

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

February 11, 2013

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present: Andrew Freilich, Chair
Lawrence Abramoff, Vice-Chair
Vadim Michajlow
William Bilotta
Timothy Loew

Zoning Board Members Absent: None

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Marlyn Feliciano, Division of Planning & Regulatory Services
Kathleen Donovan, Department of Inspectional Services

Board Site Views

CALL TO ORDER

Chair Freilich called the meeting to order at 5:30 PM.

APPROVAL OF THE MINUTES

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to accept the January 28, 2013 minutes with no edits.

NEW BUSINESS

1. 37 Fruit Street and 59 William Street (ZB-2012-076)

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

Petitioners: Christopher and Marjorie Bruce

Present Use: Two buildings used for residential and commercial uses

Zone Designation: BO-1.0 (Business, Office) (37 Fruit Street) and RL-7 (Residential, Limited) (59 William Street)

Petition Purpose: Amendment to the Special Permit granted by the Zoning Board in January 2012 to remove the condition (condition #15) that the Special Permit expires within one year

Mr. Loew recused himself from this topic and left the room.

Attorney Craig O'Neal and the applicant, Christopher Bruce, stated that their purpose is to remove the condition that the Special Permit expired within one year from the original decision.

Mr. O'Neal stated that there was much to be done but it has not been completed because of economic hardship on the part of Mr. Bruce.

Mr. Fontane stated that the property is not in compliance with the conditions of approval at this time. The Special Permit would expire on February 17, 2013 but it remains valid until the Board deliberates on the matter.

Ms. Donovan stated that if the applicant does not comply with the condition within the time frame Inspectional Services would have to take enforcement action to have the applicant remove the residential units immediately.

Mr. Freilich stated that since Mr. Bruce is not in compliance he did not believe it would send the right message to remove the condition because in essence it would communicate that the Board would be okay with his non-compliance.

Mr. O'Neal stated that Mr. Bruce has not been able to comply with all the conditions because of financial reasons.

Mr. Vadim stated that he would be amenable to an extension of the Special Permit but not to a removal of it.

Mr. Abramoff asked the applicant which conditions still remained to be met and how much time Mr. Bruce would need to complete them. Mr. O'Neal stated that the items that have not been completed are the landscaping, the paving, and the drainage. The estimate he received was for over \$30,000 and he has not been able to secure the funds to complete that. Mr. O'Neal stated that he hoped four months would be sufficient to complete the rest.

Mr. Freilich asked the applicant if he was planning on selling the property. Mr. O'Neal stated that Mr. Bruce had an offer to sell but the prospective buyer wants to demolish the property to expand the offices for the nursing home located next door.

Mr. Bilotta stated that he would only approve an extension but not a removal of the condition because the applicant has had a year to comply with all the conditions and he has not. He stated that some of the conditions did not require any money such as picking up the trash.

Claude Dorman, resident of 38 Sever Street, stated that Mr. Bruce has not done anything to improve the property since the last time he was before the ZBA. He stated that there are unregistered vehicles parked there, his garbage removal truck is parked there, and appliances are strewn about the property.

Ms. Donovan stated that the paving was part of the project as proposed by Mr. Bruce but it was not a condition imposed by the Board but it becomes a defacto condition because the project has to be built substantially according to the approved plans.

Mr. Freilich stated that the Board will grant an extension but during this time the applicant should explore other options to the paving with his engineer and then go before the Planning Board with an Amendment to the plan.

Mr. Michajlow stated that he wants to know specifically what has been completed. Mr. Bruce stated that all the interior work was completed, two unregistered vehicles were hauled away; the trash was picked up, he is in compliance with the number of units and the number of parking spaces.

Mr. Abramoff stated that at least the landscaping should have been done by the applicant to show progress and intent.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to continue the petition to May 20, 2013 subject to the applicant completing all the conditions or amending the Planning Board's Definitive Site Plan the paving and drainage and that verification of items completed be made by the Department of Inspectional Services.

List of Exhibits.

- Exhibit A: Special Permit/Variance Application – 37 Fruit Street; 59 William St; received December 24, 2012 prepared by Christopher Bruce.
- Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 37 Fruit Street, 59 William Street dated January 23, 2013.
- Exhibit C: Two Enforcement Orders from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Christopher Bruce, owner for 37 Fruit Street dated December 12, 2011.
- 1.) Two Enforcement Orders from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Christopher Bruce, owner for 59 William Street dated December 12, 2011
 - 2.) Two Enforcement Orders from John Kelly, Building Commissioner to Christopher Bruce, owner, 37 Fruit Street and 59 William Street dated December 16, 2011.
- Exhibit D: Special Permit and Variance – Findings of Fact and Decision for 7 Fruit Street & 59 William Street (MBL 02-046-00036).
- Exhibit E: Letter from Nancy Tran, Division of Planning & Regulatory Services to Christopher Bruce, dated December 3, 2012.
- Exhibit F: Email from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Nancy Tran, Division of Planning & Regulatory Services, dated January 10, 2012.
- Exhibit G: Email from Katie Donovan, Division of Inspectional Services to Abby McCabe, Division of Planning & Regulatory Services, dated January 23, 2013.
- Exhibit H: Postponement Request Form dated January 28, 2012 to the Zoning Board of Appeals.

2. 595 Mill Street (ZB-2013-001)

Special Permit: To allow a fast food establishment with a drive-through (Table 4.1, Business Use # 6)

Special Permit:	To modify the parking layout with respect to the drive-through escape lane length (Article IV, Section 7)
Special Permit:	To modify the parking lot with respect to the buffers and setbacks (Article IV, Section 7, Table 4.4 Note 5)
Petitioners:	McDonald's USA, LLC
Present Use:	~3,600 SF McDonald's restaurant with a drive-through and 73 associated off-street parking spaces
Zone Designation:	BL-1.0 (Business, Limited)
Petition Purpose:	To allow food service with a drive-through (Table 4.1, Business Use # 6); Relief from required 5-ft landscape buffer, 5-ft parking setback, and the length of the drive through's escape lane (Article IV, Section 7)

Luke DiStefano from Bohler engineering, representing McDonald's, stated that the request is rehabilitate the facility to make it a more modern and efficient facility. The main change to the exterior is to have a side by side drive through to allow the restaurant to more efficient manage their drive through traffic. The other exterior changes are a new trash enclosure, parking modifications, and adding an additional 1,800 SF of green space. The interior will be re-gutted and redone.

Mr. Fontane stated that if approved, DPRS recommends that (from staff's memo)

- A landscape plan be submitted showing at least four (4) ALB resistant trees of at least 3.5" caliper be planted along Mill Street and shrubbery along the side property lines with an updated planting legend reflecting these changes and detailing the plantings for the labeled landscaped areas adjacent to the building.
- The site lighting shall be fully shielded so that the light source is not visible and directed downward.
 - Provide a detail specification sheet for the wall sconces, parking lot lights, and all light fixtures.
- That all trash and litter be removed from the site daily.
- That the existing non-compliant banner signs be removed from the roof and fence prior to the issuance of any Building Permits.
- Six (6) copies of the of the final revised plans are submitted to the Division of Planning and Regulatory Services prior to the issuance of the Building Permit, reflecting the conditions of approval and the relief granted.
- That the parking area, drive-through, and project in its entirety be constructed in substantial accordance with the final approved plan.

He also stated that the Board should vote on the findings on fact as modified by staff.

Mr. DiStefano stated that they have an issue with the four trees in the front because it would impair visibility to the site and this is an impulse traffic location. Also, in that location there are sewer manholes, a gas line, a water line, and existing yard lights. Mr. DiStefano proposed eliminating a couple of parking spaces and putting one in each corner towards the front of the property.

Mr. Loew was called back into the room and could not participate in the vote since he did not hear the testimony provided.

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

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

Ms. Donovan stated that she has been contacted by a sign company in regards to that location about converting the sign to digital. It would be granted by-right but it is not before the Board tonight.

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

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 4-0 to approve the project subject to following conditions as outlined in DPRS memo with the following change: that a landscape plan be submitted showing at least two (2) ALB resistant trees of at least 3.5" caliper and at least 2 shrubs be planted along Mill Street landscaping area.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 4-0 to reopen the petition and moved to adopt the findings of fact as modified by staff with all other aspects of previous vote included.

List of Exhibits.

- Exhibit A: Special Permit Application; received January 8, 2013; prepared by Bohler Engineering.
- Exhibit B: Site Development Plans for Proposed McDonald's with Drive-thru; dated December 27, 2012; received on January 7, 2013; prepared by Bohler Engineering. Elevations Sheets A2.0 & A2.1; dated November 7, 2012; prepared by Visi3n Architects.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 595 Mil Street; dated February 6, 2013.
- Exhibit D: Memorandum from the City of Worcester Department of Public Works & Parks to the Planning Board; re: 595 Mill Street Parking Plan – PB-2013-001 dated January 30, 2012.
- Exhibit E: Letter from Bohler Engineering to Abigail McCabe, Chief Planner re: McDonald's Restaurant 595 Mill Street, Worcester, MA ; dated January 31, 2013.

3. 61 Lafayette Street (ZB-2013-002)

Variance: Relief of 2,899 SF of the 5,000 SF minimum lot area requirement (2,101 SF is proposed)

Variance: Relief of 2,872 S2 of the 5,000 SF minimum lot area requirement (2,128 SF is proposed)

Variance: Relief of 12.33 ft from the 40-ft frontage requirement (27.67-ft is proposed)

Variance: Relief of 12.34 ft from the 40-ft frontage requirement (27.66-ft is proposed)

Petitioners: Tom Hoang

Present Use: Vacant undeveloped land

Zone Designation: BG-3.0 (Business, General)

Petition Purpose: To construct a single-family semi-detached (duplex) dwelling on one lot that will be divided into two lots (lots 1R and 1L)

Hossein Haghanizadeh from HS&T Group, representing Mr. Hoang, stated that 5-6 years ago there was a two family structure on this lot but there were structural problems with the foundation and the property was condemned and it was demolished. Mr. Hoang is proposing a duplex on the property.

Mr. Fontane stated that the Board granted relief on Lodi Street, which is in close proximity, but the lot has a significantly different configuration and that what is proposed needs considerable relief and would be a very tight fit on this lot. Mr. Fontane also stated that although there is no by-right alternative, a two-family would require less relief and would be more appropriate. He also stated that staff would also recommend requiring a rendering of the proposed building.

Mr. Freilich asked why the units are proposed side by side and that he would like to see a rendering of what this property would look like. Mr. Haghanizadeh stated that the other houses in the area are two and three family homes.

Mr. Michajlow asked what the hardship would be if the Board denied the petition. Mr. Haghanizadeh stated that because there used to be a two family in this location; it would be a hardship to make it a one family or to leave it vacant.

Mr. Haghanizadeh stated that he would like to request a continuation.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to continue the item to April 29, 2013 and extend the constructive grant deadline to June 5, 2013.

List of Exhibits.

Exhibit A: Variance Application; received January 8, 2013; prepared by Tom Hoang.

Exhibit B: Variance Plan; dated December 11, 2012; prepared by HS&T Group.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 61 Lafayette Street; dated February 6, 2013.

OTHER BUSINESS

4. Board Application Updates & Amendments.

- Special Permit Application Amendment for Digital Sign Conversions - Update application requirements to include traffic and crash data
- Electronic copy of applications (PDF)

Mr. Fontane stated that there are two amendments that are proposed to the applications. The first change is to include the collision data as a requirement for non-accessory sign applications per the Board's recent request. The other change is to require applicants to provide their plans and application materials in electronic format as well as in paper format. Mr. Fontane stated that he requests the Board to vote to advertising these in order to consider them formally at its next meeting.

Mr. Abramoff stated that a citizen without a high level of technical sophistication and equipment could have a hard time putting together the electronic packet for an application. Mr. Fontane indicated that nearly all of what is submitted to the Board such as plans and renderings are created on computer and that it was easy enough to ask the engineer to provide an electronic version also. Mr. Abramoff stated he was concerned about the extra cost for the person that has to have the documents scanned. Mr. Fontane stated that like any other application requirement, the applicant could request a waiver from the Board related to the electronic application requirement if needed. Mr. Abramoff did not want this to be a requirement and wanted to see a revision that included an exemption.

Mr. Loew stated that he felt the opposite and supported making it a requirement for all. He also suggested that additional media such as USB (flash, jump, thumb drive) be added to the list of acceptable media for submission.

Mr. Freilich asked Mr. Fontane to re-word the electronic format submission addition in order to clarify that we can still accept applications without it and that the applicant should contact DPRS staff if having trouble complying with this requirement.

Mr. Fontane agreed to revise the proposed language to address the Board's concerns.

DECISIONS FROM PRIOR MEETINGS

The decisions for 16 Birch Street and for 721-731 & 722-724 Main Street were signed at this meeting.

ADJOURNMENT

The Board voted 5-0 to adjourn the meeting at 7:13 p.m.