by Paul Reed on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- Warning signs be installed at roof access point.

- Access to antennas be restricted.

13.19 McKeon Road (ZB-2009-090) – Amendment to Special Permit: Paul Reed, representative for Clear Wireless LLC, petitioner, is seeking an Amendment to Special Permit to allow a personal wireless service facility. Upon a motion by William Bilotta and seconded by Lawrence Abramoff, 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 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William Bilotta to grant the following waivers: 1) City Wide Map showing location of other wireless carriers, 2) Label Distances and Contours on a Site Map, 3) Colors of the proposed PWSF represented by color board, 4) Vegetative cover landscape plan:, 5) Balloon Test, 6) Noise Filing Requirements, 7) Plan to measurable scale and property lines for subject property and 8) Approval letter from the Massachusetts Department of Public Health, 9) Distances, at grade, from the proposed Personal Wireless Facility to each building on the vicinity plan, 10) Federal Environmental Filing Requirements and 11) Proposed security barrier, indicating type and extent as well as point of controlled entry (if applicable). 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 requested Amendment to Special Permit to allow a personal wireless facility with the following conditions:

- 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.
- That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a period of at least two years, and be adjusted for inflation upon term renewal – every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services.
- 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 the Division of Planning & Regulatory Services prior to the issuance of a building permit.
- That the structure is constructed in substantial accordance with the with the final approved site plan submitted and the photo simulation package dated October 16, 2009 prepared by Chappel Engineering, Associates and submitted by Clear Wire Technologies on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

- That the expanded PWSF is constructed in substantial accordance with the rendering package prepared by Clearwire Technologies, Inc.
- That the PWSF is in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- That roof access be limited to authorized persons only.
- Warning signs be on roof and antennas.

OTHER BUSINESS

Minutes: Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 to approve the minutes for November 2, 2009, as amended.

Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 to approve the minutes for November 23, 2009, as amended.

Board reviewed and signed decisions.

ADJOURNMENT

Chair George adjourned the meeting at 9:00 P.M.