

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

**September 24, 2012**

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

**Zoning Board Members Present:**

Andrew Freilich, Chair  
Lawrence Abramoff, Vice-Chair  
Vadim Michjlow  
William Bilotta  
Timothy Loew  
Kola A. Akindele

**Staff Present:**

Joel Fontane, Division of Planning & Regulatory Services  
Marlyn Feliciano, 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 5:32 PM. Chair Freilich apologized to the audience for having to reschedule the September 17, 2012 meeting.

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

**1. 525 (aka 525-545) Lincoln Street (ZB-2012-049):**

The petitioner, Clear Channel Outdoor, submitted a Request for Postponement until the October 15, 2012 Zoning Board meeting prior to the meeting. Upon a motion by Mr. Abramoff, seconded by Mr. Bilotta, the Board voted 6-0 to approve the postponement to October 15, 2012 and extend the public hearing deadline to October 29, 2012.

**2. 85 Lake Ave North and 55 Mohican Road (ZB-2012-054):**

Mr. Fontane proposed to the Board that this item be postponed because there was information the applicant still had to provide but the applicant insisted they wanted to present. The Board consented.

**OLD BUSINESS**

**3. 0 Millbury Street (ZB-2012-050)**

Chair Freilich stated that Mr. Akindele could not vote on this matter because he was not present at the initial meeting on August 27, 2012. Mr. Lowe was chosen as the alternate.

Mike Maurello, representative for Clear Channel Outdoor, stated that he was asked by Staff to provide a photometrics analysis showing what light from the digital sign would be seen from the neighboring residential district and that he complied with the request.

Mr. Fontane clarified that although Mr. Maurello was asked to provide a photo simulation he provided an analysis of where light would be visible from nearby residents, specifically from Gibbs Street. Mr. Fontane asked Mr. Maurello to clarify the visual on page 3 of Exhibit F. Mr. Maurello explained that there will be no visible light from the billboard from the houses noted on Gibbs Street due to the angle of the billboard and the tree canopy. Mr. Fontane suggested that since the applicant owns the parcel that they keep the tree canopy and Mr. Maurello stated that they had no plans to remove any of the trees.

Mr. Abramoff asked that if Clear Channel was counting on the trees for shading or blocking the light what would happen during the fall and winter when the trees had no leaves. Mr. Maurello stated that there will be no ambient light from the sign regardless and that the trees are not used to provide shade or to block the light.

There were no comments from Mr. Kelly, Inspectional Services Commissioner.

Mr. Michjlow asked who prepared the exhibit and Mr. Maurello responded that it was collaboration between him and his corporate office. Mr. Michjlow asked what research was used to assemble the document and the applicant explained the digital billboard standard that during the day, every digital sign produces a cone light effect, that is perpendicular to the lighted structure, of approximately 250' at eye level. At night the cone effect is only 100'. Because the billboard is 60 feet high light is lost into the adjacent area.

Mr. Freilich asked Mr. Fontane if he was satisfied that the sign complies with the city ordinance to which Mr. Fontane stated that it did.

In response to Mr. Freilich's question, Mr. Fontane confirmed that this was the City's first digital billboard. Mr. Freilich also asked Mr. Fontane if he was satisfied that this billboard met all the criteria, especially in regards to the timing. He stated he was concerned with the 10 second change and that he believes it is too quick.

Mr. Fontane stated that the ordinance allowed the changes to happen every ten seconds and that unless there was a compelling reason that could be substantiated that a condition couldn't be placed to restrict timing. The staff believes the site is not a highly complex environment but if the Board still felt it necessary staff could get a third party consultant at the applicant's expense.

Mr. Abramoff asked the applicant how many ads they would present and how quickly they planned to change it. The applicant responded that each message would be visible for 10 seconds and that there would be a total of 8 messages.

Mr. Abramoff asked if they needed state approval and Mr. Fontane stated that in order to move forward the applicant needs to be approved by both city and state. If the ordinances differ, the applicant would have to comply with the stricter of the two.

Mr. Abramoff thanked staff and stated that the memo was very thorough and in-depth and made him confident that they had all the information needed in order to make an informed decision. He also stated that since the applicant complied with the ordinance he thinks that they should be approved. Mr. Abramoff also thanked staff for an excellent job on the City's sign ordinance, which is very comprehensive.

There were no comments from residents.

Upon a motion by Mr. Abramoff, seconded by Mr. Bilotta, the Board voted 5-0 (Andrew Freilich, Lawrence Abramoff, Vadim Michjlow, William Bilotta, Timothy Loew) to close the hearing.

Mr. Freilich asked who will verify that the applicant meets and maintains the criteria as specified in the sign ordinance and Mr. Kelly stated Inspectional Services is responsible.

Upon a motion by Mr. Abramoff and seconded by Mr. Michjlow, the Board voted 5-0 (Andrew Freilich, Lawrence Abramoff, Vadim Michjlow, William Bilotta, and Timothy Loew) to approve with the following conditions:

- That the proposed removal of six static billboards takes place prior to the petitioned digital conversion.
- That proposed digital sign is constructed in substantial conformance with the plans submitted on file with the Division of Planning & Regulatory Services and in compliance with all government codes.
- That the sign be no higher than what is there presently.
- Subject to Exhibit F That no ambient light will reflect on any of the residential neighborhood.

### **List of Exhibits.**

Exhibit A: Special Permit Application; prepared by Clear Channel Outdoor; received July 23, 2012 and including:

- a) ZBA's July 11, 2005 decision for 99 Ballard Street;
- b) Quitclaim Deed Book 40479, Page 78
- c) Photographs of the proposed billboard (6)
- d) Photographs of the billboards off of Route 146 proposed to be removed (4)
- e) Structural drawing of the proposed billboard; prepared by Yesco Electronics; undated; received July 27, 2012

Exhibit B: Plan of land for the billboard location; prepared by Dana F. Perkins, Inc. of Consulting Engineers and Land Surveyors; dated July 19, 2012.

Exhibit C: Memorandum from Division of Planning & Regulatory Services; re: 0 Millbury Street (MBL 31-017-00005) (ZB-2012-050); dated August 24, 2012 and revised September 14, 2012.

Exhibit D: Supplemental packet submitted by the applicant with additional findings of fact and responses to staff's comments; e-mailed August 27, 2012.

Exhibit F: Supplemental packet submitted by the application with additional findings of fact dated September 19, 2012 and response to staff's comments in the DPRS memo revised on September 14, 2012.

## **NEW BUSINESS**

### **3. 28 Garden Street (ZB-2012-041):**

Mr. Akindele recused himself from this hearing and Mr. Freilich stated that Mr. Lowe will vote on this petition.

Attorney Robert Longden stated he was representing the petitioner Lamar Advertising and introduced Mike Murphy, Chris Cockerill, and Norm Lagasse from Lamar Engineering, Mr. Dresseu, traffic engineer from the BSC Group and Sheri Swanson, from the digital sign manufacturer.

Mr. Longden stated the petition is for a special permit to convert the existing south-facing 672 SF static face of the non-accessory freestanding billboard sign to a digital sign located at 28 Garden Street. Mr. Longden confirmed that there will be no changes to the size or height of the proposed sign.

Mr. Longden stated that the sign is located approximately 1600 feet from the I-290 and I-190 split. There are four other billboards in close proximity owned by Clear Channel and the distances between billboards satisfy the ordinance. The billboard is visible while traveling east bound on I-290 for 1300 feet, which Mr. Longden referred to as the eastbound zone of visibility.

Mr. Longden stated that the billboard is located on the railroad right-of-way that is owned by the Boston & Main railroad and the area is zoned for manufacturing use. There are no residential properties facing the southerly face of the billboard.

Mr. Longden stated the sign's messages will change almost instantaneously every 10 seconds and will only show static images. There will be no delays, flashing, or fading between images.

Mr. Longden stated that the applicant had applied to convert both faces of the billboard in 2009 but withdrew the application in January of 2010 because at that time the Board expressed concerns about safety and driver distraction and was not comfortable making a decision to approve.

Since 2009, Worcester has adopted a Sign Ordinance allowing digital signs in the City. Another The Massachusetts Department of Transportation has also conducted a pilot program that examined the impact of allowing 8 digital signs in several locations around the country. Once each digital sign was installed a traffic study was done 30 days from date of installation to identify any traffic or safety issues and then again one year later. The results of the pilot program were released in November 2011 and the conclusion was that the digital signs did not have any safety impact.

Mr. Longden presented the summary of conclusions of the pilot program performed by the Massachusetts Department of Transit and the Federal Highway Administration in 2010 (Exhibit G). The “Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS) – Summary of Conclusions” answered the following three questions:

1. Do drivers look at CEVMS more than at standard billboards?

Answer: Yes; “...however, there were no significant decreases in the proportion of time to the road ahead (i.e. eyes on the road) that could be directly attributed to the CEVMS at the measured luminance and contrast levels.”

2. Are there long glances to CEVMS that would be indicative of a decrease in safety?

Answer: No. The identifiable time spent viewing CEVMS was well below accepted “concern” thresholds.

3. Do drivers look at CEVMS and standard billboards at the expense of looking at the road ahead?

Answer: “No, the differences between time spent looking at CEVMS and standard billboards were not reflected in the time spent looking at the road ahead.”

Mr. Longden stated that since 2010 there has been a change in the lane striping on the eastbound side of I-290 that eliminated the conflict that previously existed as the two lanes merged. Mr. Dresseu’s accident report in his updated traffic study stated that there were 8 accidents in 2010 extending from the Lincoln Street on ramp to the existing sign structure. Mr. Longden stated that this change contributed to a significant reduction in the number of accidents in this area; only 4 accidents were reported in this area.

Mr. Longden summarized the findings outlined in staff’s memo as follows:

- 1) The applicant has demonstrated that the proposed conversion of the south-facing billboard side to digital, which would only be visible from east-bound lanes of traffic, will not substantially interfere with the driver’s ability of negotiate approaching, merging, existing or intersecting traffic.
- 2) The distance from the proposed billboard face to the upcoming highway Exit 19/20 (divergence of I-190 and I-290) is about 1,400 ft and is considered to be a sufficient distance away to provide drivers adequate time to address the Exit 19/20 decision point.
- 3) The distance of the driver from the billboard (~300-ft at its closest) and the billboard’s size (673 SF proposed, maximum 845 SF allowed), reduce the probability of significant distraction.
- 4) The proposed digital sign can and will be operated in accordance with the operational standards and will meet the placement and dimensional requirements of Section 6(G) of the Zoning Ordinance.

He also stated that they would comply with the lighting, and dimming requirements in the Sign Ordinance. Mr. Longden showed a brief video of a billboard in South Dakota to demonstrate the 10 second duration and how the messages change.

Mr. Longden stated that he agreed with all the findings of fact in the staff memo and informed the Board that they were also requesting two waivers. The first because they did not submit a full site plan because the billboard is on the railroad right-of-way and spans over five acres. The second waiver request is for the application requirements to submit photographs with the application of other billboards on the westerly side of I-290 because Mr. Longden believed the aerial pictures provided served as a better visual.

Mr. Longden stated that there were several letters of support for this billboard included with the application.

Mr. Freilich stated he believes 10 seconds is too fast and potentially dangerous. Mr. Freilich also stated that he was driving through Connecticut and there was a stretch of road where there were approximately 8 billboards visible and they were not changing in sequence and he asked Mr. Fontane to elaborate how we could avoid that distraction.

Mr. Fontane stated that Mr. Longden referred to the Mass DOT and Federal Highway study in his presentation but he stated that in the research process staff found conflicting information from reputable sources because it is very hard to prove causality and the level of distraction at which something is dangerous. Mr. Fontane asked the Board that the results of those studies be excluded from the findings and that they reserve judgment and be silent on the matter of those two studies. He asked the Board to use the findings in the memo instead.

Mr. Fontane explained that this application was different from the one the applicant withdrew in 2010. The proposal now is to convert only the south-facing side of the sign and staff was not concerned about the proposed face then. The concern was with the north-facing side of the billboard and because that is not included in this petition DPRS is not recommending an outside independent third party to analyze the impact. Mr. Fontane stated that there is not a highly complex traffic environment to be a cause for concern, for that reason he is recommending that the petition be approved, striking the findings from the two studies submitted as part of the application. He also stated that staff is amenable to the waivers because the applicant provided sufficient information to make a proper determination.

Mr. Freilich asked what would be the concern with the north-facing side of the billboard if it wasn't changing every 10 seconds. Mr. Fontane responded that if someone wants to convert a billboard and change it once a day in the middle of the night it probably wouldn't be an issue. Mr. Fontane also explained that when creating the Sign Ordinance staff looked at what the fastest time that could be allowed that won't mimic a TV. Through research they concluded and recommended to City Council that there is no sequential messaging, no flashing, and that all billboards have automatic dimming. The Building Commissioner would be responsible for enforcement.

Mr. Freilich asked Mr. Cockerill from Lamar Advertising if it wouldn't be more valuable to have all their billboards along I-290 as digital even if the time change was much longer (~ 2 minutes) as opposed to being able to have one that could change messages every 10 seconds. Mr. Cockerill stated that the customers that purchase the advertising want to be able to see it, which is why they choose locations with long approach views that allow drivers to see at least three images/messages.

Mr. Fontane stated to Mr. Freilich that the Board has considered all the things that he posed as a concern when creating the Sign Ordinance and that is why they came to the conclusion that if it meets the criteria required under the Ordinance then they are approvable by Special Permit. We need to review them on a case by case basis.

Mr. Kelly asked Mr. Longden if the structural integrity of the billboard adequate to support the new technology. Mr. Longden responded that it this billboard has already been examined and it is.

Mr. Abramoff asked if the state requires a distance between signs of 2,000 feet and the city requires 1,000 which Ordinance do they adhere to. Mr. Fontane answered that each approval is necessary but not sufficient. They would have to comply with the most restrictive combination of the two.

Mr. Freilich asked if the approvals were first come first serve and Mr. Fontane confirmed that was the case. All the sign companies were notified that there was a limited number of digital billboard approvals due to the spacing requirements.

Mr. Freilich asked if someone wanted to convert their billboard to digital and change the message only once a day would that be denied because it falls under the digital Sign Ordinance. Mr. Fontane said that the interpretation of the Ordinance would have to take place at a later date.

Keith Johnson, Worcester resident, is an ex-executive and traveled all the time and stated that he believed 10 seconds is too fast and that it would distract drivers. He stated he believed it should be two minutes to change the sign.

Upon a motion by Mr. Abramoff and seconded by Mr. Michjlow, the Board voted 5-0 (Andrew Freilich, Lawrence Abramoff, Vadim Michjlow, William Bilotta, Timothy Loew) to close the public hearing.

Upon a motion by Mr., Abramoff and seconded by Mr. Lowe, the Board voted 5-0 (Andrew Freilich, Lawrence Abramoff, Vadim Michjlow, William Bilotta, and Timothy Loew) to approve with the following conditions:

- All work shall be done in accordance with the final approved plans and on file with the Division of Planning and Regulatory Services.
- Waivers are approved.
- That the findings of fact are approved as submitted by applicant and modified by staff, except the outside study results presented by the applicant.
- And that the height of the sign is no higher than what currently exists.

### **List of Exhibits.**

Exhibit A: Special Permit Application; received June 12, 2012; prepared by Lamar Advertising Company.

- Exhibit B: Special Permit Plan; dated March 11, 2009, revised June 8, 2012; prepared by BSC Group.
- Exhibit C: Request to postpone the hearing to August 13, 2012; submitted by Lamar Advertising Company; dated July 16, 2012.
- Exhibit D: Marked aerial photograph entitled “Locus of I-290 Lamar Sign at 28 Garden Street in Worcester, Massachusetts” and “Collision Diagram 2010/2011 Data”; prepared by BSC Group; dated August 7, 2012.
- Exhibit E: A traffic study prepared by BSC Group entitled “Lamar Unit # 97-025 EB”; dated August 8, 2012.
- Exhibit F: MassDOT Memorandum re: “Digital Advertising Board – Pilot Program”; dated November 22, 2011.
- Exhibit G: Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs (CEVMS), Summary of Conclusions;
- Exhibit H: A booklet from Lamar Outdoor Advertising Company answering common questions about digital displays (“Technically Speaking”).
- Exhibit I: Letters of Support:
- a. American Red Cross; dated August 2, 2012
  - b. Resmini Law Associates; dated August 6, 2012
  - c. PriMedia; dated August 7, 2012
  - d. Sheppard Leger Nowak, Inc.; dated August 7, 2012
  - e. The Advertising Council; dated August 7, 2012
  - f. Boys Town New England; dated August 7, 2012
  - g. CareNet Pregnancy Center of RI; dated August 8, 2012
  - h. The Salgi Esophageal Cancer Research Foundation; dated August 13, 2012
  - i. Seven Hills Foundation & Affiliates; dated August 21, 2012
- Exhibit J: Excerpts from the proposed revisions to the 700 CMR 3.00: Control And Restriction Of Billboards, Signs And Other Advertising Devices regarding 3.17: Requirements for Electronic Sign Permits; Massachusetts Department of Transportation’s Office of Outdoor Advertising; <http://www.massdot.state.ma.us/highway/Departments/OutdoorAdvertising.aspx>; accessed August 9, 2012.
- Exhibit K: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 28 Garden Street – Special Permit; dated August 10, 2012.
- Exhibit L: Letter from Bowditch & Dewey to Zoning Board of Appeals; re: Lamar Advertising Company – 28 Garden Street, Worcester, MA – Application for Special Permit for Conversion to Digital Sign; dated August 24, 2012.

#### 4. 1350 Main Street (ZB-2012-044):

Mr. Freilich stated that Mr. Akindele would be voting on this matter. Mr. Freilich read the petition summary:

- Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Use (Article XVI, Section 4)
- Special Permit:** Modification of Parking and Loading Requirements (Article IV, Section 7 A(2)) with respect to one (1) loading space
- Variance:** Relief of 6.44 ft from the 10 ft side yard setback dimensional requirement for the proposed lot with an existing structure in a BL-1.0 zone
- Variance:** Relief of 9.89 ft from the 20 ft side yard setback dimensional requirement for the proposed lot with an existing structure in a RS-7 zone
- Variance:** Relief of 20 ft from the 50 ft rear yard setback dimensional requirement for the proposed lot with an existing structure in a RS-7 zone
- Variance:** Relief of .45:1 Floor to Area Ratio (FAR) from the .4:1 FAR dimensional maximum for the proposed lot with the existing structure in a RS-7 zone.
- Petitioner:** Merrimack Health Group, Inc.
- Present Use:** Nursing home
- Zone Designation:** BL-1.0 (Business, Limited) and RS-7 (Residential, Limited)
- Petition Purpose:** To demolish sections of the existing building; construct two (2) new additions – a 6,616 SF wing with 3,300 SF occupied basement along Main Street and 26,472 SF wing with a 3,600 SF unoccupied basement at the property's rear; reconfigure parking and construct three (3) new spaces; expand/construct retaining walls; and install landscaping

Mr. Longden, attorney for the applicant, introduced Michael Moore, Project manager, Mike Rody, Engineer from Rody & Associates, Ed Murphy, Administrator, and Jay Mason, Architect.

Mr. Longden stated that the applicant is proposing to demolish a substantial section of the building (single-story) and construct two (two-story) wings adjacent to the remaining section of the building in the front of the parcel. Additionally, the applicant is proposing expansion of the retaining walls, and reconfiguration of parking and landscaping areas. The Nursing Home use will remain and the number of beds will remain unchanged at 162.

Mr. Longden stated there is a 26% slope on the property and that it is a split zoned lot where the rear is in a RS-7 zone and the nursing home use is only allowed by special permit, while the front is in a BL-1.0 zone in which the nursing home use is allowed by-right. There are residential homes on the rear and west of the property and a gas station to the east of the site.

Mr. Longden stated that this nursing home employs 107 full time employees and 68 part time employees. Renovations will improve appearance and functionality and upgrade the quality of accommodations for the residents of the nursing home.

Mr. Longden stated that the square footage of the building will grow from ~45,000 SF to ~65,000 but the footprint of the building will still decrease. The fire lane will be widened to 18'. Landscaping will be enhanced even though there are dense woods at the rear of the site but they

will add landscaping along the perimeter of the building to comply with the Zoning Ordinance and greatly improve the appearance of the site.

Mr. Longden stated that total project cost is estimated to be approximately \$8 million and it will generate approximately 260 construction jobs.

Mr. Longden, after recapping the petition for 2 special permits and 4 variances, stated that because of the difficult topography and existing structure it is a hardship to conform to the setback and floor to area ratio requirements. He also stated that because a search of the City's record did not yield a building permit he had to apply for all the variances even though they are not changing the setbacks in any way.

Mr. Longden stated he is amenable and accept all the changes recommended by staff in the memo.

Mr. Fontane stated that he recommended that the findings of fact be accepted as revised by staff and that the following be added to the revised set of plans:

1. Provide the landscaping plan showing proposed tree species (Asian Longhorned Beetle-resistant and non-invasive) and landscaping proposed for parking island areas. Staff recommends a variety of tree species. The landscape island for interior parking spaces requires minimum 2, not 1, tree. Staff recommends providing landscaping between the parking adjacent to the Unit-A building.
2. Provide a compliant 5-ft landscaped buffer along the street (it's currently 4, and not minimum required 5-ft wide) to the immediate east of the entrance to the site;
3. Label proposed lighting in the rear of the building;
4. Label the height of the proposed retaining wall.
5. Revise the Zoning Summary table by providing the following:
  - a. Minimum front yard setback requirement in RL-7 is 25-ft
6. Revise the Parking Summary table by providing the following:
  - a. Existing parking spaces – 54.
  - b. Interior landscaping for 13 interior parking spaces requires 2 trees.

Mr. Fontane asked Mr. Longden what the lighting would look like and Mr. Longden replied that a photometrics plan had been submitted and that it showed that there would be less than a foot candle of spillover in the residential areas.

Mr. Kelly asked Mr. Longden to explain the discrepancy between the existing Building A, which has 3600 SF of unoccupied basement, and the new one, which will have only 2000 SF of unoccupied basement in its entirety. Mr. Mason explained that they will only have partial basements due to the slope. They will also have offices in the front building, which has a fully exposed basement because of the slope.

Mr. Kelly asked what the proposed building exterior will look like. Mr. Mason answered that they have proposed a two-tone textured CMU (concrete masonry unit) that is more durable.

Mr. Bilotta asked about an inconsistency between the plans and the rendering; one showed trees and one showed snow storage. Mr. Rody stated that there are trees there but the distance between the trees will allow the snow to be plowed between the trees and up against the retaining wall.

Mr. Freilich asked how long Parson Hills has owned this property. Mr. Murphy responded that they purchased the property in 2000. Mr. Freilich stated that he commended Parson Hills for taking care of the elderly in the community and that he believed the changes will bring value to the properties in the area.

Mr. Freilich stated he had a concern regarding the loading dock in front of the building. He asked if it caused any traffic concerns and if it was possible to move the loading dock to the rear of the building instead of the front. Mr. Murphy answered that the vendors have come to understand traffic patterns and tend to stay away from the site during the peak periods of the day.

Mr. Akindele asked Mr. Longden why they were requesting a waiver for the additional loading dock. Mr. Longden stated that due to the proposed square footage the Zoning Ordinance requires an additional loading dock but since the number of beds won't be increasing the loading dock they have is more than sufficient and meets their needs.

Jo Hart, Worcester resident, stated that she urged the applicant to move the loading dock to the side or the rear because Worcester is inundated with broken sidewalks because of delivery trucks. Mr. Freilich stated that the site was tight and that the architect did a good job with the set up.

Efrain Torres, 36 Crest Circle, direct abutter, stated he was concerned about privacy and safety. He wanted to know if they were going to build a fence to separate the property. Mr. Freilich stated that there will be an increase in landscaping and it will help serve as a buffer between the properties. He also assured the neighbor that the conditions will include that the lighting from the site won't affect the neighbors.

Scott Ricker, Grafton Street resident, asked if there were 162 rooms in this facility. Mr. Freilich answered that was correct. Mr. Ricker asked what the dimensions of the smallest room were. The architect responded that the existing rooms are roughly 11'6" x 18' but the new rooms will be 20% larger. He also stated that they are decompressing, which means they will no longer have 3 or 4 bed rooms but will only have 2 beds per room. Mr. Ricker also asked if all rooms will be wheelchair accessible and Mr. Mason answered that all rooms will be wheelchair accessible and that regulations require that a minimum of 5% will also have wheelchair accessible bathrooms.

Ms. Jo Hart asked the architect to clarify that it was 162 beds, not 162 rooms. Mr. Longden stated that was correct.

Mr. Abramoff asked what the planting schedule was going to be along the rear of the property. He asked because of the neighbor's concern. Mr. Freilich asked Mr. Longden to clarify what will be done. Mr. Longden stated the height of the structure will be 26' and it will not impede or block any views because the neighbors are on a much higher elevation than the site.

Mr. Abramoff asked if the plantings will be on top of the retaining wall and Mr. Longden stated that the trees will be planted on top. Mr. Abramoff asked if there could be a condition that the trees planted be at least 6-ft tall at the time of planting. Mr. Longden was amenable to that. He mentioned that they are planting evergreens (white pines) which will provide screening year round. Mr. Moore asked the Board to clarify that only the trees need to be 6-ft in height not the shrub material that is also proposed.

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

Mr. Abramoff made a motion to approve the two special permits and four variances petitioned by the applicant subject to the conditions stated in the memo, that the finding of facts as modified by staff, and that the evergreen trees be a minimum of 6-ft at time of planting at the rear of the property, and that a periodic maintenance schedule be put in place to maintain the landscaping.

Mr. Bilotta motioned to make a friendly amendment: that the white pines are trimmed to be less than the distance to the neighbor's house so that if one of the trees falls it will not do damage to the neighboring properties.

Mr. Freilich asked Mr. Longden if that was an acceptable condition and Mr. Longden said it was not and asked if he could explain his position. Mr. Freilich asked the Board to make a motion to re-open the hearing. Mr. Bilotta made a motion to re-open the hearing, Mr. Akindele seconded, and the Board voted 5-0 to re-open the hearing.

Mr. Longden explained that from where the trees will be planted on top of the retaining wall to the height of the plateau the house is a 16-ft slope. The trees would have to grow at least 16 ft to just get to the level of the foundation of the house. If the trees ever fell it would fall on the slope not on the house.

Mr. Abramoff asked the landscape engineer how close the next property was from the lot line. Mr. Moore responded that it is 35 to 40-ft away and the white pine would have to grow in excess of 40-ft to reach the property.

Mr. Freilich asked the applicant if any of the trees present any danger if they will take care of it right away. Mr. Murphy agreed.

Scott Ricker, Worcester resident, asked if the facility will comply with AAB (Architectural Access Board) regulations. He explained he was concerned because he is an access advocate.

Mr. Kelly said that the project must comply with the building code, which includes meeting the AAB regulations.

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

Upon the motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to approve the applicant's petition.

### **List of Exhibits.**

Exhibit A: Special Permit & Variance Application; received July 11, 2012; prepared by Parsons Hill Realty LLC.

Exhibit B: Plans:

- a) "Parsons Hill – Additions & Renovations"; dated June 10, 2012; prepared by Architectural Consulting Services
- b) Existing and Proposed Conditions; dated July 11, 2012; prepared by Meridian Associates;
- c) Exterior Elevations; dated July 5, 2012; prepared by Architectural Consulting Services
- d) Photometric Plan; dated July 9, 2012; prepared by Reflex Lighting;

e) Parsons Hill Renderings; received July 11, 2012.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1350 Main Street (ZB-2012-044); dated August 10, 2012; revised August 24, 2012, September 14, 2012.

Exhibit D: Memorandum from Edward Murphy, Executive Director of Parson Hill Nursing & Rehabilitation Center to the Joel Fontane, Director – Division of Planning & Regulatory Services; re: Merrimack Health Group, Inc. - 1350 Main Street; dated August 27, 2012.

Mr. Freilich called a recess at 7:24 p.m.

Mr. Freilich called the meeting back in session at 7:33 p.m.

**5. 755-759 West Boylston Street (ZB-2012-052):**

Mr. Freilich read the following:

Relief Requested: Special Permit: To allow retail use (Business Use # 26, Table 4.1) in the ML-0.5 zoning district.

Petitioner: Galaxy Development Corporation

Present Use: The existing 22,700 SF building is currently used for retail sales with 29 off-street parking spaces and an outdoor storage/sales area.

Petition Purpose: To demolish a portion of the existing building and to construct a new 6,831 SF building in the northern portion of the site for retail sales (Business Use #26) with 72 associated off-street parking spaces and other site improvements.

Zone Designation: ML-0.5 (Manufacturing, Limited)

Attorney Lawrence Brodeur and Patrick Doherty from Mid-Point Engineering were present to represent Galaxy Development. Attorney Brodeur stated that the proposal is to redevelop the site by removing approximately 11,900 SF of the existing building, construct a new 6,831 SF one story building on the north side of the site, reconstruct the parking lot, add a new stormwater system, add new lighting, install new landscaping, and restore one of the existing curb cuts to the sidewalk.

Mr. Doherty stated 755-759 West Boylston Street is a 71,120 SF parcel with an existing 22,700 SF one story building on the west side of the site. The existing building is used for retail sales and there are 29 off-street parking spaces associated with the current use and four curb cuts. The applicant proposes changes to the parking lot which will add 43 parking spaces to create a total of 72 off-street parking spaces and to fill in one of the existing curb cuts so that there are three curb cuts with the proposed redevelopment. Two of the curb cuts will be two-way; the other one will be entrance only to service the loading dock for the existing building.

Mr. Doherty stated the proposed plan shows 72 standard size parking spaces with one loading space. The parking area will be in compliance with the Zoning Ordinance which requires parking areas to be 5 ft from the boundary line. The applicant stated that the proposed landscaping plan also complies with the interior landscaping requirements and will be separated from the street.

Mr. Doherty stated that they already went before the Conservation Commission and received an Order of Conditions that approved the proposed stormwater system and required proper sediment and erosion controls while the work is being performed.

Mr. Doherty stated that Zoning Ordinance generally permits one double-faced free-standing pole sign per lot but allows for an additional free-standing sign on a lot that has 300 ft of frontage or greater and the signs shall be at least 150 ft apart. The proposed plans show that the free-standing signs are 245 ft apart and comply with the Zoning Ordinance Table 4.3.1, Note 25.

Mr. Freilich asked who the tenants were going to be and Mr. Doherty stated that tenants have not yet been finalized.

Mr. Fontane stated that the applicant had already submitted revised plans addressing all the comments in staff's memo and that he recommends approval without any conditions.

Mr. Kelly had no comments.

Mr. Abramoff stated that the proposed is a vast improvement on that site and that he believes the project is consistent with the area. Mr. Michajlow agreed.

Mr. Bilotta asked the applicant what plans will be in place to maintain the landscaping. Mr. Doherty stated that his experience with Galaxy Development is that they always have a property manager that takes care of upkeep and repairs. Mr. Bilotta asked the Board to have the applicant adopt a six month maintenance program.

Mr. Freilich asked Mr. Fontane to clarify what the Ordinance says regarding landscaping. Mr. Kelly replied that the Ordinance states the following: "required landscaping shall be maintained in a healthy growing condition, free of refuse and debris, and any plantings that do not survive shall be replaced in kind by the applicant or the property owner within a reasonable period of time. All plant materials and fencing shall be arranged and maintained so as not to obscure the vision of traffic. There shall be no parking of vehicles or snow storage in areas used for screening and buffering" per Article V, Section 5, C. iv of the City of Worcester Zoning Ordinance.

Mr. Freilich stated that since the Ordinance was stricter than the proposed six-month maintenance plan then that shall take priority.

There was no public comment.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to approve a special permit to allow retail use (Business Use # 26, Table 4.1) in the ML-0.5 zoning district for 755-759 West Boylston Street subject to the condition that it be constructed

substantially in accordance to the plans and that the landscaping and fencing be maintained per Article V, Section 5, C. i - iv of the City of Worcester Zoning Ordinance.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received August 18, 2012; prepared by Galaxy Development Corporation.
- Exhibit B: Proposed Commercial Development Plan; dated August 13, 2012; and revised on September 17, 2012; prepared by MidPoint Engineering and Consulting sheets C-1, C-2, C-3. LA-1, A-1A, A-1B and prepared for Galaxy Development, LLC.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 755-759 West Boylston Street (MBL 23-007-00004) dated September 14, 2012 and revised on September 21, 2012.

### **6. 2 Northboro Street (ZB-2012-053):**

**Amendment to the Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing, Nonconforming Use– Allow a Use of a Similar Nature (Article XVI, Section 4)

**Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4)

**Variances:** Relief of 10 feet from the front yard setback dimensional requirement of 20 ft

**Variances:** Relief of 15 ft from the exterior sideyard setback dimensional requirement of 15 ft

**Petitioner:** Rodney Haddad

**Present Use:** A dry-cleaning business

**Zone Designation:** RL-7 (Residential, Limited)

**Petition Purpose:** To convert the existing dry-cleaning business use (Manufacturing Use #12, Table 4.1) to a food service use (Business Use #7, Table 4.1) with 20 seats on the 1<sup>st</sup> floor and to construct a new second story to be used for food-service use related storage, with associated 10 off-street parking spaces.

Hossein Haghanizadeh of HS&T Group appeared on behalf of the petitioner, Rodney Haddad, and stated that they had been in front of the Board 3 months prior and was approved for a special permit to allow a restaurant with 20 seats at that location. They were back because Mr. Haddad hired an architect to plan the substantial renovations needed but he realized that more space was required for storage since the property doesn't have a basement.

Mr. Haghanizadeh displayed the renderings of the property, which showed that the applicant is proposing to add a second story to the building. Mr. Haghanizadeh stated the purpose of the second floor is for storage and will be an accessory use to the existing business for catering.

Mr. Haghanizadeh stated that the building will be more presentable and that the property value would go up and that they will not go beyond the footprint of the existing building. He also

stated that he was amenable to a condition that no other use will occur in the second story other than preparation for the catering and storage.

Mr. Freilich asked Mr. Fontane if they could make a condition that the second floor couldn't be used for anything other than storage or catering preparation. Mr. Fontane asked the applicant if the second floor addition will be an accessory space for the restaurant or a primary use because accessory uses do not trigger additional parking requirements. Mr. Fontane also stated that it could be made a condition and that any future use of the building would trigger the need for a special permit. Mr. Kelly stated that that condition can be listed on the certificate of occupancy as well.

Mr. Fontane stated that staff modified some of the findings of fact but stated his only concern was if the catering business was really an accessory use or if it was a stand alone business. Mr. Haghanizadeh stated that the addition would be used only as an accessory use and that was consistent with the previous application the Board recently approved.

Paul Giannetti, attorney from Hudson MA, representing Madeline & Henry Martin of 25 Northboro Street, stated that he was present at the original request to convert the use of the building. He stated that catering was not mentioned at that hearing and argued that the change from a dry cleaning to a restaurant use was more than the site could support.

Attorney Giannetti stated that the applicant noted in his application that he would have 10 employees. He was concerned that the amount of parking provided was not sufficient for 10 employees, a 20 seat restaurant, and a catering business. He submitted a petition his clients had signed by 22 neighbors in the area in opposition to the proposed expansion. The petition was entered as an exhibit.

Attorney Giannetti stated that the proposed changes would make the building two thirds the size of the lot and that it would be an overuse of the location. It would be detrimental since this is in a residential zone and the applicant has not demonstrated any hardship in order to be allowed a variance. Attorney Giannetti stated this change would cause much greater traffic in a difficult intersection and asked that the Board not support this application. He stated that the neighbors would prefer a small business in that location.

Vickie Cabezas, direct abutter at 4 Northboro Street, stated she has lived in the neighborhood for 13 years and they currently have a hard time with parking. She stated she is concerned because people that used to pick up their dry cleaning at the former business frequently used her driveway to turn around. She expressed her concern for traffic and parking with the proposed restaurant/catering business.

Pat Fantasia, resides at 20 Marlboro Street, supported the proposal for the deli. He believes the proposed location is presently an eyesore and would like to see the application approved.

Danny King, resident of 14 Northboro Street, stated that his concern was that the street was very narrow and that another floor would create too much congestion. He also praised the neighborhood and stated that there would be all kinds of people coming into the neighborhood now because of the type of business.

Robert Danner, resident of Marlboro Street, stated that no matter who occupies that property there will be extra cars. Presently the property is an eyesore and the catering business will only be one or two extra individuals. He stated this would be good for the city.

Mr. Fontane stated that the applicant did not apply for the proper relief. The lot is 9,652 square feet and the Floor to Area Ratio (FAR) needs to be .5:1. The proposed expansion exceeds the FAR and the applicant should have applied for a variance. Mr. Fontane apologized that staff did not catch that in the initial review and thanked Attorney Giannetti for pointing that out earlier.

Mr. Kelly stated that if the applicant chose to redesign the second story from the proposed 2,979 square feet to 1,852 square feet then they would not need a variance.

Mr. Fontane stated that a floor plan had not been provided and the applicant has not clearly explained the need for another floor. Mr. Abramoff agreed and stated that the applicant has ~3,000 square feet for only 20 seats and wanted to understand the layout.

Carlos Cabezas, resident of 4 Northboro Street, stated that he was concerned with parking during the winter.

Mr. Haghanizadeh stated that nothing from the original proposal will change (nature of business, number of employees, etc) only that the business would operate more efficiently by having the extra footage for storage and the catering prep. Mr. Freilich asked Mr. Haddad to explain why he needs so much more space. Mr. Haddad stated that if he had a basement at this location that he would not be asking for this expansion. He wants to mirror the same set up he has in his other business, Napoli's in Shrewsbury. His plan is to employ 8-10 people and have half working upstairs while the other half would work downstairs. The first floor will be for service, show cases, and the 20 customer seats. The second floor will be for storage and food preparation. He stated that he had a neighborhood meeting before the first request to the Board and everyone seemed to be okay with the proposal.

Mr. Freilich asked Mr. Fontane if limiting the number of seats is an appropriate condition. Mr. Fontane stated that yes it is appropriate and that it was already a condition of the previous approval and that he could add conditions to the decision that would require Mr. Haddad to appear before the Board before attempting any other kind of expansion.

Mr. Abramoff stated that he would like to see a floor plan of how he intended to use the existing floor and the proposed floor. He also told Mr. Haddad that he needed to make a decision as to whether he wanted to request up to 1,852 square feet allowed by the ordinance or go above that and apply for a variance. He suggested Mr. Haddad continue the matter to a future meeting.

Ms. Cabezas suggested that Mr. Haddad continue his catering business out of his Shrewsbury location and not at this location.

Mr. Freilich recommended that Mr. Haddad meet with the neighbors and come up with a solution that address the neighbor's concerns.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to continue the item to October 15, 2012. Mr. Abramoff stated to the applicant that the information needed to be submitted to staff at least a week in advance so that it can be distributed to the Board.

**List of Exhibits.**

- Exhibit A: Variance & Special Permit Application; received August 14, 2012; prepared by Rodney Haddad.
- Exhibit B: Definitive Site Plan; dated August 13, 2012; prepared by HS&T Group, Inc..
- Exhibit C: Rendering; undated; received August 14, 2012, unknown preparer.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 2 Northboro Street (aka 298 Plantation Street); dated September 12, 2012.
- Exhibit E: Revised Zoning Determination Form; re: 2 Northboro Street; revised August 29, 2012.
- Exhibit F: Petition in Opposition to the Proposed expansion.

**7. 85 Lake Avenue North and 55 Mohican Road (ZB-2012-054)**

- Special Permit:** To allow a single-family attached dwelling use (Residential Use #12, Table 4.1) in the RL-7 zoning district.
- Petitioner:** Zayda Vallejo
- Present Use:** A single-family residential dwelling at 85 Lake Avenue North and undeveloped lot at 55 Mohican Road
- Zone Designation:** RL-7 (Residential, Limited).
- Petition Purpose:** The petitioner seeks to demolish the existing single family dwelling and to construct a single-family attached dwelling with 4 units on the two lots.

Mr. Fontaine recommended to the Board to postpone this item due to information the applicant still had to provide. The applicant stated they wanted to address staff's comments because his clients wanted to get started on the project this fall.

Attorney Don O'Neil stated that currently on the site is a ranch house with an attached garage and a vacant lot on Mohican Road. The site has 113' of frontage on Lake Avenue and 125' of frontage on Mohican Road. Attorney O'Neil addressed the first comment on the memo, which asked the applicant to provide a zoning summary chart showing how the proposed development meets the Zoning Ordinance (height, lot area, frontage, all setbacks) and he stated the plans included that information for the existing structure on one page and for the proposed structure on the other. Mr. Fontane stated the table is usually side by side to compare what is allowed and what is proposed.

Attorney O'Neil stated that the proposed project is a town house style development of single-family attached dwellings. The garage allows for two cars to be parked back to back and they are allowing more space in the driveway for another vehicle and it would be outside of the front yard setback. Attorney O'Neil addressed the recommendation to align the houses with Lake Avenue by bringing them closer to Lake Avenue and staggering the units by stating that the applicants made a conscious effort to push the property as far away from Lake Avenue as possible since it is such a busy street. He stated that the rear setback was 50' and they are proposing back decks for each unit. The issue with staggering them is privacy since there would be people directly behind one another instead of across. Attorney O'Neil also stated that there would be a complication with the common party wall requirements if they staggered the units.

In regards to the comment regarding neighborhood density, Attorney O'Neil stated that they provide at least 3,000 SF per unit and that some of the surrounding properties average closer to 4,000 SF. He stated that the area is not too dense since the proposal meets all the set back requirements and that the area is sufficient given the size of the units.

Attorney O'Neil stated there is a full length stockade fence that runs the full length of right hand side of the property. The rear of the property is wooded and there is no intention to disturb those trees and plan to use that to provide screening from the neighbors to the rear of the property. Nothing else is proposed on Mohican Road or on Lake Avenue. They are planning to add the landscaping that is typical of single-family attached dwellings and no exterior lighting is proposed.

Attorney O'Neil showed the elevations to the Board but stated the plans were from another site but represented what they are proposing.

Mr. Fontane stated that the staggering didn't need to be 20' deep, just enough to break up the façade of the large building. Mr. Fontane stated the plans would need to be amended because the measurements for the garage show 10' x 12', which is not enough for one parking space. Also, tandem parking, meets the Zoning Ordinance but is not very practical.

Mr. Fontane also stated the applicant had not provided the number of stories but assumes the first level will be wholly dedicated to parking and would like to know what the other floors will look like. Mr. Fontane asked the applicant to consider only 3 units and if they have thought about fronting on Mohican Road. Finally, he stated that there will be very little green space as each unit will have a long driveway.

Attorney O'Neil stated that eliminating a unit wouldn't make this project work for his clients financially.

Mr. Kelly asked the applicant if it is a 3 story building and the attorney stated that it is not a three story building and that they comply with the height requirements. Attorney O'Neil stated that they will have green space between driveways.

Mr. Freilich stated that he wants to see the plans elevations and architectural designs for this project. He also stated that he was unsure how well the parking would work since Lake Avenue is such a busy street. There is no place for a car to turn around. He would also like to see the questions on the memo answered with more detail.

Mr. Abramoff stated that he would like to see them stagger the units to reflect the shape of the lot and provide a driveway turnaround area. He would also like to see what landscaping is proposed and where it would be installed.

Mr. Loew asked if there was a way to put the parking in the rear of the property. The applicant stated they would look into it.

Jo Hart, Worcester resident, stated that she believed Worcester should have ordinances that prevented houses from being constructed with the garage in front.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to continue the item to October 15, 2012.

### **List of Exhibits.**

Exhibit A: Special Permit Application; received August 14, 2012; prepared by Zayda Vallejo.

Exhibit B: Existing and Proposed Conditions Plan on Land # 85 Lake Avenue North & 55 Mohican Road; dated July 23, 2012; prepared by Robert D. O'Neil Jr.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 85 Lake Avenue North and 55 Mohican Road (MBL 6-003-46-48 & 46-003-0047A) dated September 21, 2012.

### **OTHER COMMUNICATIONS**

Mr. Fontane explained to the Board the Updated Permit Extension Act and that due to the automatic extension granted by the state, the Board will not see applications for extension time for a while. The Board had no comment.

### **DECISIONS FROM PRIOR MEETINGS**

There were no decisions from prior meetings to be signed.

### **APPROVAL OF THE MINUTES**

Upon a motion by Mr. Akindele and seconded by Mr. Michajlow, the Board voted 6-0 to approve the following minutes: August 13, 2012.

### **ADJOURNMENT**

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 6-0 to adjourn at 9:16 p.m.