

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

JANUARY 13, 2014

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

Zoning Board Members Present: Lawrence Abramoff, Chair
Joseph Wanat
Timothy Loew
Robert Haddon

Zoning Board Members Absent: Vadim Michajlow, Vice-Chair

Staff Present: John Kelly, Inspectional Services
David Horne, Inspectional Services
Stephen Rolle, Division of Planning and Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory Services
Michelle Smith, Division of Planning & Regulatory Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

REQUESTS FOR WITHDRAWALS, CONTINUANCES, AND TIME EXTENSIONS

CONTINUATIONS

1. 3 Homer Street (ZB-2013-060)

Variance: Relief of 4.6-ft from the 5-ft. accessory structure setback requirement for a proposed detached three car garage

Variance: Relief of 3.7-ft from the 5-ft accessory structure setback requirement for a proposed detached three car garage

Petitioner: Mary and Margaret Colorio

Zone Designation: RS-7 (Residence, Single Family)

Present Use: Three-family detached dwelling and a concrete pad from a previously demolished three-car garage

Petition Purpose: Construct a detached three-car garage

Luba Zhaurova, Division of Planning and Regulatory Services (DPRS), reported that the petitioner's attorney, Wayne LeBlanc, submitted a letter requesting postponement of 3 Homer Street to the February 24, 2014 meeting.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 4-0 to postpone this item to the February 3, 2014 meeting.

List of Exhibits:

- Exhibit A: 3 Homer Street Application; received December 10, 2014; prepared by Mary A. and Margaret M. Colorio.
- Exhibit B: 3 Homer Street Plan; dated December 3, 2014; prepared by B&R Survey, Inc.
- Exhibit C: 3 Homer Street Rendering; prepared by William J. Masiello Architect, Inc.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 3 Homer Street; dated January 8, 2013.
- Exhibit E: Letter and images from Abutters Sonia and Zaven Gebeshian (184 Park Avenue) and Gjergje & Natasha Cani (128 Institute Road) to Zoning Board of Appeals; re: 3 Homer Street Variance request; dated January 5, 2014; received January 7, 2014.

2. 27 Shrewsbury Street (aka 5 Shrewsbury Street) (ZB-2013-059)

- Special Permit:** To allow Retail Sales (Table 4.1, Business Use #26) in Zoning District MG-2.0 (Manufacturing, General)
- Petitioner:** Consulting and Design, LLC
- Present Use:** Service Station
- Petition Purpose:** To operate a retail convenience store
- Zone Designation:** MG-2.0 (Manufacturing, General) & Union Station View Corridor Sign Overlay District (USOD)

Ms. Zhaurova reported that the petitioner submitted a written request to postpone to the February 3, 2014 meeting due to the lack of a full Board. She noted that the petitioner was in the audience.

Ron Fortune, 33 Park Street, of Consulting and Design, appeared on behalf of Metro Motors.

Upon a motion by Mr. Loew and seconded by Mr. Haddon, the Board voted 4-0 to postpone this item to the February 3, 2014 meeting.

List of Exhibits:

- Exhibit A: Special Permit Application; received December 6, 2013; prepared by Consulting and Design, LLC.
- Exhibit B: Plans for Metro Stop and Go, 27 Shrewsbury Street; dated July 24, 2013; prepared by Northeast Survey Consultants.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 27 Shrewsbury Street (aka 5 Shrewsbury Street) – Special Permit Application; dated January 8, 2014.

3. 13 Hope Avenue (ZB-2013-062)

Special Permit: To allow an Auction House (Table 4.1, Manufacturing Use #2) in a MG-2.0 Zoning District (Manufacturing, General)

Special Permit: To allow Retail Sales (Table 4.1, Business Use #26) in a MG-2.0 Zoning District (Manufacturing, General)

Petitioner: Worcester Antique Associates, Inc. (aka Antique and Auction Centre at Worcester)

Zone Designation: MG-2.0 (Manufacturing, General)

Present Use: A ~24,320 SF industrial warehouse with a ~20,000 SF mostly paved lot

Petition Purpose: To operate an auction house and conduct retail sales

Ron D'Auteuil, 729B Franklin Street, on behalf of Worcester Antique Associates, Inc. requested postponement to February 24, 2014. Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 4-0 to postpone this item. Ms. Zhaurova stated that the Board would need to vote extend the public hearing deadline.

Chair Abramoff asked if the applicant was amenable to extend the public hearing deadline to February 24, 2014. Mr. D'Auteuil affirmed. Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 4-0 to extend the public hearing to the February 24, 2014 meeting.

List of Exhibits:

Exhibit A: 13 Hope Avenue Application; received December 20, 2013; prepared by Worcester Antique Associates.

Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 13 Hope Avenue; dated January 8, 2014.

4. 30 Tory Fort Lane (ZB-2013-021)

Special Permit: To allow a Personal Wireless Service Facility

Petitioner: Massachusetts Electric Company d/b/a National Grid

Present Use: Existing Cooks Pond Electric Substation

Zone Designation: BL-1.0 (Business, Limited)

Petition Purpose: Install, operate, and maintain 3 WiMAX mounted antenna and 2 microwave antennas located on a 10' mast extension attached to a new 80' lattice tower that would replace the existing 55' wooden pole; Install signal cables from antennas to the a ground mounted equipment frame, and a radio/transceiver battery unit enclosure

Attorney Elizabeth Mason, of Anderson and Krieger out of Cambridge, MA, on behalf of Massachusetts Electric, requested that 597 Mill Street be heard prior to Tory Fort Lane as the Mill Street site was the Company's preferred alternative.

Upon a motion by Mr. Wanat and seconded by Mr. Loew the Board voted 4-0 to postpone the item to later in the evening per the applicant's request.

NEW HEARINGS

5. 597 Mill Street (ZB-2013-044)

Special Permit: To allow a Personal Wireless Service Facility (PWSF) in BL-1.0 Zoning District

Variations: Relief of the height dimensional requirement and 'fall zone' setback for ground-mounted PWSF

Petitioner: Mass Electric Company, d/b/a "National Grid"

Zone Designation: BL-1 (Business, Limited)

Present Use: Tatnuck Electrical Substation

Petition Purpose:

1. To install a 90-ft tall ground-mounted PWSF facility (monopole)
2. To install with three (3) Worldwide Interoperability for Microwave Access (WiMAX) antennas to the ground mounted monopole
3. To install two (2) microwave antennas to the ground mounted monopole

Attorney Elizabeth Mason, of Anderson and Krieger out of Cambridge, MA, appeared on behalf of Massachusetts Electric, doing business as "National Grid". Ms. Mason stated that her client had already received a Special Permit approval for similar installations in other parts of the City as part of Worcester's Smart Energy Solutions Pilot Program. Ms. Mason stated that the pilot program seeks to put SmartGrid technology in Worcester on a trial basis to gather information and strategize as to how best to move forward with the pilot technology in National Grid's service area. She stated that National Grid is working with the Department of Public Utilities in response to the Green Communities Act mandate and the pilot is one of two approved programs in the State.

Ms. Mason stated that she submitted Radio Frequency (RF) coverage maps to demonstrate where the program is being piloted and where the proposed antennae would be mounted. She explained that the devices are all pole-mounted and serve to communicate with the WiMax base stations and National Grid's Information Technology Department to collect and transmit data.

Ms. Mason indicated that the coverage maps showed the Cooks Pond site at the 30 Tory Fort Lane. She stated that based on the community discussions and feedback the Company has realized that the Tory Fort Lane location is not very popular. She explained that the Company worked hard to identify other potential siting locations. She emphasized that National Grid would like to go forward with the Tatnuck Station or 597 Mill Street location as their preferred site given the superior coverage it would provide in the area. She explained that the goal was to provide coverage in the black areas shown on the map.

Ms. Mason stated that the company plans to file for another Special Permit elsewhere in the City.

Ms. Mason stated that the proposed tower would be a 90 ft. monopole made of galvanized steel which would be designed to collapse in on itself in the scenario where the structure was to fail. She explained that the company's plan was to install 3 WiMax antennae, 2 microwave antennae as well as cables to connect the antennae's to the transceiver units and battery cabinets to be located at the base of the tower's location. She explained that the equipment would be much smaller than typical cell-towers.

Ms. Mason stated that her client is seeking a Variance for relief of 50 ft. from the height dimensional requirement for the zone as the Ordinance only allows the tower to be 40 ft. in height and that the proposed tower is 90 ft. tall.

Ms. Mason stated that the Company also applied for a Variance from the setback requirement for a PWSF given the required fall-zone for the tower is to be equivalent to the tower's height. She stated that the fall-zone was shown in exhibit E depicting the 90 foot radius around the proposed tower and the relation to the properties located within 300 ft. of the proposed tower.

Ms. Mason stated that she submitted a radio frequency report and emissions statement as well as an alternative site analysis demonstrating why the Mill Street site was the Company's preferred location as well as statements addressing staff and Board concerns. She stated that the Company had done what was required under the Federal Telecommunications Act of 1996. She stated that the proposed site is owned by the National Grid, is available and geographically feasible with coverage superior to any of the other sites.

Mike Kayhern, of National Grid, 949 Southbridge Street, stated that the applicant tested five different sites in the City. He stated that two of the sites were existing cell carrier sites but that they had not yet responded to the applicant's request for co-location. The first location was The First Congregational Church off Pleasant Street with existing PWSF on the steeple. He noted that because the Church had not responded to the request, National Grid was unable to determine if it would be a feasible alternative.

Mr. Kayhern stated that the height of the tower is critical in this area of the City as National Grid is seeking to cover a valley. He explained that it was for this reason that many other carriers in the area are located on roof-tops. He stated that the tower had to exceed the 40-ft height restriction in order to be able to successfully communicate with the other installations as the trees and other existing structures in the area were in the 30-40 ft. height range.

Mr. Kayhern noted that the second potential site was the Hillside Condominiums located on Pleasant Street with an existing PWSF on the rooftop but that National Grid had also not received a response from the owners after the initial inquiry. He stated that testing showed that coverage is inadequate at this location .

Mr. Kayhern stated that the third site was a retirement home called Coe's Pond Village. He noted that the existing building was 12 or 13 stories and that it provided an estimated 140 ft. elevation and had multiple cell carriers on the existing installation. He stated that network coverage was not as extensive as the other sites and therefore this site was not considered further.

Mr. Kayhern stated that the fourth location the Company explored was the Cooks Pond or 30 Tory Fort Lane site which would provide sufficient coverage to the desired area.

Mr. Kayhern stated that the fifth location explored was the Tatnuck sub-station. He reiterated that the tower would be required to be 90 ft. in order to get coverage above the tree-line and existing buildings in the valley. He stated that the area was mostly commercial and the site was already used as an industrial type facility. He explained that there were no residential facilities within the 90 ft. fall zone or a 300 ft. radius and that the property was owned by National Grid. He stated that they found the site has 100% coverage for the portion of the valley they are seeking to cover.

Chair Abramoff asked for a description of SmartGrid. Jason Small of National Grid, 939 Southbridge Street, stated that the intended use of the device is to communicate with the Company's grid devices on distribution lines which feed the customers in the area. He explained that the equipment should help provide more reliable power to the area. He noted that if the switches sense a fault in the line they would be able to talk to each other through this proposed communication network and isolate the section of the line the fault is in. He noted that the system could then pick up the customers outside of the sections affected by the fault. He clarified that today this system is manual and if there is a fault on the line the breaker at the substation opens up and customers on the line are out until someone can go out, locate the problem, isolate and fix it.

Mr. Small explained that the new breakers will communicate with each other and sense where the fault is, isolate the section affected within a few seconds and pick up the customers. He explained that National Grid would not have to wait for customers to call in to become aware of a fault, rather the system communicates the fault to National Grid. Thus National Grid would be able to cut down the restoration time for the bulk of the people affected by the outage, except for the area where the fault occurred. He noted that a team would still have to go out and manually fix that area where the fault occurred but the system would provide more reliable electricity in the area.

Mr. Small stated that some of the other devices were for wiring purposes and would allow the Company to see how much load is flowing through the distribution lines. He stated that this would give National Grid a lot more information on how the system is working to allow the Company to better upgrade facilities in a timely manner. He explained that the older technology requires manual reads at the stations to determine the load. He stated that this system would allow National Grid to better plan and identify system needs.

Mr. Small explained that this is how the proposed technology is designed to work but that the Company needs to see if it's working first. He noted that currently there are fault indicators which light up when there is a fault but don't communicate back anywhere, and require an employee to ride out and look at them. He explained that these will also communicate to the network and will help identify faults so that National Grid can dispatch a crew closer to the location of the fault a lot quicker.

Mr. Small explained that the Company has other experiments going on with capacitor banks, which deal with power factor. He explained that the ideal power factor is 1, meaning 100% of the power that is put out from their systems is going into homes. He stated that typically National Grid operates just under the ideal at 0.9 or 90% efficiency. He explained that the new capacitor banks have monitoring technology that communicates back to the system and National Grid is hoping this will make the system more efficient, getting them closer to the ideal power factor.

Mr. Small stated that this technology would help with prioritize upgrades.

Mr. Small noted that National Grid is trying to experiment with a lot of new technology on this grid and after two years of monitoring the installation the Company will be able to assess the

technology's effectiveness; but all the equipment requires the WiMax communication to be effective.

Ms. Mason reiterated that this is a two-year data collection process, pursuant to the Massachusetts Green Communities Act mandate.

Chair Abramoff asked why the company could not utilize the existing wireless network for communication. Mr. Kayhern responded that one of the reasons was latency - the term for the time it takes for communications to happen. He noted that the substations have multiple feeders and that some of the feeders would be tied together so that National Grid can instantly analyze what the load is and determine whether the downstream portion can be picked up by the other substation. He explained that this process required near instantaneous communication.

Mr. Kayhern explained that the issue with cellular communication is latency is never guaranteed; cellular communications typically take a lot longer than what is required for the proposed type of switching technology. He explained that some of the technology with slower functionality could utilize cellular. However, he explained that the Grid needs a near instantaneous communications system to accomplish some of the primary pieces of the experiment, one of which is the switching element. He noted that if National Grid leverages the near instantaneous communications system for its other functions that don't require as expedited communications then the Company lowers the cost per unit. He explained that the Company is leveraging this system to do other experiments as well.

Mr. Kayhern stated that the fault indicators could have a little bit of a latency but by utilizing their proposed system, that covers the same area, the Company wouldn't have to pay additional costs which would increase the costs to the customer.

Chair Abramoff stated that he understood that the technology required a system that was able to respond fast enough to be able to give you the reliability of the network. Mr. Kayhern stated that it requires a dedicated communication system in order to function correctly.

Chair Abramoff stated that the Zoning Ordinance encourages co-location. He asked when the applicant first contacted the Hillside Condominiums and the First Congregational Church. Mr. Kayhern responded that he believed they were contacted in early November or late October and he stated that they'd had at least one Board meeting at Hillside on the topic and that the item was on the Church's agenda but the meeting was cancelled due to a storm. He stated that he was not aware of when it would go back on the agenda. Chair Abramoff stated that he felt the option then might not have been ruled out.

Chair Abramoff stated that typically when the Board is asked to consider Personal Wireless Service Facilities (PWSF), the criteria, according to the Federal Telecommunications Act (FTCA) and case law, the laws limit what the Board can rule on to primarily lack of coverage. He asked staff for clarification as to whether this use qualifies under the FTCA protections.

Ms. Zhaurova stated that after internal staff review, staff found that there was not enough information presented to be able to determine if the proposed PWSF falls under the protections of the FTCA as a telecommunications service. She recommended continuation of the item to explore the issue further and requested the applicant provide more information on the specific application of FTCA for the proposed use. Ms. Zhaurova stated that there has also been an issue with communication and resultantly staff did not receive the supplemental materials the applicant e-

mail on the 8th of January until late in the day on the 13th. She reiterated that staff would like time to review that information as well.

Chair Abramoff stated that staff recommended a continuance but that he believed the Board should let the applicant respond and then open the hearing and take testimony.

Ms. Mason responded that the proposed devices are covered under and authorized by 47 c, f, r, 15.247. She stated that this is the section of the FCCA regulation that addresses this particular frequency of devices. She stated that they could provide additional information about the specific applicability of the FTCA. She stated that this Act and case law covers not only PWSF's but personal wireless services, which includes more than just cell phones. She stated that the Act also includes what are known as unlicensed wireless services, the category which the proposed devices fall into.

Ms. Mason explained that this means a specific license from the FCC is not required to operate this category of communications device - given the particular frequency. She stated that National Grid just had to notify the FCC. She stated that National Grid doesn't need an individual permit or authorization from the FCC under the Act, but these devices are still regulated thereunder. She stated that these devices are bound to and do comply with such regulations. National Grid, even though it's an electric utility, has a large communications department with specific telecommunication engineers who do more than SmartGrid work for their transmission and distribution systems which rely on communications more than people realize.

Ms. Mason stated that the proposed facility is an unlicensed PWSF covered by Sec. 332 c of the FTCA and that there is associated case law. She stated that National Grid's proposed facility fits the definition of a PWSF under the Zoning Ordinance and that definition ties into the FTCA. She stated that the proposed antennas are the same antennas and transceiver units as those already approved at three other sites in Worcester for the SmartGrid Smart Energy Solutions Program.

Chair Abramoff stated that while Ms. Mason and National Grid's opinion is that the facility falls under the regulations of the FCTA, the issue brought to the Board is that it may not fall under the privileges of the FTCA. He stated that this definition affects the issues that the Board can consider when ruling on such a petition. He stated that his preference would be to follow staff's recommendation and have a City Attorney give an opinion on the matter. He noted that while everyone is here for the item and wants to be heard that the Board should take testimony. Ms. Mason stated that she would be more than willing to speak with the City attorney if necessary.

Ms. Zhaurova stated that staff's memo has not been updated as staff has not had time to review the supplemental materials. She noted that certain application requirements had not been submitted and she believed many of these to have been submitted, but could not verify that all the requested information was submitted.

Mr. Loew asked if the applicant had provided a rendering of the site depicting the actual tower and if not if that would be possible. Ms. Mason stated that National Grid had not provided such a rendering and that they could do so if needed. She explained that an elevation side view was provided in the supplemental materials.

Chair Abramoff stated that the side view provided did not show the Board the relation to the site.

Mr. Wanat stated that he would like to see a rendering showing the height of the tower relative to the other surrounding buildings and what the tower would look like in the ground. He asked how

many other buildings in the area came close to 90 ft. height. He stated that he was concerned with the fall-zone encroaches on a public right of way, Brookside Avenue.

Ms. Mason affirmed and stated this encroachment was one of the reasons a variance is requested. She stated that National Grid could provide additional information about the construction of the pole to show how the tower would fall, were it to fail. She stated that the pole would be designed so that there was no possibility of failure. Mr. Wanat reiterated his concern.

Chair Abramoff opened the public hearing.

Sam Rosario, 13 Jake Street, stated that he had been a member of the Planning Board for 10 years and believed the applicant had not filed all the required paperwork in a timely fashion and a continuance would be a slap in the face to the community. He stated that the applicant is well educated, well-funded and has several engineers and attorneys that know how to do paperwork yet they have not filed the application requirements. He stated that it is the burden of the applicant, per Section 2, b, to make all feasible attempts to not create a new pole in this neighborhood. He expressed concerns that the applicant has not explored other options thoroughly or proved their inability to co-locate. He respectfully requested the Board deny the applicant and noted that the applicant could re-file.

Mr. Rosario stated that he was part of the group that created this section of the Ordinance and he noted that it has produced unsightly cell towers, against the intent. He stated that the intent was to disguise towers and it is the applicant's burden to ensure towers are hidden. He stated that a goal was to get installations on churches steeples, where churches could make a little bit of money.

Steve Quist, 106 June Street, stated that the existing National Grid infrastructure could do the same job as the proposed tower. He stated that the applicant expressed concerns about saving costs. He stated that the Attorney General ruled that the Smart Grid pilot is a losing situation for consumers in the City and state. He stated that Smart Grid is a wasteful service.

Mr. Quist stated that there are no safeguards in place to secure consumer safety. He explained that all consumers' personal information would be transferred across the wire and would be susceptible to hacking. He stated that many states have stopped the smart meter program. He explained that the height restriction is in place in Tatnuck Square to preserve its historic value and that trees are tall because the area is historic and it is not meant for towers.

Mr. Quist expressed concerns that the tower would collapse into the transformers below in an event of structural failure. He stated that every electric device has a UL or underwriters laboratory sticker which means the appliance has met standards for electrical safety. He stated that National Grid could not get a UL label for the meters going on consumers' homes because the devices are not safe. He stated that the meters couldn't come into the buildings where he works because of state law. He questioned how National Grid could put smart meters on consumers' homes and expressed concerns about the effects the meters would have on kids.

Konstantina Lukes, City Councilor at large, stated she appreciated the request for a legal opinion. She noted that she requested such an opinion during a Council meeting but was told that a City Councilor had no jurisdiction to ask for such an opinion because the issue is before a separate, independent, executive Board (the ZBA).

Chair Abramoff clarified the legal opinion she referred to was the one previously discussed regarding the applicability of the FTCA to the particular use. Councilor Lukes stated that she had been inundated with emails concerning the environmental, health, and privacy impacts of the

proposed technology. She noted that when she looked at the “purpose to be achieved with the towers – efficiency, allegedly, – and the process to achieve that efficiency, she was frightened that global corporate power, in the entity of National Grid, has such a marriage with governmental power that it puts democracy at risk”.

Councilor Lukes stated that the proposal was not an idle concern as the legal opinion centers on the definition the FCC applies to the whole process. She emphasized the lack of “personal” in PWSF and asked to whom it was personal. She stated that PWSFs were not personal but for a corporate benefit. She stated that the corporate benefit was overriding the interest of those directly impacted. She stated that there is nullification by juries when the facts of a case require fairness and that she believes that the people need nullification of the FCC’s PWSF definition given the impact of this enormous wield of power over the citizens. She urged the Board to deny the application based on the fact that there is nothing personal about a PWSF and stated that this project was a corporate attempt to invade the privacy, health and environment of those who are directly impacted by it.

John Dick, 61 Tory Fort Lane, thanked Councilor Lukes for the opportunity to make a public records request and stated that he was thankful the Board finally took notice of the public concern. He stated that since May towers for SmartGrid have been approved by the Board with the understanding that the Board could only consider coverage in its decision. He expressed concerns relating to health, privacy, and the long term health impacts of the project. He stated that he hoped the Board would consider of all the issues brought up and do what’s best for the citizens of Worcester, for generations to come.

Ed Pietrewicz, 86 Wildwood Ave, stated he has great apprehension about the SmartGrid program. He stated that he read an article by Lance McKee from the Telegram and Gazette and stated that the article expressed concerns with safety associated with the electro-magnetic frequency (EMF) radiation. He stated that there was a health issue associated with the proposal and wondered what would happen to his wife who has a pacemaker were the installations to be in place as she can’t go near the microwave.

Mr. Pietrewicz expressed concern of the control National Grid would have over his electricity and that changes in voltages may ruin his appliances. He expressed concerns that the technology would impact his quality of life. He added he was concerned about privacy, hackers, and power outages associated with the proposal.

David Rynick, 1030 Pleasant Street, asked the Board if they would be able to consider health concerns, and if not who could consider them.

Chair Abramoff stated that from his understanding, under FCC’s regulations and case law, when a PWSF comes before the Board the Board’s jurisdiction is limited to ruling on a gap in coverage. He explained that if a petitioner can prove a gap in coverage then the Board is compelled under FCC regulations to approve the petition.

Chair Abramoff stated that the City’s regulations to approve PWSFs require a radiation emissions certification that the levels of radiation will be at or less than FCC regulations. He stated that in most cases the Board has seen that radiation levels are significantly less than that allowed by the FCC. He clarified that the Board requires a certification of actual emissions, or a live test, prior to a permit for occupancy, or before the facility could be used, to prove the facility is operating with emission levels in compliance with the FCC requirements.

Mr. Rynick expressed concerns about health given the technology is new.

Chair Abramoff stated that the technology isn't new and there are already many facilities and antennas closer to residential properties, he specified that Hillside Condominiums and the Congregational Church are just down the street. He explained that geographically the facilities are all over. He noted that he understood the new part of the technology to be the *use* of the antennae.

Mr. Rynick expressed that the new use was his concern – the impacts of the technology coming into homes. He cited examples of communities having installed wind turbines and resulting lawsuits, in Falmouth, MA, regarding potential irreparable physical and psychological harm. He stated that other communities have experienced negative health impacts associated with SmartGrid technologies. He asked if City engineers and health officials had signed off on the project's safety and wondered what actions would be taken to protect the community if issues arise.

Lance McKee, 10 Circuit Ave East, stated that he was in favor of the SmartGrid concept but agrees with everyone who has spoken and echoes their concerns. He stated the issue is the technical architecture being used which is designed to serve the interests of the utility. He noted that while some services would not otherwise be provided to the consumer, the utility does not consider any of the stakeholders concerns. He expressed health and privacy concerns. He suggested that National Grid provide a price signal so the consumer can program their appliances to wait and turn on once the price reaches a certain threshold as the technologies are in products you can buy.

Mr. McKee stated that the City and Board have shown the due diligence required for these types of projects. He stated that the City needs an engineer, competent in the area, to review with National Grid's engineers what requirements are being addressed.

Mr. McKee stated that he should be able to make electricity from a co-generation furnace or a PV panel and sell it to anyone at any price and be able to have a micro-grid with his neighbors, managed locally. He stated that literature about Smart Grid opens an array of possibilities. He stated that he's glad that National Grid wants to do a pilot and that it has already given them information and they need to go back to the drawing boards.

Chair Abramoff asked the applicant what the difference between SmartGrid and Smart Meters is. He stated that he understood that SmartGrid was not supposed to reach the household level and asked for clarification.

Ms. Mason stated that the Smart Meters are part of the overall program but that National Grid is seeking a Special Permit for the equipment that will be on National Grid's distribution lines – not the meters themselves. She stated that the antennas being discussed here do not talk to people's homes or appliances.

Chair Abramoff clarified that the meter at his home would not be part of the program, just what is feeding his home is part of the program. Mr. Kayhern stated that the pilot includes metering, already in place, and the collection of that data, and Smart Grid devices. He stated that SmartGrid is a canopy term, becoming coined as "grid modernization" as the movement is toward automating the grid - as National Grid is doing. He stated that the grid portion is what the devices talk to.

Robert Gilmore Pontius, Jr., 6 Judith Road and professor at Clark University, stated that he was concerned with the health impacts of the proposed technology. He told the Board that he taught a course dedicated entirely to this topic and its prevalence worldwide, but with a specific focus on implementation in Worcester. He expressed concerns regarding the uncertainty of the health impacts and the lack of any plan to monitor or evaluate health safety in National Grid's overall

scheme. He stated that he believes it would be irresponsible to institute a new technology, not even having a monitoring plan, while knowing that there's controversy.

Mr. Pontius expressed that he spoke on his behalf, not the University's, and noted that National Grid and Clark University recently established a Sustainability Hub. He explained that the stated purpose of the Hub is to have community engagement. He noted that he does not see the people lined up here lined up at the Sustainability Hub and expressed that he hoped the hub could be a place where National Grid could engage with the community. He expressed concern about a lack of community input and desire for other SmartGrid technologies that had been discussed.

Gary Rosen, 11 Herbert Road and District IV City Councilor stated that both proposed locations for the towers are in the District IV / Tatnuck area. He questioned his conflict of interest but stated that he took an oath to represent and do what's 'right for the people of Tatnuck Square, District IV, and of the City and therefore wanted to speak. He explained that he knows there are more concerned citizens than those who've appeared before the Board. He cited aesthetics and stated that the tower will lower the property values. He expressed concerns about privacy and health safety issues with the meters. He stated that the legal question that Councilor Lukes asked is critical because he didn't think the Board's hands are tied by the 1996 FTCA. He stated that he disagrees with the interpretation of the applicability for the FTCA. He stated that the FTCA did not apply because the proposal is not the same as cell phone towers.

Councilor Rosen asked why the City should risk citizens' health, security, and safety. He stated that many states and countries are establishing moratoriums on these projects because they didn't want to put people at risk. He asked the Board to put a moratorium on the whole project, stopping the approvals now, despite its previous approvals for other installations. He stated that he would like City Council talk about the matter.

Moe Bergman, 11 Kensington Heights and City Councilor, stated that he owns property near both sites and is here as a concerned citizen. He stated that his opinion and interpretation of the FTCA and its exemption regarding coverage, is that the Board is not only allowed to, but required to consider substantial evidence regarding other issues that are not related to health, including devaluation of property, aesthetics, and the impact on a particular neighborhood. He requested the Board seek clarification from the Law Department about the specific factors the Board can and cannot consider in their rulings. He stated that this issue was more important than any he encountered during his 10 years on the Zoning Board.

Councilor Bergman stated that many factors about the program have not been considered and wondered if National Grid would be responsible for taking down the tower when the program ends. He expressed concerns about privacy, hacking, and corporate protections in the case of such an incident given National Grid's quasi-public agency status. He wondered who would address issues that arise if an incident were to occur and personal property is harmed. He stated that he did not want his personal information being communicated to National Grid where they could know when he leaves his house and forgets to put the alarm on. He stated health issues could not be separated from property values and stated that the towers will certainly affect whether or not someone is going to buy property in a neighborhood.

Debra Moore, Ph.D., 88 Tory Fort Lane, stated that she believes National Grid has "seduced and eluded government officials with misleading concepts". She cited the 2012 Green to Growth Summit where the project was "co-created" with residents. She expressed concerns that the efficiencies National Grid has promised will not translate into true efficiencies as the pilot is a trial

run and added that changes won't necessarily be cost effective. She expressed concerns that nothing was in place to ensure that fees would not be raised after the pilot and stated that she believed increases are likely. She expressed concerns that customers will not have an opt-in or out choice regarding participation in the program. She stated that while this is a pilot project, it doesn't mean the outcomes haven't already been concluded.

Ms. Moore expressed concern about the proximity of the proposed tower locations to residential properties and schools. She expressed opposition to the proposed meters and stated they are known to cause detrimental impacts. She expressed concern about the pilot being human experimentation. She stated that National Grid's promises don't match the realities and its ultimate interests are for the betterment of its corporate financial stakeholders. She expressed concerns about a lack of community engagement and that the Sustainability Hub and the Green to Growth Summit were populated with invited guests. She wondered why residents were unaware of the smart meters already on their homes and why health effects could not be considered. She expressed concerns about the expedited process and requested the Board have discussions about the literature on the subject before allowing the project to proceed unencumbered and unregulated.

Joe Vancelette, Holden, MA, expressed concerns about the increased usage rate, up to 12 times from current conditions. He stated that he was not aware of the public availability of the information. He wondered who would pay for the cost to take the tower down. He stated that he is concerned the process is being rushed and expressed safety concerns asking the Board deny the application.

Chair Abramoff stated that the applicant did do a full presentation to the Board and staff and the information submitted is publically available at the Planning Office at any time, per City and State law. He stated that the Board did have a lot of information available to them. He stated that the applicant would be required to post a bond to pay for the decommissioning of any proposed tower.

Sydney Kropp, 2 Brookside Avenue, expressed concerns about the height of the tower in proximity to the Worcester Regional Airport, about the fall zone, and about health. She explained that she lives near "Why Me" for kids with cancer and emphasized that the towers are carcinogenic and their emissions are high. She requested the Board deny the Tory Fort Lane petition.

Pam Johnson, Bolton, MA, stated that she opposes the petition because decisions in Worcester impact what happens throughout the State. She expressed concerns with the FTCA ability to prevent Boards from denying PWSF petitions based on health and environmental safety concerns. She expressed concerns about the FTCA application to Smart Meters and about National Grid's lack of transparency and misinformation. She expressed concerns about public engagement in the decision making process and the health impacts of the radiation emitted by the proposed devices.

Jo Hart, Worcester resident, stated that the State and City were the actors missing from the conversation and expressed concerns about the lack of public engagement and dialogue on the topic. She stated she did not believe the towers were the issue. She stated that the issue is not geographically specific and that National Grid's ultimate goal is to make money. She expressed concerns about National Grid's competency, citing many black outs. She stated that the utilities should be bought out by the public as has been done in Shrewsbury, MA.

Ms. Hart stated that if the tower is built other components of the SmartGrid program will come to fruition. She expressed concern that dialogue about the issue of SmartGrid programs needs to

come before the infrastructure for such technology, unlike the strategy proposed. She requested that the Board write to and request that the governor deal with the issue of SmartGrid technology.

Leslie Saffer, Worcester resident, explained that she had many concerns about the full implementation of this project and cited misleading marketing from National Grid. She asked that the Board deny the Tory Fort Lane petition. She stated that this issue would affect many people and that the citizens appearing before the Board are just a sampling of the community sentiment. She referenced a 2011 draft Report of the California Council on Science and Technology, "Health impacts of Radio Frequency from SmartMeters". She explained that exposure to radio frequency for the proposed devices are two orders of magnitude higher than that of cell phones. She expressed concerns that "choice of exposure" is limited when it comes to Smart Meters as an individual would be exposed continually, unlike cell phones. She stated that the FTCA is not applicable here.

Councilor Michael Gaffney, 1 Bancroft Tower Road, stated that he supported the statements made by the other Councilor's and agreed with the request for a legal opinion. He requested that a determination from the Public Health department be issued as well, specifically regarding smart meters. He stated that during his campaigning he knocked on many doors and heard that these meters are an issue. He expressed concern about the time it had taken to open a hearing about the matter and National Grid's lack of preparedness. He requested the Board deny the petition.

Karen Belliveau, 44 Sorrento Street, expressed concerns about aesthetics and the growth of the substations overtime. She expressed concerns about health issues and stated that she felt like part of an experiment. She stated that she came to the meeting as a resident and mother who preaches values of honesty, loyalty, and independent thinking. She asked the Board to think independently about the proposals and each make their own decision, regardless of their previous approvals.

Ms. Belliveau expressed concerns about the height of the tower in a residential area. She stated that the proposed infrastructure targets people who stay at home – mainly those who are elderly. She expressed concerns about the pilot's misleading marketing, lack of public information, and that consumers would not be able to opt out of the pilot. She stated the pilot program would cost 44-48 million dollars and wondered where consumers would receive benefits. She stated that she never received or saw a flyer the company stated they sent out in billing statements. She expressed concerns about National Grid's track-record as a bad neighbor and explained that only now that the site is under review has the Company made efforts to conceal the noise and appearance of the large substation, noting that the generators were found to be too loud and that National Grid was required to replace them. She stated that other countries with such technology did not need towers.

Ms. Belliveau cited Deb Drew, of National Grid, and expressed concerns about the false statements about the program and the company's ethics. She wondered why National Grid changed the pilot name and stated that one only re-brands when trying to ease skepticism in the public sector. She expressed concern about foregone decisions and requested the Board take their time in making a decision asking scrupulous questions. She wondered why residents with addresses outside the pilot program received notice that they would have a smart meter installed.

Joyce Kimball, 20 Sorrento Street, stated that she felt the pilot is a two-year corporate experiment and expressed concerns about the aesthetics and height of the tower. She reminded the Board the pilot was for 12 towers, with the expansion to 60 towers, if the program does well and that the towers would be blight to the City.

Heather Rocheford, 9 Pomona Road, agreed with the residents and expressed concerns about aesthetics. She wondered how she would explain the tower to her 89 year old father who lives in the area and expressed concerns about property values being negatively affected by a tower.

Tim Sullivan, 34 Tory Fort Lane, stated that he abuts the sub-station on Tory Fort. He expressed concerns about National Grid not being a good neighbor, their lacking responsiveness and encroachment onto his property. He expressed concerns about the noise levels and expansion of the substation that has taken place. He expressed concerns about the property value and inability to sell his home were a tower to be erected and about National Grid's misleading marketing.

Barbara Benson, Millville, MA, stated that she first encountered Smart Grid in Sedona, CA. She expressed concerns that the issue is also global and requested the Board deny the petition.

Dennis Breffer, Berlin, MA, expressed concerns about the high federal exposure limits for microwave and radiofrequency waves and stated that other countries have much lower limits – up to 100 times lower than the United States. He expressed concerns about privacy and health and drew a simile to the Asbestos issue.

Clare Donegan, Quincy MA, from Halt MA Smart Meters, stated that the Governor of Massachusetts said "Smart Meters must be in place to make a viable SmartGrid". She stated that she did not believe the FTCA applies to SmartGrid as National Grid is not functionally equivalent. She cited *New Cingular Wireless vs. the Town of Stowe, MA* which states "there is no dispute that New Cingular, Sprint and T-Mobile are providers of functionally equivalent services within the Meeting of the FTCA". She stated that this case law does not mean National Grid's data are equivalent to Sprint.

Ms. Donegan expressed concerns about the definition of Carrier, defined as "any person engaged as a common carrier for hire" and "as a telecommunications industry secures its systems, those technologies will secure the future grid". She stated that the telecommunications industry does not include National Grid. She stated that the Act was designated to "strike a balance" between two competing aims to facilitate, nationally, the growth of wireless telephone services and maintain substantial local control over citing towers. She stated that the FTCA reflected an attempt to balance the national interest in expanding the availability of wireless telephone service with the desire to allow state and local governments to maintain significant control over zoning.

Ms. Donegan requested clarification about when Tory Fort Lane would be heard, noting that this was the eighth hearing the item has been scheduled for and that eight was enough. She expressed concerns about the disruption this process has caused for residents. She asked the Board to deny Tory Fort Lane. She stated that she tried to access the supplemental packet submitted earlier in the day and that she and other residents were not able to see the information "readily available at the Planning Office". She expressed concerns about information being withheld from the public. She stated that the Smart Grid devices can be hardwired and the wireless component was unnecessary.

Sharon Nietzsche, 460 Chandler Street, read from the FCC Jobs Act, cited in the 597 Mill Street application, which "applies to modifications of existing towers or base stations". She expressed her frustration about the process and concerns about health. She stated that the Board is trying to convince the public that health doesn't matter. She asked if GE was involved in the pilot having seen their logo on one of the supporting documents presented by National Grid. She referred to Fukushima and expressed concerns about the GE as a corporation.

Patricia Burke, Millis, MA, stated that she was living in northern CA when smart meters were first installed and she developed a lifelong disability, identified by the World Health Organization as electromagnetic hyper-sensitivity. She stated that Curtis Bennett, of Canada, was consulting with the Texas panel on Smart Meters and the Canadian Parliaments' standing committee on health. She stated that he reviewed the petition and raised concerns about the meters being tested in isolation, not as part of the working electrical circuit - the grid itself. Ms. Burke questioned who provided the health data to the City of Worcester and asked who is responsible for staying up-to-date on Smart Grid developments around the country and world.

Ms. Burke stated that the FCC is deciding whether or not to review the exposure limits. She read statements from a City of Boston attorney in November 2013 and told the Board that the towers would harm a minority of U.S. Citizens, those suffering from electromagnetic sensitivity. She stated that National Grid and the Zoning Board need to adhere to the Americans with Disabilities Act. She read a statement from the American Academy of Environmental Medicine noting that individuals suffering from electromagnetic sensitivity were not hypersensitive until after installation of smart meters. She stated that smart meters may lower the threshold for symptom development and stated that the Academy changed their position from cautionary to a moratorium.

Merrilee Daniels, of 37 Sorrento Street, expressed concerns about health and aesthetics of the proposal.

Chair Abramoff stated that staff were not able to fully review the additional information provided by National Grid and suggested the Board continue the item. He referenced the Zoning Ordinance and stated that it is the applicant's burden to show that there are no feasible existing structures upon which to locate. He stated that he did not believe National Grid had provided evidence of a good-faith effort to co-locate on an existing structure, just having sent letters requesting co-location on existing towers. He stated that he would like to see evidence of their inability to co-locate regarding the feasibility of other sites.

Chair Abramoff read from the City's Zoning Ordinance, Article IV, Section 12, A:

"it is the express purpose of this ordinance to minimize the adverse visual impact of PWSF's to avoid damage to adjacent properties, to lessen impacts on surrounding properties, to lessen traffic impacts, to minimize use of towers, to reduce the number constructed and to limit emissions in order to minimize potential adverse effects on human and animal health."

He expressed concerns that the express purpose of the Ordinance was in conflict with the FCTA which says that the Board can only consider a gap in coverage. He stated that this conflict was another reason the Board should continue the item. He requested a legal opinion from the City of Worcester attorney on the applicability of the FTCA to the proposed use. He requested the Board continue the petition to February 3, 2014.

On a motion made by Mr. Loew and seconded by Mr. Wanat the Board 4-0 to continue the item to February 3, 2014.

List of Exhibits:

- Exhibit A: Special Permit Application; received 9/3/2013; prepared by Massachusetts Electric Company.
- Exhibit B: National Grid Tatnuck Substation Plan; dated 8/2/2013; prepared by National Grid.
- Exhibit C: Division of Planning and Regulatory Services Memorandum, re: 597 Mill Street; dated October 16, 2013; revised December 2, 2013.
- Exhibit D: Emails from Elizabeth Mason, Attorney for National Grid, re: 597 Mill Street; dated November
- Exhibit E: Postponement letter from National Grid, re: 597 Mill Street; dated December 2, 2013.

4. Tory Fort Lane (aka 30 Tory Fort Lane) (ZB-2013-021)

Chair Abramoff confirmed that the petitioner would like to request postponement for the Tory Fort Lane item. Ms. Mason affirmed.

On a motion made by Mr. Loew and seconded by Mr. Wanat the Board voted 4-0 to postpone the item and extend the public hearing deadline to February 3, 2014.

Chair Abramoff called for a 5 minute recess.

Chair Abramoff called the meeting into session.

6. 61 Lafayette Street (ZB-2013-046)

Variance: Relief of 771 SF from the 5000 SF minimum lot area requirement in a BG-3.0 Zoning District (Business, General)

Variance: Relief of 24.67 ft. from the 40 ft. per dwelling unit frontage dimensional requirement in a BG-3.0 Zoning District (Business, General)

Petitioner: Tom Hoang

Present Use: A vacant lot

Zone Designation: BG-3.0 (Business, General)

Petition Purpose: Construct a two-family detached dwelling

Public Hearing Deadline: 1/24/2014

Final Action Deadline: 2/28/2014

Hussein Haghanizadeh, HS&T Group, 75 Hammond Street, stated that the previous dwelling located on the site was a two-family, condemned by the City. He stated that the applicant previously applied for a duplex (side by side) on the property, but the Board recommended a two-family with the dwelling units up and down, rather than side by side. He stated that the applicant received determinations from the Zoning and Planning Boards that this application is substantially

different from the petition for a duplex which was previously denied by the Board. He stated that the lot is still vacant and has become overgrown and become a site for neighbors to leave trash. He stated that the petition would allow the owner to replace the two-family that had to be demolished.

Chair Abramoff clarified that the petition was different being a two-family up and down rather than the duplex. He confirmed the rendering is the same and that the doors would lead to the second floor, so both units would have separate entrances. Mr. Haghanizadeh affirmed.

Michelle Smith, Division of Planning and Regulatory Services, stated that because this application for the site was filed within two years of a denial by the Board, in accordance with Massachusetts General Law, both the Zoning and Planning Boards were required to make a determination that the new proposal is substantially different from the one denied in May 2013. Both Boards made this determination in November of 2013 and therefore the applicant can now be heard by the ZBA.

Ms. Smith stated that the applicant was compliant with the required parking and rear yard setback requirement. She stated that the relief requested did not appear to be out of character with the neighborhood as many of the other homes in the area are non-conforming. She stated that there were virtually no by-right alternatives for development of the site as no residential uses would be allowed by-right, given the lot size, and that the parking requirements for other commercial uses would likely prohibit site development.

Chair Abramoff clarified that the petition would allow a vacant lot to be transformed. He asked if the applicant would be amenable to the conditions proposed by staff. Mr. Haghanizadeh affirmed.

Ms. Zhaurova added that the neighborhood was not consistently residential and that there is a mix of uses surrounding the lot. She stated that the diversity in uses makes it difficult to say that the proposal fits in with the neighborhood, but noted that the structure would be within the same footprint of a previously existing dwelling, with similar setbacks.

Mr. Loew clarified that the applicant noted of the condition about landscape screening. Mr. Haghanizadeh stated that the applicant had no problems with the condition.

Upon a motion by Mr. Loew and seconded by Mr. Wanat the Board voted 4-0 to close the public hearing.

Upon a motion by Mr. Wanat and seconded by Mr. Loew the Board voted 4-0 to approve the two variances for relief of 771 SF from the 5000 SF minimum lot area requirement and relief of 24.67 ft. from the 40 ft. per dwelling unit frontage dimensional requirement in a BG-3.0 (Business, General) Zoning District to construct a two-family dwelling with the conditions that:

1. That the structure be constructed in substantial accordance with the plot plan;
2. That two 3" caliper shade trees be planted on the lot along Lafayette Street;
3. That each side of the driveway remains as green space and not be paved;
4. That the applicant provide landscape screening with densely planted shrubs (e.g. arbor vitae, hydrangea, forsythia, etc.) along the eastern lot line where the proposed driveway abuts property owned by n/f Olihovik;
5. Provided the project is constructed in accordance with plot plan and renderings submitted on file with the City of Worcester and in compliance with all governmental codes.

Upon a motion by Mr. Loew and seconded by Mr. Wanat the Board voted 4-0 to approve the petitioners Findings of Fact as modified by staff.

List of Exhibits:

- Exhibit A: 61 Lafayette Street Application; received September 12, 2013; prepared by Tom Hoang.
- Exhibit B: 61 Lafayette Street Plan; dated August 13, 2013; prepared by HS&T Group, Inc.
- Exhibit C: 61 Lafayette Street Rendering; June 3, 2013.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 61 Lafayette Street; dated January 8, 2014.
- Exhibit E: Original Plan from February 2007 denial; dated 10-24-06; prepared by HS&T Group, Inc.

7. 28 Wigwam Avenue, Tracts 1 & 2 (ZB-2013-054)

Variance: Relief of 3000-sf from the 8000-sf lot area dimensional requirement for a proposed two-family detached dwelling (Tract 1)

Variance: Relief of 20-ft from the 70-ft frontage dimensional requirement for a proposed two-family detached dwelling (Tract 1)

Variance: Relief of 3000-ft from the 8000-ft lot area dimensional requirement for an existing two-family detached dwelling (Tract 2)

Variance: Relief of 20-ft from the 20-ft rear yard setback dimensional requirement for an existing two-family detached dwelling (Tract 2)

Variance: Relief of 12 ft. from the front yard setback dimensional requirement for an existing two-family detached dwelling (Tract 2)

Petitioner: Marco V. Charamella

Zone Designation: RL-7 (Residence, Limited)

Present Use: Tract 1 (Lot 23) – vacant lot; Tract 2 (Lot 22) – two-family residential structure

Petition Purpose: Construct a two-family detached dwelling with 2 attached garages at 28 Wigwam Avenue – Tract 1

Public Hearing Deadline: ~~1/2/14~~, 1/13/2014

Final Action Deadline: 2/6/2014

Marco Charamella, 48 Clark Street, New Haven, CT, stated that his family lives in the neighborhood and he and his wife are hoping to move back to Worcester. He stated that the lot was 50 ft. X 100 ft. and the proposed structure is a duplex with two garage bays. He stated that he planned to keep the structure within the required setbacks. He stated that he attempted to make the structure on the rendering architecturally appealing to keep in character with the homes in the neighborhood. He stated the housing stock in the area is for similar residential uses.

Ms. Zhaurova stated that staff analyzed properties in the area and that there's a mix of two- and three-family homes, with many lots laid out in a 5000 SF configuration - thus non-conforming with regard to lot area. She stated that because the two subject tracts are commonly owned, both lots require relief from the dimensional requirements. She stated that the proposed building would require two variances while the existing building would require three. She stated that the proposed structure would comply with the required setbacks and appears to fit in with the neighborhood. She stated that the existing stairs on Tract 1 encroach onto Tract 2 and would require an easement and that there is no by-right development alternative for either parcel.

She stated that staff had to advertise the item several times because the applicant wanted to expedite the permitting but the project required a Law Department determination. Ms. Zhaurova stated that staff recommended that six copies of the easement recorded with the Registry of Deeds for the encroaching stairs between Tracts 1 & 2 be provided to DPRS and that the project is constructed in substantial accordance with the approved plans.

Ms. Zhaurova stated that the applicant did not submit a surveyed plot plan and, while the plans received were to-scale, the applicant requested a waiver from the requirement to submit surveyed plans. She stated that the Board would need to take action on the waiver.

Mr. Kelly recommended that a certified plot plan should be issued prior to the Board's determination in order to ensure the relief requested is the exact relief the petitioner would be required to provide. Mr. Charamella stated that the surveyed plan would be a financial hardship, considering he has no approvals for the site. He stated he agreed with Mr. Kelly that a survey would be expected prior to the issuance of a building permit and that he intended to do so. He stated he would be in favor of a conditional approval to submit surveyed plans. Mr. Charamella stated that he felt the Board votes on the merit of a proposal and that the minor nuance is the relief requested for the variances which would be resolved later via surveyed plan. Chair Abramoff stated that the relief was not a minor nuance and that the variances are issued for the exact relief needed. He explained that in order to pull the building permit the applicant will be required to provide a surveyed plan and if the survey does not confirm the exact relief granted from the Zoning Board, the applicant would need to re-apply.

Chair Abramoff stated that he recommends the applicant provide a surveyed plan prior to voting on the requested relief. He stated that he is pre-disposed to approve the item as it seems in character with the neighborhood and that the rendering provided was aesthetically pleasing. Mr. Wanat stated that he agreed with Chair Abramoff because there are five variances requested. He stated that it would behoove the applicant to get the surveyed plans and that he had no problem with the proposal.

Chair Abramoff asked the applicant if extension of the constructive grant deadline to March 18, 2014 was acceptable. Mr. Charamella affirmed.

Upon a motion by Mr. Wanat and seconded by Mr. Loew the Board voted 4-0 to continue the item to February 3, 2014 to allow the applicant time to submit surveyed plans of the parcels and extend the constructive grant deadline to March 18, 2014.

List of Exhibits:

Exhibit A: Variance Application; prepared by Marco V. Charamella; received October 29, 2013

- Exhibit B: Proposed Two Family Plan; prepared by charamella design inc.; undated; received October 29, 2013.
- Exhibit C: Rendering, Proposed Two Family Concept; prepared by charamella design inc.; dated October 24, 2013; received October 29, 2013.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 28 Wigwam Avenue; dated November 27, 2013, revised January 8, 2014.
- Exhibit E: Letter with Deed and Plot Plans from Marco Charamella to the Zoning Board of Appeals; RE: Waiver Request; dated October 26, 2013; received October 29, 2013.
- Exhibit F: Project Review Sheet from Fire – John P. Powers, District Chief; RE: 28 Wigwam Avenue; undated.
- Exhibit G: Postponement Request and Email (Easement) from Marco V. Charamella; RE: 28 Wigwam Avenue; dated December 2, 2013.
- Exhibit H: Email from Marco V. Charamella to Nancy Tran (DPRS); RE: 28 Wigwam Avenue (Easement); dated December 5, 2013.

8. 5 Newton Avenue (ZB-2013-057)

Special Permit: To allow a residential conversion from a two-family dwelling to a three family dwelling in a RL-7 Zoning District (Article IV, Section 9)

Petitioner: Josh Gaval (Kensington Management)

Present Use: Two-family detached dwelling

Petition Purpose: Increase the total number of units on the premises from two to three and provide six off-street parking spaces

Zone Designation: RL-7 (Residence, Limited)

Public Hearing Deadline: January 18, 2014

Hussein Haghanizadeh, HS&T Group, 75 Hammond Street, stated that the property has an existing three-family home on the lot and has had three dwellings for many years. He stated that the neighborhood is mostly two- and three-family homes. He stated that the applicant is seeking to convert the property into a legal three-family and is aware that sprinklers would need to be installed due to the change in use. He stated that the building is in disrepair and the applicant plans to renovate the building.

Ms. Zhaurova stated that the item was originally advertised as a residential conversion and staff later realized this type of conversion is not allowed in this zoning district. She stated that staff should have advertised for a Special Permit to allow a 3 family dwelling. She stated that staff felt as though the relief advertised was adequate notice and requested the Board ensure the applicant is comfortable to proceed or ask if he would like to request that the Special Permit be re-advertised. Mr. Haghanizadeh affirmed that he would like to proceed with the hearing.

Ms. Zhaurova stated that application is seeking to convert the two-family to a three-family and that the structure complies with all the dimensional requirements. She stated that the neighborhood

consists of 18% single family, 41% two-family, 12% three family homes, with 29% commercial. She stated that the proposal seems to fit in with the neighborhood and that staff recommended the following conditions of approval:

1. That there be no changes to the external appearance of the structure except for new doors, windows, fire escapes, and / or stairways;
2. That the structure and use are operated in substantial accordance with the final approved plan;
3. That no parking will be provided in the front-yard setback (along Newton Avenue);
4. That the front-yard setback remains landscaped and unpaved.

Mr. Kelly stated that the 8th edition of the building code requires a sprinkler system for a three-family dwelling. Chair Abramoff stated that applicant was aware and questioned the adequacy of parking provided. Ms. Zhaurova stated that staff felt parking was adequate.

Mr. Haddon stated that he noticed that construction is taking place. Mr. Haghanizadeh stated that the applicant has a permit to alter the exterior of the building and property. Mr. Kelly confirmed that the applicant has a permit for the ongoing work

Elizabeth Gamache, 8 Midland Street, stated that she was thrilled that the house is being renovated but concerned about the parking locations as the area is a school zone. Mr. Haghanizadeh explained that there is a two car garage on the property and specified the location of the proposed parking spaces.

Ms. Gamache explained her concern was about the side-yard of the property being used for parking as she can see this from her window. Mr. Haghanizadeh stated it was not to be used for parking. Chair Abramoff stated that one of the conditions staff provided could be amended to state that both the front and side yard setbacks are to remain landscaped and unpaved.

Ms. Gamache expressed concerns about the existing chain-link fence along her property being altered. Mr. Haghanizadeh stated that the applicant has no plans to change the fence.

Ms. Gamache expressed concerns about the school zone and the street access and use of the curb cut on Midland Street. Mr. Haghanizadeh stated that there are no plans for that curb cut to be used.

Ms. Gamache expressed concerns that her property was not listed in the neighborhood classification table and analysis done by staff as provided in the memorandum, even though her property directly abuts the subject property. Ms. Zhaurova stated that her property was included in the analysis table but was incorrectly listed as 8 Newton Avenue instead of Midland Street.

Chair Abramoff asked Ms. Gamache if she would be amenable to the conditions that no egress to Midland Street would be allowed from the property, that the chain-link fence be maintained, and that the side and front yard setbacks remain unpaved with landscaping. Ms. Gamache affirmed. Ms. Zhaurova stated that for the record the lot is a corner lot and the side yard should be referred to as the exterior side yard.

Mr. Kelly asked what the condition of the existing garage was and what the floor was constructed out of. Mr. Haghanizadeh stated the floor was wooden. Ms. Gamache stated that the barn needed a lot of repair. Mr. Kelly expressed concerns about the structural integrity of the barn as the barn is required to enable the applicant to maintain two parking spaces within it. Mr. Haghanizadeh stated that the applicant plans to cover the floor with concrete and stated that the barn will be renovated.

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

Upon a motion by Mr. Wanat and seconded by Mr. Loew the Board voted 4-0 to approve the requested special permit to allow a three-family dwelling in an RL-7 Zone with the following conditions:

1. That there be no changes to the external appearance of the structure except for new doors, windows, fire escapes, and / or stairways;
2. That the applicant ensure the structural integrity of the accessory garage structure in order to safely park vehicles inside;
3. That the existing fence along the north corner of the property, abutting the rear lot line and north eastern lot line will not be removed;
4. That no parking will be provided in the front-yard setback (along Newton Avenue); and
5. That the front-yard and exterior side-yard setbacks remain landscaped and unpaved.
6. That the structure and use are operated in substantial accordance with the final approved plan;
7. Provided it is in accordance with plot plan submitted on file with the City of Worcester and in compliance with all governmental codes.

List of Exhibits:

- Exhibit A: Special Permit Application; received November 14, 2013; prepared by Josh Gaval (Kensington Management).
- Exhibit B: Variance Plan for 5 Newton Avenue; dated October 25, 2013; prepared by HS&T Group, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 5 Newton Avenue – Special Permit Application; dated January 8, 2014.

8. 60 & 72 Shrewsbury Street & 12 Leo Turo Way (ZB-2013-063)

- Variance:** Relief of 10 ft. from the 10 ft. rear yard setback dimensional requirement for non-residential structures
- Petitioner:** Robert Branca
- Zone Designation:** BG-4.0 (Business, General) and within USOD and SPOD
- Present Use:** A ~30,000 SF commercial building used for automotive repair and associated off street parking area
- Petition Purpose:** Demolish a single story portion of the building at 60 Shrewsbury Street and reconstruct the first floor to be 24 ft. in height and to connect 60 Shrewsbury Street to 72 Shrewsbury Street during the demolition and reconstruction and to reconfigure the off-street parking area at 60 Shrewsbury Street and 12 Leo Turo Way.

Public Hearing Deadline: 2/13/2014

Final Action Deadline: 3/20/2014

Robert Branca, 72 Shrewsbury Street, stated that the existing building at 60 Shrewsbury Street has three sections with three stories in the front, two stories in the middle, and one story in the rear. He explained that they are seeking to demolish and reconstruct only the rear portion of the building because of structural issues. He stated they would use the existing foundation to reconstruct the building and increase the height of the structure's ceiling to be consistent with the middle portion of the building that is two stories. He explained that the buildings at 60 & 72 were once connected but have since been separated. He explained that they will remove the concrete floor and do any environmental remediation required. He stated that the variance would allow him to keep the sheet metal fabrication business housed in the building in the facility and in Worcester.

He stated that a literal enforcement of the Ordinance would be a hardship as he cannot repair the rear portion of the building as the area is inaccessible to repairs given its location on the lot line. He explained that the only way to fix the property would be from the inside of the building, on their property as the only access is through the ball field abutting the property. He noted they have no intention of using that as a means of access to repair the site. He stated that there will be a small modification to the foundation in the rear to connect a portion of the property that was abandoned after the adjacent building was constructed and that they were seeking to straighten the line out.

He explained that many of the existing buildings in the area are built out to the lot line and that it would be consistent with the neighborhood. He noted that they are seeking to connect the two buildings and they would eliminate a 6 inch space between the structures in doing so. He expressed that the proposed uses were all permitted under the ordinance. He noted that they would be expanding a local business and allowing another manufacturing business in the City to expand. He stated that the changes have already created dozens of jobs and that they were looking to make more. He stated that the change would not be detrimental but, rather, enhance the neighborhood.

Ms. Smith stated that the applicant only applied for a variance, but that staff also advertised for two additional special permits, which it later found were not needed for the project at this time. Not Board action is required on those special permits.

She explained that the legal ads correctly listed 12 Leo Turo Way as part of the subject address, but that the abutters' notices did not list this parcel. She stated that it was staff's belief that abutters were given adequate notice and requested the applicant confirm willingness to proceed. Mr. Branca affirmed.

Ms. Smith stated that given the existing height at the front of the building, the proposed increase in the height of the roof would not be visible from the street. She expressed that there was a lack of clarity around the specific square footage for the proposed uses and the associated number of required parking spaces. She emphasized that the site would need to be treated as one given the common ownership and required parking determined as such. She stated that the lot is located within the Shrewsbury Street Parking Overlay District and that the applicant could reduce the required number of restaurant parking spaces by up to 75%. Ms. Smith stated that the proposed number of compact spaces exceeds what is allowed by-right, but when considering the site as a whole this may not be the case.

Ms. Smith explained that the applicant was compliant with providing the required landscaping buffers but that the applicant had not shown the proposed species in the buffers. She stated that the Ordinance requires a minimum of 10 trees to be planted every 20-25 ft. on center along these areas where the parking area abuts a street. She recommended the applicant submit 6 copies of revised

plans showing the landscaping requirements of the Ordinance are met prior to the issuance of a building permit and that the structure be constructed in accordance with the approved plans.

Ms. Smith stated that staff would determine the number of required parking spaces when the applicant comes before the Planning Board for a Parking Plan Approval and that the applicant would return for additional relief if needed. Chair Abramoff clarified that the Board could consider the petition while the applicant did not provide a use table and the number of associated parking spaces. Ms. Smith affirmed stating that the required parking could be evaluated when the applicant comes before the Planning Board. She noted that the applicant provided a preliminary use table but staff did not have time to review it prior to the hearing.

Chair Abramoff asked how the Board could approve this if the applicant could not prove adequate parking. Ms. Zhaurova stated that the Variance was specifically for removing a portion of the building and reconstructing the structure in approximately the same footprint, just higher in volume. She stated that the parking requirement was a different type of consideration and is a separate issue. She stated that the applicant would be required to come before Planning Board and staff would calculate the number of required spaces at that time.

Chair Abramoff confirmed that the applicant was okay to proceed and withdraw the Special Permits. Mr. Branca affirmed and clarified that they are not adding any more uses and that the existing uses are permitted. He stated they were confident they would have enough parking given parking on both sides of 60 and 72 Shrewsbury Street buildings and that they would even create additional spaces in the future.

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

Upon a motion by Mr. Wanat and seconded by Mr. Loew, the Board voted 4-0 to approve the applicant's findings of fact and the requested Variance of 10 ft. from the 10 ft. rear-yard setback dimensional requirement in a BG-4.0 Zone with the condition that six (6) copies of revised plan of land to DPRS with the following conditions:

1. That the structure be constructed in substantial accordance with the final approved site plan and with the submitted rendering prepared by AA Design Services, LLC, dated 1/2/2014;
2. That the applicant complies with the landscape ordinance and provides a landscaping table;
3. That the applicant submit 6 copies of revised plans showing the landscaping requirements to DPRS prior to the issuance of a building permit.

List of Exhibits:

- Exhibit A: 60 & 72 Shrewsbury Street Application; received December 4, 2013; prepared by Robert Branca.
- Exhibit B: 60 & 72 Shrewsbury Street Plan; dated 8/27/2013; prepared by Finlay Engineering Services.
- Exhibit C: Rendering; dated October 24, 2013, revised, January 2, 2014; prepared by AA Design Services, LLC.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 60 & 72 Shrewsbury Street & 12 Leo Turo Way; dated January 13, 2014.

Exhibit E: Parking Analysis Image; re: 60 & 72 Shrewsbury Street; dated September 26, 2013, prepared by Finlay Engineering Services.

APPROVAL OF THE MINUTES

Upon a motion by Mr. Haddon and seconded by Mr. Loew the Board voted 4-0 to approve the minutes from July 29, 2013 and December 2, 2013 with no comments.

OTHER BUSINESS

The Board signed decisions for petitions for 539 Cambridge Street & 184 Highland Street.

Mr. Loew stated he would not be in attendance on March 17, 2014 due to a scheduling conflict.

ADJOURNMENT

Upon a motion by Mr. Wanat and seconded by Mr. Loew the Board voted 4-0 to adjourn the meeting at 8:46 P.M.