

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

**January 4, 2010
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. 240 Main Street (ZB-2009-094) – Special Permit:** Michael J. Spillane, representative for Sponsor Co., LLC, sent a letter requesting a continuance to March 1, 2010 for the Special Permit to allow a non-accessory sign in a BG-6 zoning district. 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 petitioner's request to continue the hearing to March 1, 2010, due to a scheduling conflict.
- 2. 414 – 416 Main Street (ZB-2009-095) – Special Permit:** Michael J. Spillane, representative for Sponsor Co., LLC, sent a letter requesting a continuance to March 1, 2010 for the Special Permit to allow a non-accessory sign in a BG-6 zoning district. 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 petitioner's request to continue the hearing to March 1, 2010, due to a scheduling conflict.
- 3. 64 Water Street (ZB-2009-096) – Special Permit:** Michael J. Spillane, representative for Sponsor Co., LLC, sent a letter requesting a continuance to March 1, 2010 for the Special Permit to allow a non-accessory sign in a BG-3 zoning district. 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 petitioner's request to continue the hearing to March 1, 2010, due to a scheduling conflict.
- 4. 154 Main Street (ZB-2009-097) – Special Permit:** Michael J. Spillane, representative for Sponsor Co., LLC, sent a letter requesting a continuance to March 1, 2010 for the Special Permit to allow a non-accessory sign in a BG-6 zoning district. Upon a motion by Lawrence Abramoff and seconded by Leonard Ciuffredo, it was voted 5-0 by David George,

5. **37 Pleasant Street (ZB-2009-100) – Special Permit:** Michael J. Spillane, representative for Sponsor Co., LLC, sent a letter requesting a continuance to March 1, 2010 for the Special Permit to allow a non-accessory sign in a BG-6 zoning district. 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 petitioner's request to continue the hearing to March 1, 2010, due to a scheduling conflict.
6. **845 Main Street (ZB-2009-093) Special Permit:** Robert Branca, representative for J&M Batista Family, L.P. requested a continuance to March 1, 2010. 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 request to continue the hearing to March 1, 2010 to allow time for the applicant to petition for a zone change.
7. **280 May Street (ZB-2009-099) – Special Permit and Variance:** John-Markus Pinard representative for T Mobile Northeast LLC, petitioner, is seeking a Special Permit and a Variance to allow a personal wireless service facility and a variance for relief of 37 feet from the height requirement. Mr. Pinard submitted a letter seeking a continuance to January 25, 2010 as more time was needed to provide staff with requested information. Upon a motion by Lawrence Abramoff and seconded Leonard Ciuffredo, 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 25, 2010.
8. **1059 Millbury Street (ZB-2009-070) – Amendment to Special Permit and Amendment to Variance:** John-Markus Pinard and Scott Heffernan representatives for T Mobile Northeast LLC, petitioner, presented the plan for 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 stated that the additional wireless facilities are to eliminate the gap in coverage and that they will be installed 77 feet high on a 100-foot tower. He further stated that an alternate plan to enclose the antennas was supplied to the Board. Mr. Ciuffredo stated that he asked that alternate plans be provided as previous considerations required a stealth pole and he believed additional facilities should be camouflaged as the original antennas are part of a shrouded area. Mr. Heffernan provided two alternatives for camouflaging. He stated that their preference was to not shroud the antennas. He further stated that the only people that would be in contact with the antennas would be those working on the facility. Mr. Bilotta was concerned with the amount of RF that each antenna would output and questioned if there was a health concern. Mr. Heffernan stated that the Federal Government has provided studies that show that RF is low powered and is non-ionizing radiation. The Board stated that they wanted to have the antennas shrouded and approved Plan B which is on the submitted plan. 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 William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Leonard Ciuffredo, Andrew Freilich and William

- That prior to the issuance of a building permit, three (3) copies of a site plan to measurable scale be submitted showing:
 - proposed landscaping around the PWSF compound
 - showing contours
 - proposed security barrier
 - full property boundaries
- 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 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 expanded PWSF is constructed in substantial accordance with the rendering package dated 9/15/09 prepared by T-Mobile Northeast LLC.
- That the expanded PWSF be constructed to Sheet A-1, submitted to the Zoning Board of Appeals at the January 4, 2010 meeting and revised on 12/9/09 to provide details of the antenna shrouding with the antennas painted to match.
- That ropes and metal attachments on the flagpole be removed.
- That entire flagpole be painted.
- That a semi-annual maintenance program be implemented for all plantings
- That the PWSF is in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- 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 and submitted to the Division of Planning & Regulatory Services and Division of Inspectional Services. 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.

9. 39 Jolma Road (ZB-2009-080) – Amendment to Special Permit and Amendment to Variance: Paul Reed and Maznavi Jaleel, representatives for Clear Wireless, LLC, presented the plan for 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. Reed stated that the existing facility consists of multiple wireless carriers on a 190-foot pole. Mr. Ciuffredo stated that he saw the property owner's equipment stored next to the equipment area and he and Mr. George view this as a safety concern. Mr. Reed stated that he did not want to paint the equipment. The Board expressed their desire that the equipment should be painted to match the other equipment for consistency. Mr. Reed stated that he did not think landscaping was necessary due to the nature of the location of the facility. The Board said that they wanted fencing or landscaping. Mr. Reed agreed that the landscaping would be better and would serve to keep the owner's equipment away from the enclosure as well. 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 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) Approval letter from the Massachusetts Department of Public Health, 8) Federal Environmental Filing Requirements and 9) Lighting. 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 service 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 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 landscaping include densely planted shrubs that screen the equipment cabinet area from Jolma Road and include: drought resistant, hardy plantings that are not susceptible to Asian Long horn beetle infestation and are not listed on the Massachusetts Invasive Species list as most recently updated.
- That the expanded PWSF is constructed in accordance with the final submitted site plan which should be to measurable scale, show full property boundaries, and detailed landscaping information and contain all information required for site plan not expressly waived by the Zoning Board of Appeals. Three (3) copies of said plan should be submitted to the Division of Planning and Regulatory Services.

- 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 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 and submitted to the Division of Planning & Regulatory Services and Division of Inspectional Services. 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 a semi-annual maintenance program be implemented for all plantings.
- That no equipment storage be within 10 feet of the fence enclosing Personal Wireless Service Facility structure.

10.5 Suburban Road (ZB-2009-087) – Special Permit and Amendment to Variance: Paul Reed and Maznavi Jaleel, representatives for Clear Wireless, LLC, presented the plan for an Amendment to Special Permit and an Amendment to a Variance to allow a personal wireless service facility and a variance for relief of 9 feet from the height requirement. Mr. Reed stated that the existing facility includes antennas that are roof-mounted and that he will be installing more antennas and a small equipment cabinet on the roof. Mr. Ciuffredo asked why a previous applicant that was installing equipment on the roof provided a report that stated that the RF might exceed recommended levels and Mr. Haes’ report does not agree. He further stated that he did vote for the previous application as he was concerned he might be putting people in harms way. Mr. Jaleel explained that the location of these antennas is in the center of the roof and the other facility is on the edge of the roof. Mr. Fontane clarified that the previous applicant had a situation where the general population had access to the roof. He further stated that this has changed and the roof is no longer able to be accessed without authorization. Upon a motion by William Bilotta 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 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) Security Barrier, 7) Approval letter from the Massachusetts Department of Public Health, 8) Plan to measurable scale and property lines for subject property and 9) Federal Environmental filing requirements. 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 service facility and an amendment to variance for relief of 9 feet from the height requirement with the following conditions:

- Access to the roof will be restricted and a lockbox to hold access key will be installed at the rooftop door.

- Warning signs be installed on access points.
- Warning signs be installed on the roof at eye-level and below equipment.
- Security barriers be installed.
- Site be inspected annually for maintenance of fencing, cable tray and kept in installed condition.
- 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.
- 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.
- 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 PWSF is in compliance with all governmental codes and the City of Worcester Zoning Ordinance.
- 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 and submitted to the Division of Planning & Regulatory Services and Division of Inspectional Services. 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.

11.39 First Street (ZB-2009-098) – Special Permit: Paul Reed, representative for Clear Wireless LLC, petitioner, presented the plan for a Special Permit for expansion or change of a pre-existing non-conforming use to allow a personal wireless service facility. Mr. Reed stated that both Verizon and MetroPCS have facilities on the roof and that the antennas will not exceed 10 feet over the height of the roof. Mr. Ciuffredo questioned if there was noise from the equipment. Mr. Reed said that noise is produced but no more than what is already at the property line. 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 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

- Vicinity Plan filing requirements: Proposed security barrier, indicating type and extent as well as point of controlled entry (if applicable).
- Design Filing Requirements: Materials of the proposed Personal Wireless Service Facility specified by generic type and specific treatment (e.g., anodized aluminum, stained wood, painted fiberglass, etc.). These shall be provided for the antennas, mounts, equipment shelters, cables as well as cable runs, and security barrier, if any.
- Access to the roof will be restricted and a lockbox to hold access key will be installed at the rooftop door.
- Warning signs be installed on access points.
- Warning signs be installed on the roof at eye-level and below equipment.
- Site be inspected annually for maintenance of fencing, cable tray and kept in installed condition.
- 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 and submitted to the Division of Planning & Regulatory Services and Division of Inspectional Services. 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 November 20, 2009 prepared by Chappell Engineering Associates, LLC and submitted by Clear Wireless

12. 651-667 West Boylston Street (ZB-2009-083) – Special Permit: Stephen Madaus, Jeff Howland and Chris Tully, representatives for Fidelis Corporation, presented the plan for a Special Permit for the expansion or change of a pre-existing non-conforming use/structure for a drive-through regarding length, rear yard setback and landscaping. Mr. Madaus stated that they had met with DPRS and that they had received an updated staff memo. He further stated that the 16 parking spaces that are partially on an abutting parcel are not being counted as required parking. He also stated that he has provided a written opinion as to the owner's standing to be before the Board. He said that the use was established by a lease and that the use was made available to the owner through the lease as ownership is not a requirement of the use under the Zoning Ordinance. The use was established prior to the requirement of a Special Permit, was abandoned and will expire at the end of two years. The lease is part of private rights to be handled in the courts. Mr. Branca stated that the use went to the end of 2008 and that they are in the window of time prior to expiration. Mr. Howland stated that after a meeting with DPRS and DPW and with Board comments, the plan has been modified. He stated that landscape islands with ALB resistant plantings have been added, curb cuts have been changed, dumpster will be screened, a crosswalk has been added from the handicapped parking spaces, entrance, exit and left-turn only signs were added and employee only parking will be designated. Mr. George asked if the non-conformity of the lot is being intensified. Mr. Madaus stated that the drive-through will be longer, an escape land will be added, the rear yard setback will be reduced by 3 feet and the front yard alignment will be used. He further stated that access and traffic flow will be improved and that moving the WRTA shelter will make the site safer. Mr. Freilich questioned why the WRTA shelter was not being moved further. Mr. Tully stated that this is the safer place to move it, as during the winter snow is piled up. Mr. Tully stated that he did not want to close one of the curb cuts as was recommended by staff. The Board stated that they wanted to have more landscaping on the front of the building and also not allow parking in front of the building. 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 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/structure for a drive-through regarding length, rear yard setback and landscaping with the following conditions:

- 1.) Built in accordance with final revised Definitive Site Plan approved by the Planning Board.
- 2.) That the applicant close the four (4) curb cuts and provide all signage recommended by DPW.
- 3.) That landscaping be installed in accordance with the final planting plan prepared by Earth Design prior to issuance of an occupancy permit.
- 4.) That a landscaping maintenance program be performed every six months.
- 5.) No parking is allowed in front of the building on West Boylston Street.

- 6.) That the sixteen (16) partially off-site parking spaces are not to be used for zoning compliance for future expansion / change of uses unless a lease to use them is obtained and/or the land is purchased.
- 7.) That the final revised plans reflect the parking requirements for the drive-through using the following formula (0.5 parking spaces for each seat; 1 space for every 60SF of drive through service area, 1 space for every 300 SF of retail/counter space). The required spaces in the parking summary should, therefore, be significantly less than currently shown using the formula 1 space for every 60SF.

OTHER BUSINESS

Minutes: Minutes were not approved.

Board reviewed and signed decisions.

Scrivener's Error:

Ms. Gentile explained that there was a scrivener's error in the recent decision for 99 Crescent Street for a Special Permit of a pre-existing non-conforming use/structure. The decision did not reflect the use as a pre-existing non-conforming and the new decision does.

Board Recruitment:

Mr. Fontane stated that a recruitment session had taken place and that two people have been interviewed and that there was one more interview scheduled. He said that then final recommendations would be presented to the City Manager by the end of the month. The process would be for the new appointees to go to Human Resources for training and then attend two meetings prior to participating in a Board meeting. Mr. Freilich stated that he is feeling undue pressure when he has to miss a meeting as a result of personal obligations or illness. He asked if there were any restrictions on appointments and stated that we are only replacing required members and not appointing alternates. Mr. Fontane stated that there are recruitment rounds twice a year as part of the strategic plan. He said that the terms for the Board are staggered by design so that all of the members are not replaced in the same year to insure continuity. Mr. Ciuffredo stated that if there are requirements for the position, they should be put in writing. Mr. Fontane said that the recruitment efforts allow for flexibility so that a person might be appointed to one or more Boards and that up to three board preferences are asked of the candidates.

Personal Wireless Service Facilities:

Mr. Fontane provided an updated to the Board recent federal decisions that change the criteria for approval and supercede the City of Worcester Zoning Ordinance as it relates to personal wireless service facility uses. He said that all in all zones where PWSF uses are not permitted in the ordinance they will be interpreted a allowed by “SP” (Special Permit) until the Zoning Ordinance is amended. Moreover, the overarching criteria for approval is the demonstration of “gap coverage” and if this is provided they must be approved. Mr. Fontane said that the carriers will have to substantiate the gap in coverage and that the Board could as for third-party verification if its Rules and Regulations enable it to do so. He said that staff will propose an amendment to the Board’s Rules and Regulations to enable it to require an independent, certification of the “gap in coverage” paid for by the applicant.

ADJOURNMENT

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