

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

**February 13, 2012**

**WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

**Zoning Board Members Present:**

Andrew Freilich, Chair  
Lawrence Abramoff, Vice-Chair  
William Bilotta  
Timothy Loew

**Staff Present:**

Joel Fontane, Division of Planning & Regulatory Services  
Luba Zhaurova, Division of Planning & Regulatory  
Services  
John Kelly, Department of Inspectional Services

**Board Site Views**

**CALL TO ORDER**

Chair Freilich called the meeting to order at 5:30 PM. Chair Freilich made the audience aware that only four members of the Board were present and that petitions would require an affirmative vote from all four members and that the Board would be amenable if applicants wished to postpone items for that reason.

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

1. **10 Claremont Street (ZB-2011-058):** Items #1 and #7 10 Claremont Street (ZB-2011-058) and 10 Claremont Street (ZB-2012-006) were taken contemporaneously. Mr. Fontane stated that on January 9, 2012, the applicant chose to give testimony to a 4 member Board, and that only 3 of those members were present at tonight's meeting, therefore lacking in quorum. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to continue the hearing for 10 Claremont Street (ZB-2011-058) and to postpone the hearing for 10 Claremont Street (ZB-2012-006) to March 5, 2012.
2. **10 Claremont Street (ZB-2012-006):** Items 10 Claremont Street (ZB-2011-058) and 10 Claremont Street (ZB-2012-006) were taken contemporaneously. See above.
3. **2 Elman Road (ZB-2012-004):** Chair Freilich stated that due to Mr. Bilotta having to recuse himself for this item, the Board does not have a quorum to hear it. Ms. Keating, petitioner, requested a postponement to March 5, 2012. Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to postpone the hearing to March 5, 2012.

**UNFINISHED BUSINESS**

None.

## NEW BUSINESS

4. **9 Einhorn Road (ZB-2012-005):** Attorney Todd Rodman, representative for petitioner, Alpha Phi International Fraternity, stated that the petitioner is seeking a Special Permit to convert a single-family detached dwelling into a sorority house affiliated with Worcester Polytechnic Institute (Article IV, Section 2, Table 4.1, Use #5 Fraternity/Sorority/Cooperative residence) and a Special Permit for Modification of Parking / Loading Requirements (Article IV, Section 7) – Requesting to waive 1 of the 6 required off-street parking.. He stated that project’s engineer revised plans by providing drainage unit in the rear of the site and that as a result a 5-ft landscaped buffer will be provided. Therefore, he requested a withdrawal of a Special Permit for Modification of Landscaping Requirements for Parking/Loading (Article IV, Section 7) – requesting a partial waiver of a landscaped 5-ft buffer. Also present were Matthew Brassard, project engineer and Linda Cahangi, Executive Director of Alpha Phi and Charlotte Williamson, Housing Director, and Maggie Becker, Chapter Advisor and liaison for the chapter and the university.

Attorney Rodman stated that the sorority will be for 12 female students, that an emergency exterior egress will be added for the 2<sup>nd</sup> and 3<sup>rd</sup> floors, and that the sorority currently has 65 members, with maximum 100 allowed. He stated that an informal meeting was held for the neighborhood last week and that he believes the proposed use is appropriate to the neighborhood and current density and will result in several substantial improvements to the property. Atty. Rodman stated that the applicants seek to open the sorority in the fall. The building currently has 5 bedrooms. He indicated that sprinkler systems will be in place, a grease trap and an extension of the driveway to provide parking for 5 vehicles with a vehicle turnaround that has motion sensor lights.

Ms. Cahangi explained the history of Alpha Phi and stated that there will be a housing board for the chapter. She also stated that the sorority will have strict House Rules, that no alcohol or smoking will be allowed on site, no overnight male guests permitted and that guests will be monitored by their hosts during visiting hours. Only residents will be living and cooking there. She stated that no dumpster is proposed, but roll-away trash bins. She indicated that there will be professional landscaping and snow removal run by the housing board. Responding to staff’s memo, she stated that the whole Chapter will meet on campus in classrooms due to its size, but that some executive council meetings and new member orientation meetings will take place on site. There will not be separate meeting room. She stated that the sorority will have a point system based on seniority and responsibility they have taken; the top twelve would be allowed to live in the house and the top 5 of those would be granted one of the five parking assignments.

Mr. Fontane stated that staff had recommended that a compliant landscape buffer be provided and this can be captured in revised set of plans. He also stated that staff’s memo (Exhibit C) indicates where the sorority’s proposed house rules do not meet, comply or exceed Board’s standard suggested House Rules. He also stated that the memo provides staff’s suggested findings of fact. Mr. Fontane reminded the Board that a sorority was approved by the Board 5-0 on 13 Hackfield Rd. on April 28, 2008 which is nearby. Mr. Fontane confirmed that no landscaping relief was necessary based on the revisions.

Mr. Kelly requested that when the petitioner is applying for a Change of Use permit, structural plans of the deck are provided showing that it complies with the side yard setback dimensional requirements, showing that four (4) feet is being removed.

Mr. Abramoff asked whether the applicant was amenable to staff's recommendations per the house rules.

Atty. Rodman stated that he felt some of the typical lodging house rules were not applicable to the sorority; specifically he stated rule 7 – *residents are prohibited from having overnight guests for more than 2 nights* would not be permitted by the sorority.

With respect to the typical house rule stating no more than 3 people are permitted to visit without permission from the owner, Atty. Rodman stated that he did not believe this was applicable or necessary because the national and state chapters will monitor all activity at the house and the owner of the house is the national chapter. He did say that there will be an occasional meeting as indicated earlier in the meeting and that, at times, there may be between 8-12 visitors for meetings.

Similarly, Atty. Rodman, stated that members not obeying the rules would not be permitted to live in the house.

With respect to the suggested rule that minimum leases are six months; he stated that the women living at the house would be living there at a minimum for one school year which would exceed 6 months.

He further stated that while there will be a security system for the house that the sorority does not typically have security cameras in common areas. With respect to the rule requiring that a sign be placed on the door showing who the property manager is; Atty. Rodman stated that aesthetically they do not wish to place a sign on the door however he did state that there will be a 24 hour number for neighbors or others so that people can easily get in touch with the house manager who would live in the house.

With respect to visitors, Atty. Rodman stated that a total of 12 women will live in the house. Mr. Bilotta indicated that if each woman was permitted 1 or 2 female visitors, that the number of visitors at the house could be overwhelming for the neighborhoods. Ms. Cahanghi stated that the chapter is considering a rule that no nonmembers are permitted to stay overnight unless special permission is granted from an advisor. Mr. Bilotta felt a cap on the total number of visitors may be appropriate. Mr. Freilich asked if there was control or a cap on number of visitors for a three family and staff responded there were not.

After the Board discussed whether or not to set a limit on the number of people allowed in the building overnight at any one time, they set a number at no more than 6 visitors at any one time.

Mr. Loew asked if sorority members would have access to on-campus parking garage. Maggie Becker, chapter advisor, stated that students are allowed to purchase on-campus parking permits. Ms. Becker stated that many campuses struggle with parking issues. Emily Perlo, Director of Student Activities, stated the new parking garage that is being built, will be available to faculty and students, freeing up surface parking lots in the area for students. Mr. Loew stated that he understood convenience for parking was as much an issue as the number of spaces.

Frank Scacciotti, of 7 Einhorn Road, expressed concerns with drainage, snow removal, overflow of cars parking on-street, and dump trucks accessing the site during construction as

a result of this project. Chair Freilich stated that he believed drainage will be improved as a result of the new drainage system being proposed in the rear of the property.

Greg Garshler of 5 Einhorn Road, stated that he was speaking on behalf of the owner and that he believed that the neighborhood is being encroached upon by WPI and Becker College. He stated that he was not opposed to this particular project, but expressed concern with changing the character of the neighborhood by allowing uses other than one, two or three-family residential dwellings. He asked the Board to “be cognizant of density” of proposed uses going forward. He expressed concern that if this sorority house goes on market again, it could be converted to a rooming house.

Javier Crespo, owner of 9 Einhorn Road, stated that he believed parking will not be an issue as many houses in the vicinity have on-site parking and there is a lot of on-street parking.

Mr. Bilotta suggested that the excess snow is removed off-site, and that the landscaping is maintained minimum twice a year.

Mr. Kelly suggested that the house manager keeps a log of all the visitors for safety reasons.

Chair Freilich stated that he believed a sorority was an appropriate use, but did not feel the same about a lodging house use. Mr. Abramoff clarified that the same rules would apply to future users. Mr. Fontane stated that a lodging/rooming house is a separate use from sororities, and that a change of use permit would be required to do that. They could not do anything different from a sorority or fraternity; they could not go to a general lodging house use which is only permitted in RG-5 zoning districts. The permit would be tied to a fraternity, sorority or cooperative residences; they could not change to a generic lodging house.

Ms. Cahangi stated that a professional company will be hired to do snow removal and maintain landscaping in site.

Mr. Fontane clarified that to be compliant, both the parking area and the driveway adjacent to the side lot line need to be landscaped in accordance with the Zoning Ordinance.

Mr. Brassard stated that the arbor vitae can be placed at 4-6’ and will grow much taller.

Mr. Frelich asked if another vehicle could fit under the stairwell. Atty. Rodman stated the sorority did not want to reduce maneuverability, nor provide parking under a wooden deck.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to accept the applicant’s findings of fact as amended by staff and to approve the requested Special Permit to convert a single-family detached dwelling into a sorority house affiliated with Worcester Polytechnic Institute (Article IV, Section 2, Table 4.1, Use #5 Fraternity/Sorority/Cooperative residence) and a Special Permit for Modification of Parking / Loading Requirements (Article IV, Section 7) – Requesting to waive 1 of the 6 required off-street parking, with the following conditions of approval:

1. That the width of the proposed rear deck is reduced by 4-ft in order to comply with the required 10-ft side yard setback dimensional requirement for other permitted residential uses in the RL-7 zoning district;
2. That the House Rules are amended by adding the following provisions:

- a) No more than 6 guests can stay overnight at any one time. All guests shall be approved by the manager who will keep a current log of all guests staying on site for emergency purposes;
  - b) Residents are responsible for all guest behavior and any problems created by guest will result in potential termination of host's residency;
  - c) Management reserves the right to amend or add to these rules and guidelines provided they are compliant with this ZBA decision;
  - d) The minimum period for leases is six months;
  - e) Contact information of the property owner or manager shall be posted on the exterior of the building visible from the street (a maximum 12 SF sign per primary public entrance is allowed in this zoning district).
3. That the House Rules be followed by all members and guests;
  4. That the House Rules be posted in a visible location on each floor and in common areas within the building;
  5. That six (6) copies of final revised plans are submitted to the Division of Planning & Regulatory Services prior to issuance of a Building Permit/Occupancy Permit with the following modifications:
    - a. Provide a mix of trees and shrubs throughout the 5-ft side yard setback where the parking and driveway abut property lines;
    - b. Label distances from adjacent buildings and dimensions of the final proposed deck;
  6. That six (6) copies of floor plans are submitted to the Division of Planning & Regulatory Services prior to issuance of a Building Permit/Occupancy Permit;
  7. That the plantings in the rear of the building are minimum 6-8-ft tall when planted;
  8. That the landscaping is maintained regularly on site;
  9. That excess snow interfering with provided landscaping or parking area is removed off-site;
  10. At the time of the annual inspection by the Department of Inspectional Services and Fire Department, land owner must demonstrate that the conditions of the Special Permit are being met;

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to approve the requested Leave to Withdraw of a Special Permit for Modification of Landscaping Requirements for Parking/Loading (Article IV, Section 7) – requesting a partial waiver of a landscaped 5-ft buffer because required landscaping was determined to be in compliance.

List of Exhibits:

- Exhibit A: Special Permit Application – 9 Einhorn Road; received 01/17/2012 prepared by Atty. Todd Rodman on behalf of petitioner, Alpha Phi International Fraternity.

Exhibit B: Special Permit Plan; 01/17/2012; prepared by Brassard Design & Engineering.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 9 Einhorn Road; dated 02/06/2012.

5. **114 Randolph Road (aka 240 Barbara Avenue) (ZB-2012-001):** Mark Cook, representative for Sprint Nextel Corp, petitioner, stated that the petitioner is seeking an Amendment To Special Permit: To allow a Personal Wireless Service Facility in ML-0.5 zoning district and a Special Permit: Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4). He stated that the petitioner is seeking to replace the existing 6 antennas with 6 new antennas at the top of the monopole, add 12 remote radio head units, remove 2 equipment cabinets and replace with 4 new cabinets; remove and replace a GPS unit with a new GPS unit. Mr. Fontane indicated that staff had some additional proposed findings of fact in its memo with respect to the height of the proposed PWSF not exceeding the current PWSF height and indicated the board may want to consider submission of an RF report after installation beyond the compliance statement. He noted that the Board had granted similar waivers however in other manufacturing districts. Mr. Freilich suggested that noise study be submitted given nearby residential uses. Mr. Fontane stated that the nearest residence was 800' away.

Mr. Abramoff asked if a coverage gap must be demonstrated with respect to amendments. Mark Cook stated that this is not new service; an RF plot coverage map was submitted. He stated that the coverage map is located after the EME report before the photo simulations. Mr. Fontane clarified that the waiver request was with respect to location maps of existing and future facilities. Mr. Freilich stated that he was not happy with the lock on the gate and asked that another pole be installed so that the gap is removed.

Mr. Bilotta requested that the petitioner color-matches the proposed installation to the existing tower, that the site is cleaned up in terms of trash, and that security gate gap is maximum 4-inches wide.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to accept the applicant's findings of fact as amended by staff and to approve the requested Amendment To Special Permit: To allow a Personal Wireless Service Facility in BG-3 zoning district and a Special Permit: Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4) with the following conditions:

- That the site is maintained free of trash;
- That the security gate's gap is maximum 4-inch wide;
- Cost of decommissioning:** 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;
- Paint color matching:** 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 (metal galvanized grey or similar), 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;

- **Surety Bond:** That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;
- **Post-installation measurement of sound and RFP:** That post-installation measurements of the total noise and total Radio Frequency Radiation emitted by all PWSF on the building/site are taken by a certified noise and RF engineer; that results of these measurements demonstrate compliance with the Noise and Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy;
- **Signs** are posted at the site in accordance with section 13.0 of the submitted Radiofrequency Compliance report and in accordance with the Federal Communication Commission rules and regulations regarding warning of exposure to radio-frequency radiation;
- That the structure is constructed in substantial accordance with the site plan and the photo simulation package submitted by the applicant on January 6, 2012 and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to approve applicant's requested application requirement waivers.

List of Exhibits:

Exhibit A: Special Permit Application – 114 Randolph Road; received 01/06/2012; prepared by Mark Cook for Sprint Nextel Corp. with the following attachments:

- a. Waiver Request Letter from Mark Cook for Sprint Nextel Corp to the Zoning Board of Appeals; dated September 29, 2011.
- b. Equipment Information
- c. RF Engineering Affidavit from Ryan Monde de Ramos of Alcatel-Lucent; dated December 22, 2011.
- d. Radio Frequency – Electromagnetic Energy Compliance Report prepared by EBI Consulting; dated December 20, 2011.
- e. Photographs with superimposed proposed antennas; prepared by Network Building & Consulting, LLC

Exhibit B: Special Permit Plan – 114 Randolph Road; dated 8/24/11; prepared by Salient Architects, LLC and Alcatel Lucent.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 114 Randolph Road; dated 02/08/2012.

The Board took a 10 minute recess.

6. **101 Dewey Street (aka 103 and 115 Dewey Street) (ZB-2012-002):** Kevin Quinn, project engineer, presented the project. Also present were Samuel Rosario, Dan Craig, and David Johnson. Mr. Quinn stated that the petitioner is proposing to demolish two existing buildings on site, which he said were in dilapidated state, and to construct a new 2,000 SF building for warehouse storage in the southeastern corner of the site (close to Mason Court). The application seeks relief from rear yard setback requirements – specifically a Variance for relief of 14 ft from the 15-ft rear yard setback dimensional requirement and a Special Permit to expand/change a pre-existing, nonconforming structure. The property is located in an MG-1.0 district. Mr. Quinn stated that the owner and applicant, P&D Johnson is part of the Kaola Family; a long standing business in the City with a current business on Park Ave. He explained that the proposed building is located in southeast portion of the site, roughly in the same location as the current building; however, the proposed building will reduce the existing nonconformity slightly by moving the building from 7/10 of a foot to one foot from the rear yard property line. The proposal also reduces the massing of the building along the rear yard setback through the reduction of the building length and total square footage from 929 SF to ~560 SF. Atty. Quinn stated that the building will be secure and attractive and will improve the neighborhood. He stated that the applicant is seeking to minimize setback gaps to discourage illegal dumping and illegal use of the property. Mr. Freilich asked for clarification on what buildings are remaining and being removed. Mr. Quinn clarified for the record which buildings would remain and be removed. Mr. Fontane advocated that a five foot landscaped buffer be planted in the rear along the residential property on Mason Court and also a five foot landscape buffer along Dewey St. where the former building is being removed. David Johnson stated that the building will be used for equipment storage, duplicating secure construction in other parts of the City in buildings that he owns. Mr. Quinn stated that there is an existing state of the art drainage system currently on site. Mr. Abramoff asked about the landscape buffer. Mr. Rosario stated that it would be in the client's best interest to place the building at 1 foot off the property line for security purposes and to preserve development potential and parking for future uses. He indicated that the applicant plans to replace the fencing. Mr. Quinn stated that the 40' x 50' building on the plan is the proposed building. Mr. Abramoff asked how maintenance on the building will be conducted. Mr. Freilich asked what else the site would be used for. Mr. Rosario stated that they would like to keep the parking area open for future expansion and new uses. Because of the existing infrastructure for stormwater, Mr. Rosario stated that new buildings would not be placed on top of the infrastructure.

Mr. Rosario stated that an 8" block building, fire proof building will be placed on site and stated his client was aware that they could build by right by moving the building on site 5' from the property line. Mr. Quinn reiterated that his client would like to preserve the remaining portion of the site for future use. Mr. Loew asked about the 5' landscape buffer along Dewey St. where the building will be removed. The applicant stated that he were amenable to placing landscaping in a buffer along Dewey St. in the area where the building will be removed.

Mr. Bilotta stated concern with an abutting dumpster overflowing with trash but was unsure if it was at 101 Dewey St. Mr. Rosario clarified that the overflowing dumpster was not on his client's property. Mr. Kelly indicated that he log a complaint and send an inspector. Mr. Fontane stated that arborvitaes could be provided in a 3' buffer along the rear yard setback. He stated that the residential building to the rear while vacant now could be inhabited at some point in the future.

Mr. Johnson stated that he would like to preserve existing parking and allow for sufficient area for loading. He stated that the building will actually create privacy in some ways from the rest of the lot and it will be painted and will remove the possibility for dumping.

Mr. Freilich stated he did not want to create an issue between future neighbors and asked for a compromise for a small buffer zone that would allow for maintenance on the property. He suggested 3'.

Mr. Bilotta stated that equipment from the roof could allow for painting on the rear.

Mr. Fontane stated that 3' would be sufficient to allow for planting of arborvitaes between the wall and fence. Mr. Freilich stated that it could create a problem to maintain the arborvitae which would still create a maintenance issue. Mr. Rosario stated that 3' with no plantings was amenable to his client and clarified that a perimeter fence will be maintained.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 4-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to accept the applicant's findings of fact as modified by staff and voted 4-0 by Board members Andrew Freilich, Lawrence Abramoff, William Bilotta and Timothy Loew to approve a Variance for relief of 12' feet from rear yard setback requirement (15' required; 3' will be provided) and a Special Permit for Expansion, Alteration or Change of a Pre-Existing Nonconforming Structure with the following conditions of approval:

- Provide a 3-ft rear yard setback between the proposed building and the fence;
- Provide a 5-foot wide buffer landscaped in accordance with the Zoning Ordinance along front property line adjacent to Dewey Street where the demolished building previously stood;
- Maintain the property perimeter fence in good condition;
- Six copies of final revised plan are submitted to the Division of Planning & Regulatory Services prior to issuance of a Building Permit with the following changes:
  - Provide a separate existing conditions sheet;
  - Indicate on the proposed plan that the applicant was approved for 12-ft of relief from rear setback requirement;
- The project is constructed in substantial accordance with the final revised plans on record with the Division of Planning & Regulatory Services.

List of Exhibits.

- Exhibit A: Variance & Special Permit Application; received 01/10/2012; prepared by P&D Johnson Realty Trust.
- Exhibit B: Variance & Special Permit Plan; dated 01/04/2012; prepared by Quinn Engineering, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 101 Dewey Street (aka 101-103, 111, 115 Dewey St & 13 Parker St); dated 02/06/2012.

7. **24 Mendon Street (ZB-2012-003):** Mohammed Djamshidi, representative for the owner and project engineer, stated that the applicant is proposing to retroactively seek a special permit to convert a two-family residential dwelling to a three-family residential dwelling with 6 off-street parking spaces. Mr. Djamshidi stated that the exterior of the building will not be touched and that his client recently purchased the building. He noted that the existing 3rd floor tenant has lived there for five years. He explained the applicant is specifically seeking a Special Permit for Residential Conversion from a two-family to a three-family residential dwelling (Article IV, Section 9). Mr. Fontane reiterated that the exterior of the building cannot be changed and recommended that a minimum of two trees be planted on the southern side of the building to provide a more substantial buffer and that snow storage not interfere with required parking. Mr. Fontane stated that staff recommends reducing the pavement to provide a larger backyard or maintain the existing driveway width; either two would be acceptable. Mr. Fontane stated that the Fire Department asked that the building be sprinkled. Mr. Abramoff asked for clarification on the parking area. Mr. Fontane stated that with respect to the large parking area, staff recommends taking out an area in the front yard setback area or take out some parking in the rear. He stated that parking needs to be outside of the front yard setback and that cars can back out onto Mendon St. for 3 family. He stated the revised plan would reduce the impervious area on site. Mr. Freilich stated he would prefer to see landscaping in the front. Mr. Loew asked about snow removal. Mr. Djamshidi stated there is sufficient area, flat in the rear of the property to provide snow. He also stated that there is sufficient area (30') for vehicles to turn around and come out. They will be stacked up two deep on each side.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to close the public hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to approve the requested Special Permit for Residential Conversion (per Article IV, Section 9) with the following conditions of approval:

- That a minimum of two (2) native species and Asian Longhorned Beetle-resistant tree species are planted along southern side property line to provide a more substantial buffer between the expanded parking area and the abutting residential use;
- That at no point the snow storage area interferes with the parking area;
- That landscaped area is maintained on a regular basis;
- That the petitioner submits six (6) copies of final revised plan to the Division of Planning & Regulatory Services prior to issuance of a Building Permit showing the revised parking configuration to reduce pavement and a provision of a landscaped triangular bed in the

eastern front corner of the property (11-ft wide by 15-ft long) per Exhibit D on file with the DPRS;

- That the project is constructed and operated in accordance with final revised plans on file with the Division of Planning & Regulatory Services.

#### List of Exhibits.

Exhibit A: Special Permit Application; received 1/10/2012; prepared by 24 Mendon Street Realty Trust.

Exhibit B: Special Permit Plan; received January 10, 2012; prepared by The Professional Group LLC.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 24 Mendon Street – Special Permit; dated February 9, 2012.

**8. 2-14 Kansas Street (ZB-2012-07)** Dennis O'Connor, applicant, indicated that he was seeking an amendment to special permit to remove the Board's condition of approval that the Special Permit is valid for one year from date of final action (Special Permit to allow solid waste transfer on site). Mr. O'Connor explained that since the Board granted the Special Permit to allow for solid waste in addition to recycling on site 13 months ago, that the applicant has been working to meet conditions of approval from the City and that he is still waiting on a waiver from the Dept. of Environmental Protection due to the fact that the property is located within 250' of a residence. He stated that the state has not yet granted the waiver. He stated that it was his understanding the one year condition was put in place to allow the Board to see if the site was in compliance however the solid waste use is not operating at this time, only the recycling use. He stated that while he could come back within a year once the site is operating that he would prefer to save time if he does receive the approval from the state and not come back. He reminded the Board that the Board of Health and DEP would have control and oversight and that he has been working closely with the City. Mr. Abramoff asked Mr. Kelly if there had been any complaints. Mr. Kelly pointed to the Inspectional Services' memo that outlines remaining conditions of approval to be addressed, specifically: paving the unpaved area on site, the required 8' fence, netting for birds and signage. He stated that he feels these items can be completed in a timely manner once the site is operating with the additional solid waste transfer use and that his staff will continue to monitor the site for compliance with the Board's conditions of approval and Board of Health requirements.

Mr. Abramoff stated that he is comfortable with the applicant's work to date. Mr. Fontane stated that the condition was a one year check in and stated that the use for solid waste has not commenced and indicated that it was up to the Board whether or not they were comfortable removing the one year condition. He stated that the condition is not necessary from an inspection point of view. Mr. Abramoff asked when he thinks the solid waste transfer will commence. Mr. O'Connor hoped that it would commence soon. Mr. Abramoff and Mr. Bilotta expressed support for removing the one year condition of approval. Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to close the public hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta the Board voted 4-0 to approve the requested Amendment to Special Permit to remove the one year condition of approval with the same conditions of approval placed upon the previous Special Permits, specifically:

**Special Permit to allow a recycling operation in an MG-2 zone:**

- 1) Trucks must operate from Cambridge Street to Kansas Street;
- 2) List of items for recycling must be provided to the Division of Planning and Regulatory Services;
- 3) Provide proof of license of haulers to the Division of Planning and Regulatory Services;
- 4) Hours of operation are allowed from 7:00 AM to 10:00 PM;
- 5) Final revised plans submitted to the Division of Planning and Regulatory Services showing the location of permanent signage and provided it is in accordance with plot plan submitted on file with the City of Worcester and in compliance with all governmental codes.

**Amendment to Special Permit to allow a small (less than 50 tons per day) solid waste transfer operation in an MG-2 zone:**

*1.) General*

- a.) All loading, unloading, storage of recyclable and non-recyclable materials shall be conducted indoors. Solid waste transfer shall occur in the southern loading area as indicated on the proposed plan and shall not occur in the Kansas Street loading area.
- b.) Plot plan should be revised to show location for proposed dumpster staging. All containers shall be covered. Solid waste containers shall be emptied within 24 hours. Recyclables shall be emptied within 48 hours.
- c.) Inspections by Inspectional Services shall be conducted annually.
- d.) The facility shall be locked at night.
- e.) The floor may be required to be sealed if deemed necessary by an Inspection from Inspectional Services.

*2.) Litter.*

- a.) Kansas & Sherman Streets in vicinity of the facility shall be maintained free from litter on a daily basis.
- b.) Incoming and outgoing loads shall be covered.

*3.) Traffic.*

- a.) In accordance with the previously approved Special Permit, access shall be limited to Kansas Street and Cambridge Street.
- b.) Kansas Street and the access drive shall be paved fully to control dust.
- c.) Traffic to site for solid waste transfer shall be limited to licensed private haulers. No “walk up” shall be permitted for solid waste transfer.
- d.) Avoid queuing off-site onto Sherman and Kansas Streets.

- e.) Site operators shall ensure compliance with existing anti-idling laws of Massachusetts and post signage with relevant portions of the anti-idling law visible to incoming trucks.
  - f.) The addition of a scale on-site and circulation for weighing on-site shall be permitted only by an additional amendment to this special permit, if approved.
- 4.) *Dust.*
- a.) Truck bodies and tires shall be cleaned as necessary prior to leaving the site to reduce tracking of dirt onto streets.
- 5.) *Hours of Operation.*
- a.) Hours of operation for the facility shall be limited from 7:00 am to 10:00 pm, Monday-Saturday and the facility shall not operate on Sunday as suggested in the Department of Inspectional Services memo dated November 16, 2010 (Exhibit D).
- 6.) *Odor/Pest Control.*
- a) Yard waste and/or any food waste that is more than incidental.
  - b) Provide documentation that the services of a licensed pest control company have been retained to the Division of Planning & Regulatory Services and Department of Inspectional Services on an annual basis.
  - c) Due to proximity to residential neighborhood, in addition to a licensed pest control company, staff recommends using best practices for non-chemical deterrent of vectors (rodents, insects, etc) including rodent-proofing measures for holes, vents, pipes and removing all potential areas for rodent “harborage” – empty boxes, piles, brush, etc. In addition to maintaining overgrowth and brush on-site, the Board may want to consider requiring the applicant *seek* an easement or agreement from abutting property owner to remove brush/overgrowth on the eastern portion of the site.
  - d) Install bird deterrent measures such as suspended or hanging wires and eliminate horizontal surfaces, within reason, where birds can congregate.
- 7.) *Other.*
- a.) Site shall process less than 50 tons of solid waste per day.
  - b.) Containers shall be covered; solid waste containers shall be emptied within 24 hours, recyclables emptied within 48 hours.
  - c.) Maintain a log for all material brought to the site, total weight of material transferred, date and time of transfer, and by whom. Said log shall be submitted annually to the Department of Inspectional Services.
  - d.) Provide a staffing plan that lists duties by job title, minimum staffing levels and typical work schedules.
  - e.) Create a fact sheet for all private haulers that describes acceptable and unacceptable wastes and alternative locations for dispensing of items on the unacceptable waste list. Per the EPA’s Waste Transfer Station – Manual for Decision Making (Exhibit E), staff suggests, at a minimum, that the fact sheet include:
    - o A picture or graphic of unacceptable waste
    - o A definition of what the unacceptable waste is and why it is not accepted at the transfer station

- The dangers or penalties for improper disposal of unacceptable waste.
  - Safe consumer alternatives.
  - Where the waste can be appropriately managed, including driving directions, hours of facility operation and contact information.
  - Telephone numbers and websites of appropriate regulatory agencies that can provide more information.
- f.) Provide a copy of Operations and Contingency Plan for emergencies such as power failures, unavailability of transfer vehicles, discovery of hazardous materials, spills, fire and injuries to employees or visitors to site. to the Division of Planning & Regulatory Services and the Department of Inspectional Services
- g.) Comply with proposed conditions proposed in the Dept. of Inspectional Services memo dated November 16, 2010.
- h.) Provide schedule for installing signage – staff notes that on a recent staff visit, it does not appear as if any signage identifying the building or business have been installed. Additional signs shall be located on site per the Department of Inspectional Services memo dated November 16, 2010 (Exhibit D)
- i.) Any windows, if uncovered or replaced shall be re-installed with double-glazed glass windows.

*Previous condition of 2009 Special Permit approval:*

- In addition to previous conditions of approval for the recycling facility provide proof that an engineering firm was hired to conduct indoor air testing related to the subsurface contaminants to the portion of the lot fronting Cambridge Street as stated in letter from Dennis O'Connor in response to staff's previous memo. (Exhibit C)

List of Exhibits

- Exhibit A: Special Permit Amendment application -2-14 Kansas Street. (includes Board's Special Permit Amendment Decision from Nov. 29, 2010 with conditions of approval) prepared by Dennis O'Connor dated January 22, 2012; received January 25, 2012.
- Exhibit B: Letter to DPRS staff – Response to Select ZBA Conditions of Approval, dated April 12, 2011, received April 12, 2011, prepared by Scott Soucy, Corporate Environmental Advisors and Dennis O'Connor.
- Exhibit C: DPRS Memorandum to Zoning Board of Appeals: re: 2-14 Kansas Street Amendment to Special Permit (2<sup>nd</sup> Amendment), dated February 8, 2012.
- Exhibit D: Letters to Massachusetts Department of Environmental Protection:  
 1.) From Michael O'Brien, City Manager dated January 25, 2012, re: 2 Kansas Street location of waste transfer station facility.

- 2.) From Department of Public Works & Parks, Robert Moylan – Commissioner, dated January 25, 2012, re: 2 Kansas Street location of waste transfer station facility.
- 3.) From John Kelly, Commissioner of Inspectional Services - From Department of Public Works & Parks, Robert Moylan – Commissioner, dated January 25, 2012, re: 2 Kansas Street location of waste transfer station facility.

## **OTHER BUSINESS**

**Lodging House Policy Discussion.** Mr. Freilich stated that he had requested staff to provide additional information with respect to the City’s policy on lodging houses, sororities, fraternities, three family dwellings.

Mr. Fontane showed the Board a zoning map and started the discussion by stating that lodging houses are a more geographically restricted use than sororities, fraternities and cooperative residences. He indicated that while both uses require a lodging house license from the License Commission, they are treated differently in the Zoning Ordinance. Specifically sororities, fraternities and cooperative residences are allowed by right in BL-1 and Business General zoning districts and are allowed by special permit in all residential zoning districts and business office zoning districts. Lodging houses, however, are only allowed by special permit in RG-5 zoning districts (not in other residential districts) and also require a special permit in Business zoning districts. He reminded the Board that the special permits process allowed for another level of review and control within specific geographic areas and stated that not every location is appropriate for these uses. He gave the example of the proposed sorority on Massachusetts Avenue that while a residential zoning district was determined not to be an appropriate location for a sorority.

Mr. Fontane reviewed the special permit criteria and intent of the Zoning Ordinance and pointed out specific considerations within this decision making framework that might be important for the Board to consider when reviewing special permits such as: one intent of the ordinance which is to provide protection from overcrowding and also the intent to provide a variety of housing options.

He gave the specific example of parking. Lodging house uses are not allowed to provide parking that requires a vehicle to back up onto a street. Similar to multi-family dwellings, there is a different standard which in turn requires larger lots and a higher standard of quality for parking. Unlike a family unit within a one, 2, 3 family dwelling, where one can expect coordination of parking, lodging houses tend to have larger number of unrelated individuals thus necessitating more formalized parking and control. Informal arrangements for parking for these uses do not work as well because if it does not perform, it spills over onto the public sphere and impact the neighborhood. He pointed out staff’s memo that pointed out specific considerations within the special permit criteria the Board may want to consider when reviewing LH and Sororities/fraternities, and cooperative residences:

- Traffic flow and safety, including access, parking and loading areas;
  - The Board should consider if the parking provided is sufficient to accommodate the increased parking demand.
- Neighborhood character and social structure; & impacts on the natural environment;

The Board should consider the following:

- Will the use overwhelm/intrude into other uses in the vicinity and the neighborhood in general through its density?
  - Will the density of the use (number of beds per building's livable space and per site's area) or the proposed parking overwhelm nearby uses?
  - Will the use contribute or detract from the stability of the neighborhood?
  - Does the proposed use have appropriate setbacks, buffers, and fences to adequately achieve compatibility with abutting uses? A greater setback provides additional open space and separation between the proposed building and adjacent buildings. Setbacks reduce the sense of crowding, loss of privacy and mitigate noise.
  - Do the proposed site features cause negative impacts, e.g. parking lot paving, lighting, security lighting, outdoor garbage storage?
- Adequacy of utilities and other public services;
    - Lodging houses are not eligible for City trash and recycling pick-up. Did the applicant demonstrate the adequacy of this site to address the storage and disposal of garbage and recycling materials?

Andrew Freilich stated that he understands and appreciates the review of the criteria however he felt that the process is still quite subjective and leaves a lot open for interpretation. The issue at hand, in his opinion comes down to, in some cases, whether there will be 3 or 4 individuals in each floor of a 3 family dwelling; one situation is permitted by right; the other has a much higher level of scrutiny. He offered for the discussion the question: what would have been the difference if instead of the proposed sorority at Einhorn St., it would have been a proposal for a lodging house.

Mr. Abramoff offered that lodging houses require a significantly higher level of investment in sprinkler systems and building code requirements given the change in density and change in nature of the building. He stated that in a three family situation tenants pay utilities which is generally not the case in lodging houses.

Mr. Kelly clarified that License Commission is charged with how lodging houses area managed and stated that between the Special Permit consideration and the License Commission process that he feels the City is adequately considering these uses and appropriate conditions. Mr. Fontane added that enforcement is always a challenge with any effort and that through the problem property review team, the City is systematically looking for uses that are not run appropriately. He added that the special permit framework provides a consistent minimum level of expectations for how these uses will be operated and provides recourse and clear framework for enforcement.

He added that distinctions blur where the line is drawn, similar to zoning lines running down the street. State law defines the lodging house as no more than 3 unrelated individuals; if that is exceeded by definition the use on the property is a lodging house and would require a special permit in RG-5 or business zoning districts and would not be permitted in other zoning districts.

Mr. Kelly informed the Board that in Boston, through an ordinance change, it was his understanding that lodging houses are defined as 5 or more unrelated individuals. Mr. Fontane,

reminded the Board that Boston has a different zoning code from rest of the state and felt that the amendment only applies to student residents.

Mr. Freilich indicated that he would rather see 4 individuals in a controlled unit than 3 in an uncontrolled situation.

Mr. Fontane stated that the Special Permit criteria are important because no ordinance can define every possible scenario and confirmed that it is a judgement call by this Board. In some cases the use will be appropriate, in other it will not, same for fraternities and sororities. He stated that sororities and fraternities, however, due to their affiliation with colleges and national organizations, have strict internal rules and another level of scrutiny and control. If the management of the lodging house is having problems, the License Commission can say that the management needs to be changed. There is wide deference given to the 1, 2 and 3 family uses. He pointed out that as an exhibit staff included the License Commission rules and regulations for reference and also indicated that staff will conduct an analysis of density for future special permit considerations to help the Board in their decision making.

#### List of Exhibits:

- Exhibit A: Memorandum from Luba Zhaurova, Senior Planner and Joel Fontane, Director, to Zoning Board of Appeals; re: Lodging Houses Policy Discussion; dated February 10, 2012.
- Exhibit B: ZBA's standard conditions related to Lodging Houses / Fraternity / Sorority Houses.
- Exhibit C: License Commission Rules Regarding Lodging Houses.
- Exhibit D: Legal Opinion by the City of Worcester Law Department to Division of Planning & Regulatory Services; re: Lodging House Special Permits and Lodging House Licensing; dated June 3, 2011.
- Exhibit E: List of Lodging House Licenses by address and number of bed / residents (Source: Deborah Steele, Principal Staff Assistant of the License Commission. Current as of December 31, 2010).

### **APPROVAL OF THE MINUTES**

Upon a motion by Mr. Abramoff and seconded by Mr. Loew the Board voted 4-0 to approve the following minutes: 4/4/11, 5/16/11, 11/21/11, 12/12/11, & 1/30/12.

Upon a motion by Timothy Loew and seconded by Mr. Bilotta the Board voted 4-0 to approve the minutes from the January 9, 2012 meeting.

### **ADJOURNMENT**

Chair Freilich adjourned the meeting at 8:09 pm.