

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

February 28, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present:

Lawrence Abramoff, Chair
Andrew Freilich
William Bilotta
Kola A. Akindele
Timothy Loew

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 Abramoff called the meeting to order at 5:30 PM.

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

- 1. 764 Pleasant Street (ZB-2011-001)** – Special Permit to allow a three-family detached dwelling in an RL-7 zone; Special Permit for an Expansion or Change of a Pre-existing non-conforming use/structure; Variance of relief of 15 feet from the frontage requirement; Variance of relief of 1,052 square feet from the gross dimensional requirement: Nicholas Markopoulos, of 23 Blackthorn Drive, stated that he purchased legal two-family unit in November of 2010, but that he was aware that there was an existing illegal third floor unit apartment. He stated that his goal is to permit the third-unit. Chair Abramoff stated that the six proposed parking spaces are not shown on the plan. Mr. Markopoulos stated that 2 parking spaces would be provided in the garage in the rear of the property and 2 parking spaces in front of the garage and two to the side. Chair Abramoff questioned whether the two cars on the side will be able to bypass two cars parked in front of the garage. Mr. Markopoulos said yes, saying there is a bypass, and that there should be enough space. The Board asked Mr. Kelly whether he knew about the illegal third unit. Mr. Kelly stated that due staffing issues the property has not yet been inspected. The applicant stated that the property was inspected before purchase by the Fire Department and that it was approved because the third floor unit has two egresses on both sides and a common area all the way to grade. Mr. Kelly stated that the petitioner needs to provide floor plans and undergo an inspection prior to issuance of the occupancy permit. Mr. Abramoff questioned Mr. Markopoulos on the issue

of hardship for the variance. Mr. Markopoulos based it on current economic hardships, as he is currently out of work and lives off the rental income and this would help with his overall expenses. Chair Abramoff asked if the petitioner has a hardship relating to the soil conditions of the land. Mr. Markopoulos said no, but stated that he cannot purchase land to make the lot conforming without making the abutting land non-conforming.

Elaine Baskin, of 769 Pleasant Street, stated that she knew the former owner who, in her words, used the third floor as a den and that it was not a rental unit. Ms. Baskin was in favor of the project with a condition that the plans show all 6 parking spaces given that the neighborhood, according to her, already has parking issues.

Mr. Freilich stated that he would have preferred the petitioner coming in front of the Board right after the purchase. He asked if the petitioner is prepared to have an engineer survey the site and prepare a plan to satisfy the parking requirements. Mr. Markopoulos said yes.

Mr. Freilich stated that he shares the neighbors concerns regarding lack of parking but that he is amenable to approving the petition as long as the petitioner can demonstrate that all 6 parking spaces can be provided on site. Mr. Kelly stated that in his opinion the parcel is large enough to accommodate all 6 parking spaces.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to close the public hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to approve the requested Special Permits and Variances with the following conditions of approval:

(1) That six (6) copies of final revised engineer-certified plot plan are submitted to the Division of Planning & Regulatory Services prior to the issuance of an Occupancy Permit with the following additional information:

- Address
- Petition name
- Date
- Street name
- Setback dimensions
- Delineation of all 6 off-street parking spaces, minimum 9 by 18 feet

(2) That the front yard setback portion of the site, excluding the driveway, remains unpaved;

(3) That Special Permits and Variances, as approved, are in accordance with the final revised plot plan submitted on file with the City of Worcester and in compliance with all governmental codes.

Exhibits:

Exhibit A: Special Permit & Variance Application; received February 3, 2011; prepared by Nicholas Markopoulos.

Exhibit B: Special Permit & Variance Application Plan; received February 3, 2011; prepared by Nicholas Markopoulos.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 764 Pleasant Street; dated February 17, 2011.

Exhibit D: Cease and Desist Order for 764 Pleasant Street; issued by City of Worcester Department of Inspectional Services; January 6, 2010.

- 2. 242A Stafford Street (ZB-2011-002): Special Permit for Expansion, Alteration or Change of a Privileged Pre-existing, Nonconforming Structure and/or Use:** Christopher Flood of Northern Ridge Realty, the petitioner, stated that Steven Herbert and Scott Robarge of Northern Ridge Realty were also present. He stated that UB Properties, LLC wants to use a portion of the site for Concept Tooling business and are under a purchase and sales agreement. Mr. Flood described the site and stated that the applicant is in the business of light manufacturing. He stated that the property was zoned RL-7 since 1980 and that in 2005 it was approved for a multi-tenant garage and contractor's bay. He presented an affidavit from a previous owner of this building, Thomas Mann, who confirmed the previous use of the site and the construction of the 242A Stafford Street building, to be purchased by the applicant (Exhibit E). Mr. Flood also presented informational brochure about the Concept Tooling with line data sheets, company profile, and material safety data (Exhibit F). He stated that the operations are quiet and will take place inside, and that traffic to the site will mostly consist of delivery trucks. Mr. Flood stated that the petitioner does not expect to provide additional ventilation as there is "no hazardous waste of any kind" and the materials in use do not require special handling. Mr. Herbert stated that the business will not have more than two to four five gallon pails in the shop at any given time. Mr. Flood stated that there will be about 6 staff members.

Mr. Freilich asked if the building is sprinkled and if there is hazardous waste on site. Mr. Herbert stated no to both questions.

Mr. Bilotta asked about disposal of steel shavings. Mr. Herbert stated that larger parts of metal are recycled, shavings are not and are thrown out.

Mr. Freilich asked if a separate driveway will be used for 242A as opposed to 242 Stafford Street building. Mr. Flood stated that each building has its own separate entrance and driveway but the two sites are connected internally.

Mr. Freilich confirmed that the building is sufficiently insulated thus providing more noise attenuation. He asked about hours of operation. Mr. Herbert stated 7am-4:30pm M-F, and occasionally Saturdays 7am-12pm.

Chair Abramoff asked if the business might expand in the future. Mr. Herbert stated that there is a possibility of buying more equipment in the future. He stated that the business would be using 4,000 of the 6,000 SF of the building for manufacturing, with the rest used for storage.

Mr. Fontane stated that the use approved by the Board in January is a pre-existing non-conforming use, but that the proposed use (Concept Tooling) is not the same as the one approved previously; however, "the site in total has the pre-existing non-conforming status". He suggested the Board considers a condition of approval that the parcel at 242A not be used now or in the future (regardless of preexisting nonconforming status) for motor freight terminal; truck/trailer/bus storage or servicing (Manufacturing Use #7 in the Zoning Ordinance) and that similar use considerations be limited to the use proposed, office and

warehousing / enclosed storage only. He stated that if not for that condition, future owners could operate the site for the light manufacturing use and the truck terminal.

Mr. Flood stated that the dumpster, about 2-yards in size, would be located behind the building and would not be visible from the street. Mr. Herbert stated that the applicant will comply with the signage regulations for the RS-7 zoning district. Mr. Bilotta asked that the building has landscaping adjacent to it. Mr. Herbert stated that they are interested in maintaining a positive look of the building.

Upon a motion by Mr. Loew and seconded by Mr. Freilich, the Board voted 5-0 to close the public hearing.

The Board reopened the hearing. With respect to the submitted Exhibit F – Material Safety Data Sheet – Mr. Fontane read out that “general room ventilation” is sufficient and should not require specialized ventilation system, but asked whether the petitioner has had problem with ventilation at the previous place of work. Mr. Herbert said no. Mr. Freilich read out from p. 104 of the exhibit F that “acute effects of over-inhalation are non-toxic.” The Board closed the hearing.

Upon a motion by Mr. Freilich, and seconded by Mr. Bilotta , the Board voted 5-0 to approve the requested Special Permit for Special Permit for Expansion, Alteration or change of a Privileged Preexisting, Non Conforming Structure and/or Use with the following conditions of approval:

- 1) That hours of operation, including truck deliveries will not go beyond 6am-6pm Monday-Friday, and 7am-6pm Saturday-Sunday, and there will be no second shift operations given the proximity of residential uses;
- 2) That existing landscaping is regularly maintained in accordance with the Zoning Ordinance;
- 3) That the use does not generate any hazardous waste through its operations;
- 4) That the parcel at 242A not be used now or in the future (regardless of preexisting nonconforming status) for motor freight terminal; truck/trailer/bus storage or servicing (Manufacturing Use #7 in the Zoning Ordinance) and that similar use considerations be limited to the use proposed, office and warehousing / enclosed storage only.
- 5) That six copies of final revised plans are submitted to the Division of Planning and Regulatory Services prior to issuance of the Occupancy Permit with the following changes:
 - The plan should be to scale;
 - Label the driveway entrance to the site for 242A and 242 Stafford Street parcels
 - Provide off-street parking breakdown including – required/proposed spaces; number of compact / standard parking spaces, provision of handicap spaces and handicap access aisle;
 - Label location of the dumpster in the rear of the building;
 - Provide existing or proposed screening for the dumpster;
 - Provide existing and proposed landscape buffers;
 - Provide information regarding signage for building and / or along street frontage and include a note that proposed signs will comply with the sign ordinance for RS-7 zoning district;

- Provide location of snow storage.

Upon a motion by Chair Abramoff and seconded by Mr. Loew, the Board voted 5-0 to accept the petitioner's findings of fact, as amended by staff, and supplemented by information provided by the petitioner at the hearing.

Exhibits:

- Exhibit A: 242A Stafford Street Application; received January 24, 2011, prepared by Steven Herbert, representative for Northern Ridge Realty Inc.
- Exhibit B: Zone Change – Stafford Street Area – Ordained February 2, 1988.
- Exhibit C: Special Permit decisions from Zoning Board of Appeals – April 26, 2005, September 26, 2005, and November 17, 2008.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 242-A Stafford Street (MBL: 28-042-00003); dated February 25, 2011.
- Exhibit E: Affidavit of Thomas E. Mann before the Zoning Board of Appeals in the Matter of Northern Ridge Realty – 242A Stafford Street; transmitted February 28, 2011.
- Exhibit F: Concept Tooling, Inc. Informational Brochure including Material Safety Data Sheet for Hurricane Citrus All-Purpose Cleaner; TRIM MicroSol 585XT and Accu-Lube.

3. 1119 and 1121 Grafton Street (ZB-2011-003): Mr. Quinn, representative for LGN., LLC, the petitioner, stated that the petitioner is seeking a Special Permit to allow for relief of 10% of the off-street parking requirement for a total relief of 2 off-street parking spaces; a Special Permit to allow food service with a drive-through; and a Special Permit to modify parking and landscaping requirements with respect to 1) reduced drive-through length, 2) relief from escape lane requirement, 3) drive-through lane to interfere with internal parking spaces and 4) relief from 5 foot landscaping buffer requirement along front and side lot lines. Also present were Tony Bianco of LGN, LLC and Steve Corapas of Dipping Donuts, one of the potential tenants of the building. Mr. Quinn stated that the Site Plan was approved by the Planning Board and the Conservation Commission. He stated that the applicant met with the Conservation Commission in January regarding encroachment into the wetland and that “a general agreement was made that some improvements to the wetlands environment to compensate wetland setback encroachments took place”. He stated the petitioner by now has secured all three tenants for the building. He stated that the drive-through length is 270 ft, and the requirement is 240 ft, thus exceeding the requirement. Mr. Quinn stated that the proposed uses – a doughnut shop, a nail salon, and a sushi restaurant, have complementary working hours, thus relieving traffic on site. He stated that the applicant inadvertently placed pavement on 1117 Grafton Street abutting property of Mr. Casella and since then a note was placed on the amended plan stating that all paving, curbing and wall will be removed from his property.

Mr. Akindele asked if seating area is provided for the coffee shop. Mr. Quinn stated yes – 1,800 SF for the entire interior coffee shop use, but he did not how many seats that would translate to. Mr. Fontane stated that while the petitioner is providing 9 spaces more than is required, he did not provide information regarding number of additional seats, which would require more parking spaces. Chair Abramoff stated that the restaurant and the nail salon would require 16 parking spaces, leaving 4 parking spaces for the coffee shop, which would be sufficient for up to 8 seats for the coffee shop.

Mr. Bilotta was concerned with lack of the escape lane from the public safety perspective. Mr. Quinn stated that there are many drive-throughs in the state with no escape lane, and that “if there was a problem with that – something would have emerged by now”.

Mr. Bilotta asked if the petitioner would be maintaining the landscaping in the public right-of-way. Mr. Quinn stated yes.

Mr. Quinn stated that with respect to 1127 Grafton Street abutter, a fence separates the two properties, and additionally, the petitioner will provide a 5-ft landscaped buffer which will delineate the two properties.

Mr. Bilotta asked at what point the snow will be removed from the site. Mr. Quinn suggested putting a note on the plan stating that “no parking spaces will be compromised by the storage of snow.” He stated that the only space to store snow would be in the landscaped areas.

Mr. Freilich asked how the shared dumpster will be emptied. Mr. Quinn stated that the petitioner will designate an hour for pick-up, probably after the working hours. Mr. Freilich was concerned about the noise associated with the dumpster pick up. Mr. Quinn suggested that the dumpster is emptied out in the middle of the day, prior to the restaurant opening.

Mr. Freilich was concerned about site, the flow of cars and parking spaces, especially given some overlap in the working hours of the coffee shop and the sushi restaurant. He asked how many employees the sushi restaurant would have. Mr. Bianco, the owner of the building, stated that the sushi restaurant owners have hired valet parking for the night.

Chair Abramoff was concerned about the lack for the escape lane and asked what the intent of that ordinance is. Mr. Fontane stated that the ordinance was developed in 2003 by City engineers in response to the problem of queuing off-site of several drive-through uses. He stated that he does not anticipate stacking off-site for this project given longer than required length of the proposed drive-through.

Mr. Loew suggested placing signage on site warning the drivers that there is no escape lane.

Mr. Quinn stated that the parking spaces in the rear are designated employee spaces, and, therefore, will not interfere with the flow as much as regular parking spaces would.

Howard Shear of 1120 Grafton Street, an abutter, was concerned about snow removal due to constrained site. He stated he believed people would be parking across the street on his property and then crossing over and that the enforcement would be difficult. He stated that during the construction, construction workers were parking on his lot. He added that the valet parking would increase the volume of traffic. Mr. Quinn stated that the proposed parking is for the proposed use according to the Zoning Ordinance requirements.

Chair Abramoff asked if the petitioner would be amenable to limiting the hours of the doughnut shop to provide truly complementary hours. Mr. Quinn stated that the restaurant opens at 5pm, and that an hour of overlap would be amenable.

Mr. Shear clarified what the proposed landscaping is. Mr. Quinn suggested submitting revised plans clearly showing landscaping. Chair Abramoff asked if it was appropriate as a condition of approval to require the petitioner to maintain landscaping on the public right-of-way. Mr. Fontane stated that it would be appropriate if the petitioner was amenable to maintaining it, and that there is another case in the City where a land owner has agreed to maintain City's landscaping buffer. Chair Abramoff asked what the hours of operations of his business were. Mr. Shear stated that normally they are 7am-6pm.

Mr. Freilich was in support of the petition and asked Mr. Bianco to work with Mr. Shear on some common ground with regards to parking. Chair Abramoff stated that the site is tight, but was generally in support of the petition. Mr. Bilotta had an issue with no escape lane provided and the size of the site. Ms. Shear stated that due to no-left-turn on Grafton Street, many people cut through her property, that people park on sidewalks on Grafton Street, and that she has asked the City to change parking signage and traffic configuration in the area for 6-7 years.

The Board discussed a condition of approval of placing signage at the entrance to and exit from the site as well as signage for employee parking.

Mr. Akindele asked if the petitioner has already secured a site for valet parking. Mr. Bianco stated yes, but did not have the specifics or how long the valet parking lot is from the property.

The Board discussed continuing the hearing to allow the petitioner time to submit information regarding valet parking (contract) and submitting revised plans showing landscaping, removal of the retaining wall, signage (exit and entrance); dumpster removal information; hours of operation information; and snow removal note stating that snow interfering with parking spaces will be removed off-site.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to continue the hearing to March 14, 2011.

Exhibit:

Exhibit A: 1119 & 1121 Grafton Street Application; received January 25, 2011; prepared by Nancy Bianco on behalf of LGN, LLC.

Exhibit B: 1119 & 1121 Grafton Street Plan; dated December 6, 2010, updated on 1/19/11 and received January 25, 2011; updated on March 4, 2011 and received on March 7, 2011 prepared by Quinn Engineering.

Exhibit C: DPRS staff memo to Zoning Board of Appeals, dated February 27, 2011 and updated on March 7, 2011.

Exhibit D: Traffic Study Report, dated November 29, 2010, received January 25, 2011; prepared by Ron Miller and Associates.

Exhibit E: Memorandum, Joseph Borbone to Zoning Board of Appeals dated 2/11/2011.

- 4. 41 Lancaster Street (ZB-2011-004):** Special Permit to modify parking layout and dimensional requirements with respect to required five-foot landscape buffer. Attn. Todd Brodeur of Fletcher, Tilton & Whipple, representative for Marimba Management Services, LLC, is seeking to construct a 2,900 square foot structure for professional office use. Also present was Epithany Vera, petitioner. Attn. Brodeur stated that the building and parking area

will be relocated in conjunction with proposed changes to the layout of Highland Street. Mr. Brodeur stated that during construction, the petitioner was informed by MassDOT of the traffic improvement plan which would expand lanes of traffic and would take about 5 ft from the petitioner's property, which necessitates moving the building about 2 feet and reducing the northern landscaping buffer from the required five (5) feet to three (3) feet. He requested a fee request due to the fact that the change is not necessitated by the petitioner, but MassDOT. Chair Abramoff asked what stage the construction is in. Mr. Vera stated that the building was demolished and the site was graded, but the foundation was not yet built. The Board and Mr. Fontane expressed the support for the petition.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Kola, the Board voted 5-0 to approve the requested Special Permit to modify parking layout and dimensional requirements with respect to required five-foot landscape buffer with the following conditions of approval:

1. That the site be constructed in substantial accordance with the Worcester Kids Dentist Rendering, received January 25, 2011 (Exhibit C) including a functional front entrance facing Highland Street as was previously approved by the Zoning Board of Appeals;
2. That the site be constructed in accordance with the final approved parking plan by the Planning Board including the proposed landscaping and fencing in the reduced northern landscape buffer as shown in the plan submitted to the Zoning Board of Appeals (Exhibit D);
3. That six copies of final revised plans are submitted to the Division of Planning and Regulatory Services prior to the issuance of the Building Permit that show the following additional annotations:
 - 1) Provide landscaping table;
 - 2) Correct typos on all sheets that show “?” in place of ft²;
 - 3) Label the height of the proposed structure in the zoning summary table along with the permitted height (40') in a BL-1 zoning district;
 - 4) Provide a landscaping table indicating proposed number and type of species. Proposed species shall be Asian Longhorned Beetle resistant; shall be drought resistant tree species and/or arborvitae; shall include no more than 25% of any one tree species on site to provide for sufficient species diversity; and shall include species that are viable in the northern landscape buffer in a three-foot wide space. Drought resistant ornamental grasses should also be provided.

Upon a motion by Mr. Freilich and seconded by Mr. Lowe, the Board voted 5-0 to approve the petitioner's request to waive the application fee of \$300.

Exhibits:

Exhibit A: Special Permit Application prepared by Atty. Todd Brodeur, dated January 24, 2011, received January 25, 2011.

- Exhibit B: Memorandum in support of Special Permit from Marimba Management Services, applicant to the Zoning Board of Appeals; dated January 21, 2011, received January 25, 2011.
- Exhibit C: Rendering – Worcester Kids Dentist Building, 41 Lancaster Street, prepared by Tuck & Tuck Architects, undated, received January 25, 2011.
- Exhibit D: Proposed Development Plan, Worcester Kids Dentist, 41 Lancaster Street, prepared by Land Planning Inc., dated 1/19/2011, received January 25, 2011 includes Worcester Highland Street Roadway Reconstruction Plan (Sheet 4 of 7), undated, unsigned.
- Exhibit E: Memorandum from Joseph Borbone, Director of Engineering, Department of Public Works and Parks to Lawrence Abramoff, Chair Zoning Board of Appeals, February 16, 2011.
- Exhibit F: Memorandum from Ruth Gentile, Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 41 Lancaster Street; February 24, 2011.

Other Business

- 5. Approval of Minutes:** Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to approve the minutes of January 31, 2011.
- 6. Citizen Planner Training Collaborative – Annual Conference on Saturday, March 19, 2011:** Mr. Fontane stated that Board members are encouraged to attend this annual conference at no cost to the members and that staff will follow-up with more information on how to sign up.

Adjournment: Chair Abramoff adjourned the meeting at 8:17 pm.