

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

**March 22, 2010
WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

Zoning Board Members Present: David George, Chair
Lawrence Abramoff
Andrew Freilich
William Bilotta
Vadim Michajlow

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.

**REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS,
WITHDRAWALS**

- 1. 525 Pleasant Street (ZB-2010-011) – Variances: relief of 1989 square feet from the gross dimensional requirement and relief of 6 feet from the rear yard setback requirement:** Michael Sowyrda, representative for the applicant, Stephen Hopkins, requested a continuance to April 12, 2010 to allow time to advertise for additional required relief. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to grant the petitioner's request for a continuance to April 12, 2010.
- 2. 40 Harlow Street (ZB-2009-015) – Special Permit: To allow a non-accessory sign billboard) in a MG-2.0 zone:** Jonathan Finkelstein, representative for Murray Marketing, Inc., petitioner, presented the plan. Mr. Fontane clarified that this hearing was postponed from 2/8/2010. Mr. Finkelstein stated that the petitioner is seeking a Special Permit to alter the existing structure to allow an LED display or a digital sign in accordance with international building code in an MG-2 zone. He further stated that the sign must meet the approval of the Outdoor Advertising Board (OAB), the Zoning Board of Appeals for a Special Permit and the Planning Board for Site Plan Approval. He said the site was part of a Mass Highway pilot program to determine safety and that Murray Marketing was awarded approval on March 11, 2010 from the Outdoor Advertising Board to install a digital sign at 40 Harlow Street – submitted to the Board. Mr. Finkelstein said that the zoning ordinance allows that the signs be permitted in business and manufacturing zones. He further stated that the Zoning Board of Appeals shall permit non-accessory billboard signs in manufacturing zones, if they comply with the sign ordinance for spacing, dimensions,

illumination and do not obstruct visibility for traffic and that the Special Permit application requirements for traffic and safety are subordinate to the requirements of the sign ordinance for spacing, dimensions and illumination. Mr. Finkelstein submitted relevant section of the Zoning Ordinance to the Board and called their attention to provisions for the ML and MG zoning districts. Mr. George clarified and confirmed with Mr. Finkelstein that this sign requires a Special Permit considering both the general special permit requirements and the specific requirements for billboard signs. Mr. Finkelstein agreed.

Joseph Murray stated that the sign was built in 1980 prior to the requirement of a special permit by the issuance of a building permit and that now a special permit is required to alter the structure. He said that the structure will be reconstructed with new I-beams that will be constructed to the new international Building Code and will be able to support any sign face they install. He cited the different types available as hurricane, tri-vision and LED substrates and showed examples. He said that the OAB wants to do a study of a number of locations throughout Massachusetts with respect to brightness and how its distraction impacts safety. They did a study and there are no accidents attributable to this sign and then they will study after the LED whether there were any. He stated that the requirements of the program are a pre-study of traffic, then a study 30 days after the sign is erected and then over a twelve month period to determine if the sign is safe. If it is determined to be unsafe, then the OAB has the discretion to stop the LED. Mr. George indicated that the Board was familiar with the program from another application.

Mr. Finkelstein indicated that the OAB approved the digital sign on March 11, 2010. Mr. Finkelstein clarified that the proposed sign is illuminated and that illuminated signs are allowed by-right in ML and BG districts and further stated that at this time there is no prohibition or moratorium on these types of signs. The applicant is just changing the substrate to digital and introduced the traffic engineer that conducted the baseline traffic safety study.

Mr. Kudadow, a traffic engineer, explained the pre-study's parameters and stated that the pre-study done by BSC group determined that the sign could be seen from 2,000 feet and that 7 accidents had occurred in that area. None of the accidents could be attributable to the sign that is there today. He further stated that there are several signs in the study area including an existing LED sign on the C.K. Smith property and that these signs were not the cause of the accidents. He further stated that there is a similar LED sign that changes every 10 seconds on I-93 in Stoughton and accidents have not occurred there.

Mr. Bilotta asked about the source of the accident data. Mr. Finkelstein said State Police. Mr. Freilich stated that he was having a problem moving forward on this petition which is the same as the one that he saw at another location a month ago from a competitor and indicated that a new sign ordinance was coming out and that the exact same petition was before them. Mr. Finkelstein said that it is site specific. Mr. Freilich further stated that he sees merit in the digital signage, but is reluctant to support it since there is a sign moratorium ordinance being considered and we do not know what the new sign ordinance is going to be.

Mr. George clarified that the Board will vote on the petition based on the current ordinance and findings of fact, and that this location will be considered independently of other similar locations. Mr. Finkelstein stated that they have received OAB approval, for which they will

have to ask for an extension if there are impediments to the permitting process, such as a moratorium, and that they are changing an existing frame to hold the many types of signs. He said that it will have a single pole not two as staff's report indicated. In response to Mr. Bilotta's question regarding public services announcements, Mr. Finkelstein said that a requirement of the program, the digital test, is that they must provide public service announcements. Mr. Bilotta indicated that on page 5 of staff's memo that the applicant did not include timing between messages.

Joseph Murray stated that the OAB requires the message to be 10 seconds in duration and then an instant message change with no flashing or scrolling and that the sign cannot go up if it is not part of the pilot program. Board asked about the pilot program. Mr. Finkelstein further said that there were two pre-approved sites in Worcester for the pilot study, this one and the one owned by Lamar Advertising on Garden Street on the east bound side of I-290. Mr. Finkelstein said that the deadline for erecting the sign was April 30, 2010, and if the deadline could not be met, the applicant would request an extension but they cannot get an extension if they do not get an approval here. An extension could not be requested without an approval to erect the sign.

Mr. George asked if there was anyone in the audience that wanted to be heard. None indicated. Mr. George stated that distraction to motorists and safety is the issue and further said that he believes accidents are under-reported. He then asked for staff's comments.

Mr. Fontane said that the items outlined in the memo are based on research done for the sign ordinance and are applicable to 28 Garden St. and this location. He further stated that the memo contained an overview of the project, neighborhood context, sign ordinance and a summary of research as to whether or not signs contribute to driver distraction and other safety studies and further recommendations for studies based on those studies and that all were included in a series of appendices and added one more "J", A through J were provided to the Board. Staff's memo offers our comments and additional findings of fact for the Board to consider.

Mr. George asked about the research related to the safety issues and impact on motorist and the research out there relative to distraction. And raise reasonable doubt that the signs would not have an impact. Mr. Fontane reviewed findings related to criteria of approval and indicated that traffic flow and safety was staff's focus. The existing billboard is located on a lot that is occupied by a four bay garage and school bus parking and will not reduce required off-street parking on site. The proposed digital display is part of a pilot study on digital billboards being conducted in conjunction with Mass Highway. The sign will be designed to transition and be displayed in accordance with best practices in the industry. Regarding traffic flow and safety, the applicant has submitted pre-sign installation crash data study (by BSC group) and Mass Highway's Traffic Engineering and Outdoor Advertising field review memorandum for the site at 40 Harlow Street (Attachment F).

Mr. Fontane went on to say that the Traffic Engineering & Outdoor Advertising field review memorandum revealed some interesting and important elements regarding traffic safety for the site at 40 Harlow Street for traffic traveling eastbound on I-290 where the digital face is proposed. It is characterized as a billboard location that *"has a moderate to high potential to distract I-290 eastbound drivers from the advance lane assignment signing for the I-190"*

north (Exit 19) and SR 70 / Lincoln Street (Exit 20) exits.

Mr. Fontane said that the site is located in the vicinity of the I-290 and I-190 merge / exit, and we posit that it is a demanding driving environment where drivers must negotiate merging lanes and pay attention to directional signage. We have attached, as an additional information about this location, the February 26, 2010 Telegram & Gazette article entitled: “Slow spot top I-290 gets Nod as Region’s Worst Bottleneck” (Attachment J), which discusses the results of a 2009 nationwide study by INRIX, a Seattle based traffic and navigation consulting company. Worcester was ranked 68th of the top 100 most congested metro areas in the country; however the report highlighted that the Rt. 70 exit on Friday afternoons is congested with traffic slowing to 15 mph. Mr. Fontane said, this is a highly trafficked road and this provides third party verification of that notion.

The pre-installation traffic study prepared by BSC also indicates that there were seven reported accidents in 2008 approximately 2,000 feet south of the current static sign’s location on I-290 eastbound. Five of the seven accidents occurred during the day; the other two at night. The accidents consisted of three rear end collisions; two were caused by side swipes, two from vehicles changing lanes to use the I-190 northbound lane. Given that research shows that accidents generally go underreported; this information supports the premises that the driving environment is a demanding one. Mr. Fontane continued to say that side swipes and rear end collisions are often the result of driver distraction, both interior such as texting or exterior stimuli, and increased potential for external driver distraction at this key decision making point is not recommended.

Mr. Fontane said that staff interviewed Edward Farley at the Outdoor Advertising Division of Mass Highway regarding how results of the pilot study for each site will be analyzed. Mr. Farley indicated to us that the 30 day and year long reports will be reviewed by Mass Highway traffic engineering staff. He also stated that the pilot study does not specifically identify a particular threshold for increases in accidents or standards for identifying statistically significant increases that will automatically result in the state ordering the cessation of any of the digital billboards in the pilot study. He further stated that the results will be reviewed on a case-by-case basis.

Mr. Fontane said that based on our research best practices for this type of study, as recommended by the FHWA, staff believes the pilot study has inherent weaknesses that will limit its ability to produce statistically sound data. The Board may want to set a condition of approval, should it so desire, that safety data from the pilot study in Worcester and the other pilot studies in the state, both the required thirty day and year end report, be submitted for review by the City of Worcester and the Zoning Board of Appeals. Moreover, the Zoning Board of Appeals may wish to set a crash increase threshold and require that if that threshold is exceeded, the digital billboard must cease operation or that any image displayed remain static for 24 hours before changing. The Board may also want to require that a third party independent statistician advise the Zoning Board of Appeals regarding the scope of the study and whether changes in the number of accidents, if any, is statistically significant.

Mr. Fontane said that unfortunately, as described in the summary of research, merely studying crash data reported to the police has some drawbacks, including underreporting, the unlikelihood of drivers reporting specific distracting elements that may have caused them to cause an accident, and in frequent cases you have issue with what caused the accident and

contributed to it. So those are the safety issues we have Mr. Chairman, Mr. Fontane concluded.

Mr. Finkelstein stated that the staff wrote their memo as if Worcester has some jurisdiction over the highway. There is no ordinance that states that the City of Worcester or Zoning Board has any jurisdiction over I-290. This is why we have OAB to review and analyze proposed signs for traffic safety. So the Planning Staff is substituting their judgment, which has no traffic engineer to support it. All of the studies do not address this site, only the opinion article from the Telegram and Gazette. The OAB determines what is safe on the highway. Everything that Planning staff said, except for safety, is that they comply with the ordinance. It is solely under the jurisdiction of Mass Highway, and the whole idea of the pilot program is to determine if the signs are safe. He further stated that the Planning Staff supported the applicant's findings of fact with the exception of the safety issue. Mr. George reiterated his point that one of the criteria of the Special permit is traffic flow and safety and that is within the Board's purview to make a finding of fact related to traffic flow and safety.

Mr. Fontane responded that the City is not claiming any jurisdiction over OAB and that if you could erect a billboard with only that approval we would not be here tonight considering it. And in terms of safety we are not merely citing a Telegram and Gazette article, that was related to the traffic congestion based on a study they cited. We are talking about the study they did for this site were the digital face is proposed and referred and quoted *"has a moderate to high potential to distract I-290 eastbound drivers from the advance lane assignment signing for the I-190 north (Exit 19) and SR 70 / Lincoln Street (Exit 20) exits."*

Mr. George said this is Exhibit F in the Board packet and read it allowed. He read the following that Traffic Engineering recently conducted field reviews of proposed digital billboard locations to be included under the Outdoor Advertising Board's pilot program. The purpose of this review was to identify those locations where billboards may distract driver's attention away from either adjacent traffic signs and signals or other roadway features.

"I-290 Eastbound Worcester adjacent to Harlow Street (Permit # 80156) This location has a moderate to high potential to distract I-290 westbound drivers from the high-speed lane drop (five lanes to three lanes) at this location. This location has a moderate to high potential to distract I-290 westbound drivers preparing to exit at SR9.

I-290 westbound Worcester adjacent to Harlow Street (Permit #80156) This location has a moderate to high potential to distract I-290 eastbound drivers from the advance lane assignment for the I-190 north (exit 19) and SR 70/Lincoln Street (exit 20) exits."

Mr. Murray said the OAB knew those comments as still approved this sign. All signs are distracting. He also referred to the CK Smith sign and that it was permitted by a building permit by-right. Mr. George said that is not before them and that he thought this Board would not have permitted that sign. Mr. Murray stated that the sign at C.K. Smith was given a building permit because it was an on-site sign. He further said that by allowing the C.K. Smith sign and not this sign is not just a zoning issue but a first amendment right. Mr. George said that the Board did not vote on the C.K. Smith sign and that it was not relevant to the discussion.

Mr. Fontane said that staff did not have any comments regarding the applicant's findings

regarding adequacy of utilities and other public services. With regard to neighborhood character and social structure he said: The proposed digital billboard is located on the same location as an existing static billboard in a manufacturing zoning district and would not obscure a view corridor that is significant to the character and social structure of the area. Impacts on the natural environment: Staff has no additional comments regarding the applicant's findings. Potential fiscal impact, including city services needed, tax base, and employment: Staff has no additional comments regarding the applicant's findings.

Mr. Finkelstein said so all we are talking about is traffic safety. You got comments from state highway and the OAB approval and Planning staff are substituting their judgment. Where does the jurisdiction come from?

Mr. Fontane said Mass Highway made its decision based on a "drive by". If the applicant feels that doing some research on the issue, as we did, is not as good as OAB's research that's for the Board to determine. Mr. Fontane said that the applicant says that Mass Highway has determined the sign to be appropriate through a mere "drive-by" by a traffic engineer and the OAB has approved the site and now it is up to the Board to make their determination. He continued to say that the OAB made its decision based on the information it thought was necessary and he recommended that the Board should do the same.

Mr. Fontane further stated from staff's memo regarding additional findings that staff believes the following should be considered by the Board. Number 7, the owner of record is Murray Commercial Real Estate LLC and the applicant is Murray Marketing, Inc. The existing sign is a static non-accessory sign and the dimension are provided. Number 9, the applicant seeks to convert one sign face (southern sign face) to a digital billboard. Number 10, related to the Pilot study, the proposed digital billboard is part of a pilot study with Mass Highway, Outdoor Advertising Division regarding digital billboards and, in conformance with this study, hired a consultant to collect crash data for a year prior to and a year after the installation of the proposed digital billboard. Number 11, crash data submitted to Mass Highway will be reviewed on a case-by-case basis and the pilot study includes no set number or statistical significance threshold that would require automatic cessation of the digital billboard by Mass Highway Division. This was within their jurisdiction and they chose not to do so. Number 12, the proposed digital billboard meets dimensional and location requirements of the Zoning Ordinance per Article IV, Section 6F. Number 13, from the research we did we pulled together the following points. There are no official guidelines from the FHWA or from Mass Highway to date regarding digital billboards nor has staff made final its recommendations for regulating digital billboards. The Federal Highway Administration's most recent report on the "Effects of Commercial Electronic Variable Message Signs on Driver Attention and Distraction" (Feb. 2009) does not provide guidance to States on the control of Commercial Electronic Variable Message Signs but outlines what it believes are the best future research methods going forward¹ and indicates that *additional research is needed prior to issuing guidelines*. (Attachment G) Whether you google it, or not, it's their report. With respect to its temporary guidelines from 2007, the FHWA noted that they should not preclude municipalities from prohibiting digital billboards wholly or partially or to adopting stricter standards. So staff is advising based on these studies, Mr. Fontane said.

¹ On road instrumented vehicle study; naturalistic driving study, and the unobtrusive observation method

Mr. Fontane continued that while it proceeds with its current research project, FHWA has issued interim guidance that addresses message duration, transition, timing, spacing. Unfortunately it has been noted that these guidelines are based on little sound empirical data and in several cases are so subjective as to be open to multiple interpretations. In other areas of traffic safety, actual crash causation is rarely required prior to setting regulations such as speed limits, restricting in vehicle mobile telephone use or developing current billboard restrictions.² I am pointing out that how we get to the regulation we have on these highways, causation is rarely involved in setting regulation, yet we still have them. Digital billboards have been shown to be a causative factor in crashes most researchers believe; however research methods to date are not sufficiently sensitive to identify this linkage. Other states and municipalities have prohibited or reversed previous decisions regarding digital billboards pending final FHWA research results. (See Attachment H and I) regarding digital billboards in Rhode Island. I am just pointing out that we are not some outlier here in being concerned.

Mr. George asked do you feel this information is subjective? Mr. Fontane said that it is drawing from the findings of the studies identified. What we find is that a lot of this is still in development so there is an absence of knowing. There are studies that show that there are potential problems with regard to distraction, and there are industry reports that say otherwise, but we found those to be flawed. We provided these studies to the applicant and the Board for consideration.

Mr. Finkelstein stated that the city's traffic engineer had not commented on traffic safety with relation to the sign. He further stated that billboards are a distraction and that the purpose of the pilot-study is to determine the level of distraction and safety. He also said that the default for special permits should be to approve a special permit, with conditions if necessary. He said that the billboard structure will be brought up to national safety standards for hurricane, tri-vision and LED as part of the purpose of the petition and not only to allow an LED billboard.

Mr. Freilich asked for a clarification that the special permit was for the billboard structure and not the LED billboard. Mr. Finkelstein stated that he is requesting a special permit for the billboard structure, whether or not the LED substrate is approved. Mr. George clarified that the approval, if the Board chose, would be for the structure with conditions that the LED substrate not be allowed.

Mr. Freilich said that he did not see the billboards as any more of a distraction than the wind turbine or baseball games along the highway. He said that he would be in favor of the petition after a new sign ordinance is adopted. People look at the content they are interested in and not just the type of sign. If they are not interested, then they are not distracted. Mr. Finkelstein opined about moratoriums. The whole point is to stop the permitted so that a new ordinance can be adopted. But applicants may choose to beat the adoption of the ordinance by applying for permits. Mr. Freilich discussed the mechanics of permitting. Mr. Finkelstein said we are here now because they are allowed now. Mr. George said we should work with the ordinance before the Board.

² Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs – Final Report. Prepared by Jerry Wachtel, CPE for the NCHRP Project 20-7 (256) April 2009, page 182. (Attachment G)

Mr. Fontane asked if he could rebut with regard to the studies and the complex driving environment. Mr. Fontane stated that staff is looking at reports from engineers that state digital billboards may be a cause of accidents. He further read from staff memo as follows:

Despite the need for future studies, extensive literature reviews and reanalyzing of past studies as well as review of studies from the last decade support the premises that digital billboards contribute to driver distraction at levels that adversely affect safe driving performance.

The comprehensive report submitted under the National Cooperative Highway Research Program, April 2009 which performed extensive literature review and analysis of past research and the most recent studies finds that: studies performed in the last decade demonstrate that the presence of roadside advertising such as digital billboards contributes to driver distraction at levels that adversely affect safe driving performance.³ They found, not my staff said Mr. Fontane.

There are strong theoretical underpinnings in the psychology of cognition, perception, psychophysics, and human factors to suggest why stimuli such as roadside digital billboards can capture and hold a person's attention even at the expense of primary task performance driving.⁴ They found Mr. Chairman, not my staff said Mr. Fontane.

Research sponsored by the outdoor advertising industry generally concludes that there are no adverse impacts from roadside digital billboards even when the actual findings of such research indicate otherwise.⁵ So we are looking at reports from other experts. We do not have them here before you tonight, I know that. It is not my staff putting on their engineering hat, nor is it our DPW since they do not have the resources. The Tantala Associates 2007 report submitted as part of a presentation to the Board in a supplemental packet has been widely criticized by numerous peer reviewers⁶ for inherent weaknesses in the study including small sample sizes, other erroneous use of statistics and bias throughout the report.⁷ They concluded that Mr. Chairman, not my staff said Mr. Fontane. In terms of the driving environment within the zone of visibility of the proposed sign we posit it is complex. It's not just based on the T&G's most recent article Mr. Chairman.

Mr. Fontane continued that according to the Traffic Study Phase I report from BSC Group dated June 12, 2009: in the eastbound travel direction, the roadway consists of three lanes that widen to four 1,100 south of the highway split. Two lanes continue to the left on I-290 eastbound, the third lane becomes a shared lane for I-290 and I-290 and the added fourth lane is dedicated to I-190 traffic. Mr. Fontane said we are just laying out what is out there and that there are many lane changes. In the eastbound travel direction, the sign is visible from approximately 2000' from the sign location. An official Mass Highway overhead sign signaling Exit 19 and 20 is visible as well. It is therefore likely that some drivers will be negotiating a lane change in either

³ For example Virginia Tech Transportation Institute 2005-2006 study showing that the time drivers' eyes are off the road due to external (outside the vehicle) distractions are estimated to cause more than 23% of all crashes and near crashes.

⁴ Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs – Final Report. Prepared by Jerry Wachtel, CPE for the NCHRP Project 20-7 (256) April 2009, page 5.

⁵ Ibid

⁶ Ibid page 89-98.

⁷ Ibid page 89-101

direction while the digital billboard is within view. If they are saying that we are trying to be traffic engineers because we say that Mr. Chairman, I disagree, said Mr. Fontane.

Mr. Fontane said that of the seven accidents that occurred in the eastbound direction in 2008 as reported in the BSC study three were rear end, two were from drivers switching lanes to I-190 and two were side swipes. The NCHRP report states that side swipe and rear end collisions are indicative of driver inattention or distraction.⁸ The Mass Highway Traffic Engineering field review memo conducted in May 2009, received by staff on February 5, 2010 indicates that this location has a “moderate to high potential to distract I-290 eastbound drivers.” Again, not my staff’s words Mr. Chairman said Mr. Fontane. No official response memo to BSC Group’s June 12, 2009 pre-installation had been generated by the Traffic Engineering Division. Some municipalities (e.g. Queensland Australia) have stated that digital billboards should not be placed so as to distract drivers in areas in which merging, diverging, and weaving traffic maneuvers take place and reading and interpreting official traffic signs.⁹ Mr. Fontane reiterated that the reports cited above were not the words of staff, but they are studies done by other agencies and have been gathered and presented to the Board.

Mr. George reiterated that the board members had read all of the reports and that independent decisions would be able to be made. He further asked the applicant if he would accept the conditions on page 10 of the staff memo. Mr. Finkelstein suggested that condition #2 should be for a ten second interval. Mr. Finkelstein asked for clarification of contrast orientation. Mr. Fontane said it was to improve legible. Characters are brighter against darker background. Mr. Murray said he never heard of a condition that dictates color. Mr. Fontane said we are not dictating color, we are saying that it is easier to read a message darker vs. lighter. Mr. Finkelstein said that they had no issue with conditions four through 13 in staff’s memo. Mr. George read them aloud.

Mr. Finkelstein indicated that number 14 was fine too and asked about condition #15 regarding the operation of the sign after fourteen months. Mr. Fontane stated that the condition was to allow the board to have future input, based on results of the study regarding the operation of the digital sign and that if the sign was not going to be changing more than once in 24 hours, then the petitioner would not be required to have additional board oversight. He also stated that these conditions are based on ‘Best Practices’ and other research as to how the sign should be operated. Mr. George spoke about how the new ordinance process occurs. Mr. Freilich was concerned about the condition that would make this essentially a static billboard if it is required after the 14 month period. Mr. Murray mentioned the State’s amortization regarding the pilot. Mr. Finkelstein said they are willing to accept the condition. Mr. George and Mr. Freilich discussed what the new ordinance might include but that they need to use the current ordinance. Mr. Fontane clarified conditions 13, 14 and 15 with regard to taking down the sign. These conditions do not necessitate that it would come down Mr. Fontane said. Mr. George agreed. Mr. Finkelstein stated that the applicant is amenable to the condition. Mr. Kelly spoke of the exemption for amber alerts.

Mr. Abramoff requested clarification on the condition #15 and that the wording of issuance of building permit be changed to the issuance of certificate of use and occupancy permit. Mr.

⁸ Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs – Final Report. Prepared by Jerry Wachtel, CPE for the NCHRP Project 20-7 (256) April 2009, page 16.

⁹ Ibid page 121.

Abramoff said he thought that it was paramount that they get information on safety. Therefore, he would like a condition that in any rolling thirty day period, if there are two accidents, then the sign must be immediately changed to a static display. The Board discussed this condition amendment with the applicant and the ability to obtain the data that quickly. Mr. Murray said that if they are determined not to be safe, that the OAB will allow the recoup of their investment. Mr. Abramoff stated that he is uncomfortable with the absence of a time limit on the reporting of crash data. The Board discussed the language that would satisfy Mr. Abramoff.

Mr. Freilich stated that he would like to see a 15 second interval change until safety is determined and Mr. Murray said that the pilot study is requiring a 10 second interval. Mr. Freilich noted that the last applicant proposed eight seconds. Board decided to leave it at 10 seconds. Mr. Michajlow asked how the photocell worked. Mr. Murray explained how it is set to 0.3 foot-candles above ambient light.

Mr. George described the driving environment's multiple lanes and exits and that staff's information was credible. He further stated that the sign would have a moderate to high potential to distract.

Mr. Freilich stated that he is concerned that the sign ordinance is not complete and he is unsure about the city's position and offered the applicant the opportunity to request Leave to Withdraw without Prejudice. Mr. George stated that the decision would have to be made based on the ordinance as it stands today and not where the city is going with the future sign ordinance. Mr. Finkelstein indicated that they want to move forward on the application at this time as all of the items under a special permit are allowed right now, if the petition is in compliance. Mr. George stated that he would not be able to find favorably as a result of the distraction of the sign causing a safety issue. He further stated that the location of the sign on a highway that has three lanes, then four lanes, then breaks into three lanes going onto I-290 and two lanes onto I-190 is a critical decision point for drivers. He further stated that he believes the sign is a distraction to drivers who may not be at their peak driving ability. He also said that all of the comments in the staff memo in their entirety are cause to not allow him to vote favorably on the petition given the current sign ordinance. He further stated that his position is that the safety issue far outweighs the benefit of the digital sign.

Mr. Finkelstein indicated that the Board should vote on the superstructure. Mr. George indicated that a condition that it not be digital could be incorporated. Mr. Freilich opined about whether a pilot program would supersede the sign ordinance and could the digital billboard be constructed after the new sign ordinance is ordained. Mr. Finkelstein said it does not. Mr. George agreed. The Board discussed with applicant and staff whether they could vote on the structure apart from the digital substrate aspect of the application and took the following votes.

Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, Vadim Michajlow, and William Bilotta to approve the Special Permit to allow the non-accessory sign for the re-construction of the head of the structure for a non-digital static billboard with the conditions that it be constructed according to plans by BSC dated 3/21/07 and amended on 11/10/07 and 12/12/07.

Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 2-3 by Lawrence Abramoff, Andrew Freilich (David George, Vadim Michajlow, and William Bilotta voting no) to approve the Special Permit to allow the non-accessory sign for a digital billboard sign in an MG 2.0 district subject to the following conditions. Number one through 15 outlined in the memo dated Feb 5th, 2010 updated March 15, 2010 from Lara Bold and Joel Fontane. Number 2) Sign messages do not change more than every 10 seconds; Number 13) Copies of all safety studies for the Worcester pilot site and other pilot sites in the state be furnished within 60 days of the end of each month for submittal to Mass Highway Traffic Engineering Division (or its predecessor) to the Division of Planning and Regulatory Services and the Zoning Board of Appeals; Number 14) The digital advertising billboard be in compliance with the City of Worcester Zoning Ordinance as may be revised in the future, or be operated as a static sign that changes no more than once every 24 hours; Number 15) That the term of the special permit be no longer than 14 months from the issuance of a certificate of use and occupancy without an amendment to this special permit, unless the digital display is operated as a static sign – changes no more than once every 24 hours; and that exceptions be allowed for public service messages. Number 17) in the event of two (2) accidents in any rolling 30 day period, the sign must go to static display for each 24 hour period, Number 19) applicant must participate in the Mass Highway pilot program.

Mr. George asked for a reconsideration of the vote. There was no motion to reconsider.

Mr. Finkelstein said that their understanding is that they have an approval for a head that is non-digital and static and that they have a “no” vote on the digital. He also declined the Board’s offer to withdraw. Mr. George stated that the motions stand and it’s a denial per the findings of fact and the application submitted.

Recess 7:45

Reconvene 7:55

NEW BUSINESS

- 3. 114 Austin Street (ZB-2010-009) – Special Permit: To allow a residential conversion from a three-family to a four (4) unit multi-family dwelling in an RG-5 zoning district and Variance: for relief of 2 parking spaces from the off-street parking requirement:** Attorney Morris Bergman, representative for Hany Ahmed, petitioner, presented the plan. He stated that there is a house and carriage house on the property. The project has received approval from the Worcester Historical Commission to make repairs and improvements to the structure. The applicant wants four units to make the project profitable and the carriage house cannot be removed or used for residential units. The project is eligible for NSP funds. Mr. George asked what the status of the rehabbed units would be. Mr. Bergman stated that they would be rental units. Aaron Tucker stated that he owned property at 110 Austin Street and wanted to know if the structure would be owner-occupied. He further stated that he wanted to object to the parking relief and that that first floor of the structure was being rehabbed into two units. He stated that the problems in the area are coming from studio apartments. Mr. Bergman stated that parking that is being provided is greater than other lots in the area. Upon a motion by Lawrence Abramoff and seconded by Vadim Michajlow, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich

and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Andrew Freilich, Vadim Michajlow, and William Bilotta to approve the Special Permit to allow a residential conversion from a three-family to a four (4) unit multi-family dwelling in an RG-5 zoning district and a Variance for relief of 2 parking spaces from the off-street parking requirement with the following conditions: 1) landscaping to be ALB resistant plantings, 2) plan constructed to final plot plan , 3) semi-annual maintenance program for plantings to be performed, 4) first floor units to have more than one bedroom, 5) all mature trees, included but not limited to, the mature tree located on the southerly side of the dwelling are to remain, 6) the former carriage house on site to be designated as non-habitable.

- 4. 500 Lincoln Street (ZB-2010-010) – Special Permit: To modify the parking layout requirements of planting trees every 20 – 25 feet on center along the public street lines and other landscaping screening requirements.** Todd Brodeur, Steve Bohman and Matt Smith, representatives for RFP IV Hotel-O Worcester, LLC, presented the plan. Mr. Brodeur stated that he was presenting a new plan that showed 7 street trees on Lincoln Street and 7 street trees on Country Club Boulevard. He said that the proposed structure would contain 16,650 sf. of retail space. He said that the zoning ordinance required 14 street trees on Lincoln Street and 13 street trees on Country Club Boulevard. Mr. Abramoff inquired about signage. Mr. Smith stated that there would be a free-standing sign, replacing the current sign which will comply with the zoning ordinance and also additional signage on the building. Upon a motion by William Bilotta and seconded by Vadim Michajlow, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow and Andrew Freilich to approve the Special Permit to modify the parking layout requirements of planting trees every 20 – 25 feet on center along the public street lines and other landscaping screening requirements with the following conditions: 1) landscaping according to the submitted plan dated 3/22/10, rev3 with more than 20 % of species, being ALB resistant, 2) plantings must be in place prior to the issuance of a Certificate of Occupancy, 3) Semi-annual maintenance program for landscaping to be performed.
- 5. 152 Beacon Street (ZB-2010-007A) – Variances: Relief of 532 square feet from the gross dimensional requirement, allow parking in the front yard setback and allow a habitable third floor.** Todd Rodman, representative for Main South CDC, presented the plan. He stated that this is the fourth and final phase of the Gardner-Kilby-Hammond project. He further stated that the Main South CDC owns the properties and that the funding being applied for requires site control and permits. He said that even if the permits are granted it is likely that extensions will be needed as this is a multi-year project with a total of 92 housing units and a \$20 million investment. He stated that the relief being requested is due to topography issues and that construction will be up and not out. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow and Andrew Freilich to approve the Variances for Relief of 532 square feet from the gross dimensional requirement, allow parking in the front yard setback and allow a habitable third

floor with the following conditions: 1) Three copies of Final Revised Definitive Site Plans are submitted reflecting the following changes:

- Final revised plans should indicate relief granted and date of approval by the Zoning Board of Appeals.
 - Final revised plan set should include all sheets of the final approved Definitive Site Plan approved by the Planning Board and should include the landscaping plan (existing, proposed, and preserved plantings) with Asian Long horned Beetle resistant species.
 - Remove 10 Gardner Street and 156 Beacon Street from the Dimensional Requirements Table as no relief is sought for these two lots.
 - Label open (pervious) space on the lots.
- 2) The structure is constructed in substantial accordance with the final approved Variances plan and with the submitted rendering prepared by Domenech Hicks & Krockmalnic Architects, dated 2/25/2010.
- 3) Approval should be subject to the final approved Definitive Site Plan and More Than One Building on the Lot submitted February 4, 2010.

6. 30 – 32 Hammond Street ZB-2010-007A) – Variances: Relief of 3 feet from the height requirement, allow parking in the front yard setback and allow a habitable third floor.

Todd Rodman, representative for Main South CDC, presented the plan. Upon a motion by William Bilotta and seconded by Vadim Michajlow, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow and Andrew Freilich to approve the Variances for Relief of 3 feet from the height requirement, allow parking in the front yard setback and allow a habitable third floor with the following conditions: 1) Three copies of Final Revised Definitive Site Plans are submitted reflecting the following changes:

- Final revised plans should indicate relief granted and date of approval by the Zoning Board of Appeals.
 - Final revised plan set should include all sheets of the final approved Definitive Site Plan approved by the Planning Board and should include the landscaping plan (existing, proposed, and preserved plantings) with Asian Long horned Beetle resistant species.
 - Remove 10 Gardner Street and 156 Beacon Street from the Dimensional Requirements Table as no relief is sought for these two lots.
 - Label open (pervious) space on the lots.
- 2) The structure is constructed in substantial accordance with the final approved Variances plan and with the submitted rendering prepared by Domenech Hicks & Krockmalnic Architects, dated 2/25/2010.
- 3) Approval should be subject to the final approved Definitive Site Plan and More Than One Building on the Lot submitted February 4, 2010.

7. 0 Tainter Street ZB-2010-007A) – Variances: Relief of 3 feet from the height requirement, allow parking in the front yard setback and allow a habitable third floor.

Todd Rodman, representative for Main South CDC, presented the plan. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow

and Andrew Freilich to approve the Variances for Relief of 3 feet from the height requirement, allow parking in the front yard setback and allow a habitable third floor with the following conditions: 1) Three copies of Final Revised Definitive Site Plans are submitted reflecting the following changes:

- Final revised plans should indicate relief granted and date of approval by the Zoning Board of Appeals.
 - Final revised plan set should include all sheets of the final approved Definitive Site Plan approved by the Planning Board and should include the landscaping plan (existing, proposed, and preserved plantings) with Asian Long horned Beetle resistant species.
 - Remove 10 Gardner Street and 156 Beacon Street from the Dimensional Requirements Table as no relief is sought for these two lots.
 - Label open (pervious) space on the lots.
- 2) The structure is constructed in substantial accordance with the final approved Variances plan and with the submitted rendering prepared by Domenech Hicks & Krockmalnic Architects, dated 2/25/2010.
- 3) Approval should be subject to the final approved Definitive Site Plan and More Than One Building on the Lot submitted February 4, 2010.

8. 25 Hammond Street ZB-2010-007A) – Variance: To allow a habitable third floor. Todd Rodman, representative for Main South CDC, presented the plan. Upon a motion by William Bilotta and seconded by Andrew Freilich, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow and Andrew Freilich to approve the Variance to allow a habitable third floor with the following conditions: 1) Three copies of Final Revised Definitive Site Plans are submitted reflecting the following changes:

- Final revised plans should indicate relief granted and date of approval by the Zoning Board of Appeals.
 - Final revised plan set should include all sheets of the final approved Definitive Site Plan approved by the Planning Board and should include the landscaping plan (existing, proposed, and preserved plantings) with Asian Long horned Beetle resistant species.
 - Remove 10 Gardner Street and 156 Beacon Street from the Dimensional Requirements Table as no relief is sought for these two lots.
 - Label open (pervious) space on the lots.
- 2) The structure is constructed in substantial accordance with the final approved Variances plan and with the submitted rendering prepared by Domenech Hicks & Krockmalnic Architects, dated 2/25/2010.
- 3) Approval should be subject to the final approved Definitive Site Plan and More Than One Building on the Lot submitted February 4, 2010.

9. 22 Kilby Street ZB-2010-007A) – Variance: To allow the extension of a residential use in a manufacturing zone closer than 25 feet. Todd Rodman, representative for Main South CDC, presented the plan. Upon a motion by Andrew Freilich and seconded by William Bilotta, it was voted 5-0 by David George, Lawrence Abramoff, Vadim Michajlow, Andrew Freilich and William Bilotta to close the public hearing. Upon a motion by Lawrence Abramoff and seconded by Andrew Freilich, it was voted 5-0 by Lawrence Abramoff, David George, William Bilotta, Vadim Michajlow and Andrew Freilich to approve the Variance to

allow extension of a residential use in a manufacturing zone closer than 25 feet with the following conditions: 1) Three copies of Final Revised Definitive Site Plans are submitted reflecting the following changes:

- o Final revised plans should indicate relief granted and date of approval by the Zoning Board of Appeals.
 - o Final revised plan set should include all sheets of the final approved Definitive Site Plan approved by the Planning Board and should include the landscaping plan (existing, proposed, and preserved plantings) with Asian Long horned Beetle resistant species.
 - o Remove 10 Gardner Street and 156 Beacon Street from the Dimensional Requirements Table as no relief is sought for these two lots.
 - o Label open (pervious) space on the lots.
- 2) The structure is constructed in substantial accordance with the final approved Variances plan and with the submitted rendering prepared by Domenech Hicks & Krockmalnic Architects, dated 2/25/2010.
- 3) Approval should be subject to the final approved Definitive Site Plan and More Than One Building on the Lot submitted February 4, 2010.

Other Business

Meeting Schedule: Upon a motion by Lawrence Abramoff and seconded by William Bilotta, it was voted 5-0 to approve the updated meeting schedule.

Sign Moratorium Ordinance: Mr. Fontane discussed an article on digital billboards and the proposed sign moratorium. He then stated that the sign moratorium ordinance had been proposed by Councilor Lukes as suggested by former board member Ciuffredo. It has had the required advertising and will be heard at the 3/31/10 Planning Board meeting. Mr. Abramoff asked if the moratorium required that no building permits for signs be issued for six months and then stated that this action shows that Worcester is anti-business. Mr. Fontane stated that the City Council deliberated the moratorium at the council meeting and that there was concern about the broad scope of the moratorium and that action on the moratorium be taken quickly. Mr. George said that the intent of the request was to deal with digital billboards and non-accessory wall signs. Mr. Kelly said that if the moratorium is put into place, his department would be able to issue a Building Permit for free-standing, ground, roof or projecting signs, but not digital, wall or illuminated signs. Mr. Fontane stated that staff is preparing comments in response to the moratorium and that any comments that the Board would like to have included to more narrowly define the scope of the moratorium should be forwarded to the Division of Planning and Regulatory Services. Mr. George stated that the board is frustrated by the amount of time it is taking to develop a new sign ordinance. Mr. Fontane stated that once the moratorium, which is a zoning ordinance amendment, is enacted, the board cannot supersede it. Mr. Freilich stated that he does not support a moratorium as it is giving up the Board's authority and further stated that he believes that the city should allow digital signage. Mr. Fontane said that it typically six months to adopt an ordinance due to the required hearings, etc. Mr. Abramoff said he believed that the intent of the moratorium was to focus on the problem areas, digital billboards and non-accessory wall signs, and that signs that are now allowed by-right should not be included in the moratorium. Mr. George recapped the Board's consensus as the moratorium should be limited to the problems signs of digital billboards and non-accessory wall signs and that there is a difference of opinion as to whether the moratorium should also include signs that are allowed by-right and those allowed by Special Permit or Variance.

Adjournment

Chair George adjourned the meeting at 9:15 pm.