

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

**FEBRUARY 3, 2014**

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

**Zoning Board Members Present:** Lawrence Abramoff, Chair  
Vadim Michajlow, Vice-Chair  
Joseph Wanat  
Timothy Loew  
Robert Haddon

**Zoning Board Members Absent:** None

**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**

**1. 597 Mill Street (ZB-2013-044)**

**Special Permit:** To allow a Personal Wireless Service Facility (PWSF) (per FCC regulation – Jobs Act, § 6409, a)

**Variance:** Relief of the height dimensional requirement (40-ft max.) and ‘fall zone’ setback for ground-mounted PWSF (Article IV, § 12, C, 3, e & f)

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

**Present Use:** Tatnuck Electric Substation

**Zone Designation:** BL-1.0 (Business, General)

**Petition Purpose:** Install a 90-ft tall ground-mounted PWSF facility (monopole) with three (3) Worldwide Interoperability for Microwave Access (WiMAX) antennas and two (2) microwave antennas at 597 Mill Street transmission structure as part of National Grid’s Smart Grid Pilot Program. As part of the proposal, the applicant is also proposing signal cables from the antennas to a ground

mounted equipment frame, where radio/transceiver and battery unit enclosures will be installed on a 35 SF concrete pad

Public Hearing Deadline (Special Permit): ~~11/7/13, 12/2/13~~, 1/13/14

Constructive Grant Deadline (Variance): 11/07/13

Luba Zhaurova stated that the applicant requested a continuance to March 17, 2014 to respond to the Board's request regarding the possibility of co-location.

Upon a motion by Mr. Loew and seconded by Mr. Michajlow, the Board voted 5-0 to continue the item to March 17, 2014 subject to the applicant agreeing to extend the constructive grant deadline to April 8, 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 and January 28, 2014.

Exhibit D: Postponement letter from National Grid, re: 597 Mill Street; dated December 2, 2013.

Exhibit E: Supplemental application requirements information dated January 8, 2014, received January 13, 2014; submitted by Elizabeth Mason on behalf of National Grid.

Exhibit F: Postponement Request with a Letter submitted by Mark R. Rielly on behalf of National Grid; dated and received January 23, 2014.

Exhibit G: Letters from the Public:

- a. From Lance McKee; re: Webmaster: Please forward to Lawrence Abramoff – Vice Chair Zoning Board of Appeals; dated October 15, 2013.
- b. From Lance McKee; re: Moratorium on National Grid's Worcester Smart Grid Pilot; dated November 19, 2013.
- c. From Mauro DePasquale; re: NO to Ngrid's Smart Meter Towers in Worcester; dated January 10, 2014.
- d. From Elizabeth Proko; dated January 12, 2014.
- e. From Lance McKee; re: Comments for consideration by the ZBA in their decision regarding approval of National Grid's Smart Grid deployment; dated January 13, 2014.
- f. From Curtis Bennett to Patricia Burke; re: Zone Meeting on Smart Meter Program; undated; received January 13, 2014.
- g. T&G Article from Lance McKee; titled "Smart and safe technologies"; dated November 5, 2013; submitted January 13, 2014.
- h. From Diane Whitmire; re: Chairman Abramoff with Attachments; dated January 14, 2014.
- i. From Patricia Burke:

- a. Re: Smart Meter, documentation for comment at City Council Meeting 1/13-Patricia Burke; dated January 14, 2014.
- b. Re: Smart meters 2 WCCA resources re: health; dated January 17, 2014.
- c. Re: smart meters, new vs. old technology; dated January 22, 2014.
- d. Re: Smart meters – Sheffield MA planning board; dated January 23, 2014.
- e. Re: Smart meters outstanding article today January 23; dated January 25, 2014.
- f. Re: Recent Legal Briefs re: recall of dangerous devices affecting health of Maine’s people; dated January 15, 2014.
- j. From Claire Darie; re: 6 Ignored ‘smart’ City Council Accepted Orders; dated January 17, 2014.
- k. From Claire Darie; re: ‘smart’ network already succeeding per Bill Jones of Ngrid; dated January 28, 2014 and a response e-mail by Deb Moore; dated January 28, 2014.

Exhibit H: Letter from Director of Smart Energy Solutions Program of National Grid to the City Council and City manager; titled “Smart Energy Solutions Program Informational Letter”; dated January 20, 2014.

**2. Tory Fort Lane (aka 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

Public Hearing Deadline: 6/20/13, 7/8/13, 7/29/13, 9/9/13, 9/30/13, 10/21/13, 12/2/13, 1/13/14, 2/3/14

Luba Zhaurova stated that the applicant requested a postponement to March 17, 2014 to respond to the Board’s request regarding the possibility of co-location.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 5-0 to postpone the item to March 17, 2014 subject to the applicant agreeing to extend the public hearing deadline to March 17, 2014.

**List of Exhibits:**

Exhibit A: Special Permit Application; received April 16, 2013; prepared by Massachusetts Electric Company d/b/a national Grid that includes:

1. Location Map
2. Site Plan
3. Elevations
4. Existing conditions photographs
5. Equipment Brochure

Exhibit B: Postponement request to June 17, 2013; dated May 17, 2013; and to July 8, 2013; dated June 12, 2013; and to July 29, 2013; dated July 8, 2013; and to September 30, 2013; dated September 9, 2013; and to October 21, 2013; dated September 30, 2013; and to December 2, 2013; dated October 16, 2013; dated December 2, 2013.

### **3. 12 Laurier Street (MBL 28-023-00013) – Special Permit & Variance Application**

Variance: Relief of 4.8 ft. from the 8 ft. side-yard setback dimensional requirement for a single-family detached dwelling in a RS-7 Zoning District (Residence, Single Family)

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

Petitioner: William LePage

Present Use: Single family detached dwelling

Petition Purpose: Construct a ~384 SF two car attached garage along the western side of the building

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

Public Hearing Deadline (Special Permit & Variance): February 3, 2014

Constructive Grant Deadline (Variance): February 25, 2014

Ms. Zhaurova stated that staff respectfully recommends postponing the item to allow time for the applicant to provide missing findings of facts and submit:

- An additional Special Permit application for relief of one required parking space; or
- Revised plans showing two off-street parking spaces located outside the required front yard setback.

Upon a motion by Mr. Wanat and seconded by Mr. Michajlow, the Board voted 5-0 to postpone the item to February 24, 2014 and extend the constructive grant deadline to April 9, 2014.

#### **List of Exhibits**

Exhibit A: Variance and Special Permit Application; received November 1, 2013; prepared by William LePage.

- Exhibit B: Plan for Variance; prepared by B& R Survey, Inc.; dated September 8, 2013; received November 1, 2013.
- Exhibit C: Floor Plan and Details; prepared by unknown; undated; received November 1, 2013.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 12 Laurier Street; dated January 30, 2014.
- Exhibit E: Request for Postponement (January 13, 2014 to February 3, 2014) from William LePage to the Zoning Board of Appeals; dated December 17, 2013; received December 31, 2013.

**4. 8 Bluff Street (MBL 06-013-00013) – Variance Application**

- Variance: Relief of 670 SF from the 5,000 SF minimum lot size dimensional requirements for a single family detached dwelling
- Variance: Relief of 3.5-ft from the 15-ft rear-yard setback requirement for a single family detached dwelling
- Petitioner: Mayank Patel
- Zone Designation: RG-5 (Residence, General)
- Present Use: Vacant lot
- Petition Purpose: Construct a single-family detached dwelling with two off-street parking spaces
- Final Action Deadline: March 5, 2014

Attorney Donald O’Neil stated that the applicant plans to purchase the subject property, contingent upon receiving Zoning Board relief. He stated that taxes are owed on the property which prevents the item from being heard until the unpaid taxes have been resolved. Mr. O’Neil requested a postponement to resolve the tax issues to February 24, 2014.

Upon a motion by Mr. Wanat and seconded by Mr. Loew, the Board voted 5-0 to postpone the item to February 24, 2014.

**List of Exhibits**

- Exhibit A: Variance Application; prepared by Mayank Patel; received December 30, 2013.
- Exhibit B: Plan for Variance; prepared by B&R Survey, Inc.; dated December 6, 2013; received December 30, 2013.
- Exhibit C: Rendering Home Plans; prepared by Beyond Basics; dated December 3, 2013; received December 30, 2013.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 8 Bluff Street – Variance Application; dated January 28, 2014.

## **OLD BUSINESS**

### **5. 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

Present Use: Tract 1 – vacant lot; Tract 2 – two-family residential structure

Zone Designation: RL-7 (Residence, Limited)

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

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

Mr. Michajlow stated that he could not vote on the petition because the hearing had previously been opened.

Marco Charamella, petitioner, stated that he submitted a surveyed plot plan that the board requested at the last meeting, verifying the relief needed and delineating the easement for the stairs.

Mr. Kelly stated that he reviewed the plans and they were acceptable.

Ms. Zhaurova stated that the relief for the front-yard setback for Tract 2 is 7 ft. less than what was advertised.

Mr. Charamella stated that he was concerned with the staff recommendation that the proposed driveway / parking areas be constructed with permeable pavers and be maintained as pervious surface. He explained that he was unsure how expensive the pavers would be to maintain and if they would function as the driveway is sloped.

Mr. Kelly stated that the driveway could be paved and that suggestion could be removed.

Mr. Abramoff asked if the stairs still needed to be relocated. Mr. Charamella replied that there no longer was a need for an easement as the stairs would be re-located.

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

Upon a motion by Mr. Wanat and seconded by Mr. Loew, the Board voted 4-0 (Mr. Michajlow did not vote) to approve the findings of fact and the following variances for 28 Wigwam Ave, Tracts 1 & 2:

- 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 5 ft. from the front yard setback dimensional requirement for an existing two-family detached dwelling (Tract 2)

Subject to the following conditions of approval:

1. One 3” caliper Asian Longhorn Beetle-resistant shade tree be planted on Tract 1 fronting Dustin Street;
2. Each side of the driveway on Tract 1 remain as green space and not be paved;
3. The project is constructed in substantial accordance with plans on file with the Division of Planning & Regulatory Services.

### **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, and January 28, 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.
- Exhibit I: Email and Revised Plan from Marco V. Charamella to Nancy Tran (DPRS); RE: 28 Wigwam Avenue; dated January 23, 2014; received January 24, 2014.

## **NEW BUSINESS**

### **6. 27 (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: A ~3,494 SF building and service station
- Zone Designation: MG-2.0 and within USOD
- Petition Purpose: To operate a retail convenience store
- Public Hearing Deadline: 2/9/2014

Ron Fortune, representing Metro Motors, stated that they are seeking to change the use of the location from an automotive to retail use. The location currently has two service bays with lifts. The first floor, which consists of 1600 SF, is to be renovated to allow retail space for a convenience store, restrooms, and storage. Mr. Fortune showed plans that stated that depicted the free standing sign, canopy and islands that already exist.

Ms. Zhaurova stated that based on staff's survey of the surrounding neighborhood, nearby properties consist of a mix of uses – transit, residential, and commercial. The proposed retail sales use at 27 Shrewsbury Street (aka 5 Shrewsbury Street) does not appear to be inconsistent with the varied business uses in the area. She stated that the proposed retail sales will replace the two service/repair bays but the gas station use will remain on site. She stated that eleven parking spaces are required based on the proposed/existing uses and twelve spaces will be provided on an adjacent parcel.

Ms. Zhaurova stated that if approved, staff respectfully recommends the following suggested conditions of approval:

1. Six (6) copies of the revised Parking Plan, (Sheet TS-22) showing corrected parking schedule based on uses on site
  - a. 1 space/300 SF retail (~1,578 SF retail) = 6 required spaces
  - b. 1 space/750 SF retail storage (~793 storage) = 1 required space
  - c. 1 space/300 SF office (~1,172 SF office) = 4 required spaces

- d. 11 spaces required, 12 spaces provided plus 4 fueling spaces
2. That the structure and use are operated in substantial accordance with the final approved plan.

Mr. Loew stated that he did not believe the two angled parking spaces in front of the store are well placed since they would back out into traffic and could potentially cause accidents.

Mr. Fortune stated that they could be rearranged. Mr. Kelly Suggested the spaces be parallel to the structure. Mr. Fortune affirmed willingness to alter the plans as such.

Mr. Rolle stated that the Department of Public Works & Parks had not reviewed the plans but that he recommended the spaces be rearranged as well.

Mr. Abramoff asked the applicant if he was amenable to the condition of approval and the proposed changes discussed and Mr. Fortune stated that he was.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 to approve the findings of fact as modified by staff and the special permit requested subject to the following conditions of approval:

1. Submit six (6) copies of revised plan of land to DPRS with the following conditions:
  - a. Show corrected parking schedule based on uses on site;
  - b. The two parking spaces located in the front of the building (north) are to be constructed parallel to the existing building, and not angled, in order to prevent backing out onto Shrewsbury Street;
2. Provided the project is in accordance with the site 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 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, revised January 28, 2014.
- Exhibit D: Postponement Request from Ronald Fortune re: 27 Shrewsbury Street (aka 5 Shrewsbury Street) – Postpone from January 13 to February 3; dated and received January 13, 2014.

**7. 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

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

Zone Designation: RS-7

Petition Purpose: Construct a detached three-car garage

Public Hearing Deadline: 2/13/2014

Constructive Grant Deadline: 3/20/2014

Attorney Wayne LeBlanc, representing Mary and Margaret Colorio, stated that his clients purchased the property in 1996 as a three family home. He stated that there was an existing garage on the property which was demolished due to its dilapidated state. The original concrete pad and one of the cinder block garage walls remains. Mr. LeBlanc stated that a building permit had been obtained from Inspectional Services and a verbal cease and desist was issued during construction and subsequently the owners are seeking the following relief:

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.

Mr. LeBlanc stated that the rendering submitted showed that the roof was modified to a gable roof and includes gutters to deflect water to a drywell. The house was built in 1914 and therefore it does not need to comply with the six parking spaces on site. The applicants want to rebuild the garage that previously existed in that vicinity and was demolished before 2005.

Michelle Smith, Division of Planning & Regulatory Services, stated that there is sufficient space in the rear of the building to accommodate the garage with the same footprint proposed with the required 5 ft. accessory structure setbacks. She stated that staff is concerned about snow drift and potential runoff from the garage to the west of the property where there is only ~1/2 ft. separation between property lines.

Mr. LeBlanc stated that they are using the existing pad and haven't expanded the footprint of the garage, just extended the height. If the garage is moved, the radius for getting the third vehicle out wouldn't work, essentially making it a 2 car garage.

Zaven Gebeshian, owner of 184 Park Avenue, stated he was a civil engineer who has lived in the area for 37 years and never saw a garage at that location. He stated that he suspected that if there was a garage there in the past, it might have been there illegally. Mr. Gebeshian stated that he recommends denial because of the 6" setback and the snow drift from the roof of the proposed garage onto the abutting property and garage. He stated that the contractor will need permission to

trespass onto his property to complete the work. He noted that many of the garages in the neighborhood have flat roofs. He expressed concerns that a building permit was issued prior to receiving the necessary relief and stated that the applicant should not be heard because they do not have the necessary relief. Mr. Abramoff stated that is the reason why a cease and desist order was issued so that this petition can come before the Board to obtain the necessary relief. And if approved, then they would need to re-apply to Inspectional Services to get a new building permit.

Natasha Cani, resident of 128 Institute Road, stated she opposed the petition because she was concerned with the setback and the pitch towards her garage. She also stated that the garage was not pre-existing non-conforming because she has been there since 1998 and had not seen a garage there.

Sonia Gebeshian, 184 Park Ave resident, stated that she has lived there since 1977 and there was not a pre-existing garage.

Tony Economou, District 1 City Councilor, stated that he was in favor of the garage because it was in keeping with the surrounding height and it would not negatively impact property values. He stated that he believed the applicant took the proper precaution by modifying the roof pitches.

Jeffrey Richardson, 30 Institute Road resident, stated he had no objections to the garage and remembers the garage back in 1995. He stated that these tight dimensions are typical to the old neighborhood so he supports the project.

Domenic Triantonio, contractor for the applicant, stated that he was willing to make any necessary alterations to the plans. He also stated that the other properties in the neighborhood do not comply with the required setbacks. He stated that John Kelly, ISD Commissioner, had walked the site with him and that the proposed garage will go over the existing foundation.

Mr. Michajlow asked about the drainage. Mr. LeBlanc stated that they are proposing a 2 sided (gable) roof with the gable roof pitching on the easterly and the westerly side. He explained that the gutters would route the water to the drain on the new concrete pad into the drywell.

Mr. Wanat stated that he was concerned about the proximity of the roof overhang to the utility pole in the rear of the property. Mr. LeBlanc stated that they can modify the roof line so that it does not overhang.

Mr. LeBlanc stated that his clients maintain that the garage was taken down sometime in 1996. He also stated that the neighbor's roofs are much higher than the proposed garage's roof. He stated that the snow will drift off other roofs in the neighborhood and will drift anywhere and the roof will be less than 14 ft. tall, much shorter than what's allowed in terms of height.

David Horne stated that a building permit was issued originally because the building permit application and plans submitted listed the garage as a pre-existing structure. He noted that since its issuance, the permit was revoked and the applicant was asked to apply for the required variances.

Mr. LeBlanc responded to the following comment in the memo:

“Additional screening with fencing or vegetation in the areas where parking abuts other residential properties as well as to help delineate the parking area for each property – specifically along the southwestern lot line where the abutting property also provides parking”

He stated that there is a picket fence and stone wall on the abutting property, 11 Homer Street, which is owned by the applicants' brother and on the easterly side, a row of arborvitae and a shade tree exist and the executor of the estate provided a letter of non-opposition.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 to approve the finding of fact as modified by staff and the variances requested subject to the following conditions of approval:

1. The structure be constructed in substantial accordance with the final revised plot plan and with the submitted rendering prepared by William J. Masiello Architect, Inc., with the exception that along both the southerly and westerly lot lines, the garage roof will not extend beyond the structure's walls, except to allow for the proposed gutters to be attached thereto;
2. The proposed structure is to be non-habitable;
3. Each side of the driveway remains as green space and not be paved;
4. The trees located on the property shall be protected during and after construction; and
5. Provided the project is conducted in compliance with all governmental codes.

**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, revised January 22, 2014; prepared by B&R Survey, Inc.
- Exhibit C: 3 Homer Street Rendering; revised January 24, 2014; 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, revised January 28, 2014.
- 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.
- Exhibit F: Request to Postpone; re: 3 Homer Street; dated and received January 13, 2014.
- Exhibit G: Letter from Wayne LeBlanc regarding DPRS memorandum dated January 8, 2014; received and dated January 28, 2014.
- Exhibit H: Letter from abutter Sean Maher (182 Park Avenue); re: 3 Homer Street; dated January 8, 2014 and received January 13, 2014.

**8. 8 Blackstone River Road (ZB-2013-061)**

- Special Permit: To allow drive-through food service in BL-1.0 zone
- Special Permit: For modification of the parking layout and the drive through and escape lane dimensional requirements.
- Petitioner: Jason Lwiss
- Present Use: A ~2107 SF vacant bank building with a drive through and associated off street parking
- Zone Designation: BL-1.0 (Business, Limited) and within QPOD (Quinsigamond Parking District Overlay)
- Petition Purpose: To use the pre-existing drive through and building for drive-through food services and requests relief from the drive through dimensional requirement and for parking layout

Public Hearing Deadline: 2/13/2014

Jason Lwiss, resident of Holden MA, stated that he wants to open a coffee shop with a drive—thru on Blackstone River Road but he does not have the required 240 ft. length.

Ms. Smith stated that there was a previous parking plan approval for the site when it was approved as a bank with a drive-through, which has a different length requirement for an escape lane. She stated that the applicant submitted copies of the plans that were previously approved with the new application but that the site has been re-striped and the plans do not reflect the current conditions onsite.

Mr. Lwiss submitted new plans to the Board and stated that he had an architect redraw the plans with a drive-through with 225 ft. in length and eliminate two parking spaces to comply with regulations. He stated that he could not afford an engineer. The drive-through is needed otherwise the coffee shop won't work.

Ms. Smith stated that the new plan submitted appears to have an escape lane but there staff have concerns with the layout as the proposed layout of the drive-through curves around the existing building and the drive-through queue would likely block the existing handicapped parking and the two rows of parking closest to the building while requiring that this traffic cross the drive through lane and queue to exit the site. Also, the applicant is not proposing to install a "squawk box", instead he plans to use the existing drive-through window as a place for customers to order and pick up their food. Staff has concerns about queue traffic impeding circulation in the parking area closest to the existing building on the site.

Mr. Lwiss stated that he plans to install a large flower bed with a stop sign to help break up the drive-through line to allow cars to leave the site.

Mr. Kelly asked how many parking spaces are required for the use. Mr. Lwiss responded that 24 spaces are provided. Ms. Smith responded that the applicant is in the Quinsigamond Parking Overlay District (QPOD) and therefore no parking is required because the lot already exists.

Mr. Kelly suggested that the applicant eliminate the angled parking spaces altogether but Mr. Abramoff suggested that the parking spaces be made perpendicular to the building (90 degrees) so

that the customer has a choice to back out in the opposite direction and leave the site without crossing the drive-through lane. He suggested eliminating spaces 1-9 along the rear lot line as well.

George Elhoussan, 30 Northboro Street, stated that he was the landlord and he supported the project because Mr. Lwiss has spent a lot of money preparing the business but has been unable to open for a long time due to this matter.

Mr. Abramoff stated that there is plenty of parking and he felt the escape lane is a good length and explained that management of the queue and that it is the applicant's responsibility to keep the line moving to keep customers coming back.

Mr. Wanat stated that he would prefer to eliminate parking spaces 1-9 along the rear lot line and keep open the interior parking spaces.

Mr. Rolle stated that if the driveway from Millbury Street is made a two-way then the exit should be a right-turn only because of its proximity to the intersection.

Mr. Michajlow asked the applicant if he was amenable to the conditions of approval suggested by staff and the applicant stated he was amenable for to all of the conditions except for that requirement of a squawk box because he couldn't afford a squawk box.

Ms. Zhaurova asked the Board if they would accept the marked up plan submitted rather than a plan by an engineer. Mr. Abramoff stated that he would accept it.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Wanat, the Board voted 5-0 to approve the findings of fact as modified by staff and the special permits requested subject to the following conditions of approval:

1. The applicant submits 6 copies of revised plans to DPRS showing the following conditions of approval:
  - a. Plant shrubs every 5 to 10 ft. on center along western lot line;
  - b. Provide signage that directs traffic flow to the drive-through lane and exits;
  - c. Provide appropriate signage and striping to indicate handicapped accessible spaces and direct circulation;
  - d. Remove the northernmost ten parking spaces along the lot line that abuts property owned by n/f Linear Retail WH#3, leaving the site with 14 parking spaces;
  - e. Move the existing interior parking spaces to the north of the site by ~10 feet;
  - f. Modify the two rows of parking closest to the existing building to be striped at 90 degrees;
  - g. Label circulation, aisle width, drive-through length, and on revised plans;
  - h. Allow the curb cut along Blackstone River Road to be bi-directional with right-turn only egress onto Blackstone River Road; and
2. Provided the project is in accordance with the parking plan submitted on file with the City of Worcester and in compliance with all governmental codes.

## List of Exhibits

- Exhibit A: 8 Blackstone River Road Application; received 12/10/2014; prepared by Jason Lwiss.
- Exhibit B: 8 Blackstone River Road Parking Plan; dated 3/8/1998; prepared by J & D Civil Engineers.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 8 Blackstone River Road; dated January 28, 2014.
- Exhibit D: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals; re: 8 Blackstone River Road; forthcoming.
- Exhibit E: DPRS revisions to proposed parking layout.
- Exhibit F: Revised 8 Blackstone River Road Parking Plan; submitted 2/3/14.

## 9. 73 Downing Street (ZB-2013-064)

Administrative Appeal: Cease and Desist Order issued by the Commissioner of Department of Inspectional Services (Article II, Section 6).

Petitioner: Blake J. Rubin & Dean A. Taylor

Present Use: Four condominiums with accessory off-street parking

Zone Designation: RG-5 (Residence, General)

Petition Purpose: To appeal the Cease and Desist Order of the Inspectional Services Commissioner dated November 18, 2013 which asserted that the first and third floors of 73 Downing Street were found to be operating as a Lodging House without a Lodging House License

Public Hearing Deadline: 2/15/2014

Constructive Grant Deadline: 3/22/2014

Attorney Blake Rubin and Dean Taylor were present for this matter. Mr. Rubin stated that they are before the Board because they received a letter stating that they are allegedly operating a rooming house in violation of the Worcester City Ordinance. He stated that there are two reasons why this violation does not apply: common sense and the state of the law.

Mr. Rubin stated that a rooming or lodging house is for people who pay for a furnished room in advance and the manager keeps logs of all who check-in and out. The definition for a rooming house per the Webster's Dictionary is "furnished rooms to rent"; per the Merriam-Webster Dictionary the definition is "a house where rooms with furniture are rented to people to live in", and in the American Heritage Dictionary it's "A house where lodgers may rent rooms." 73 Downing Street does not meet any of these definitions.

This property is a traditional three-decker that was converted into condos. Each floor has 1300 SF and the first and third floors have identical floor plans; they have 4 bedrooms each. These were the floors that received the violation. The second floor has two two-bedroom apartments.

Mr. Rubin stated that the first and third floor units have yearly leases, each signed by the four students who live there. Those tenants have unfettered access to that apartment with no restrictions or assigned bedrooms. They have the rights of tenant, not lodgers.

Mr. Rubin stated that there was a Supreme Judicial Court case decided on in 2013, *City of Worcester vs. College Hill Properties*, which looked at the state statute defining a lodging house (MGL Ch.140, Sec 22) as “a house where lodgings are let to four or more persons not within the second degree of kindred to a person conducting it.” The Worcester City Ordinance mirrors the state statute but reads “a dwelling or part of a dwelling where sleeping accommodations are let with or without kitchen facilities to 4 or more persons not within the second degree of kindred to a person conducting it.”

Mr. Rubin argued that lodgings and sleeping accommodations are synonymous and quoted the Webster New College Dictionary as defining lodgings as “sleeping accommodation and rented rooms.” The College Hill case answered the question whether the statute can be applied to a condominium leased to four students, which is identical to their own case. The court decided that in that scenario the apartment was considered a rental apartment and not a lodging because of the definition of lodgings, tenancy was created (more rights than a lodger), unfettered access granted to tenants, and control of the premises.

Mr. Rubin stated that the Supreme Judicial Court found that Worcester was selectively enforcing the statute since they would have to treat a person renting an apartment to a family of four as a lodging house since it meets the definition of “a dwelling or part of a dwelling where sleeping accommodations are let with or without kitchen facilities to 4 or more persons not within the second degree of kindred to a person conducting it.” And that the lodging house statute would not apply in these cases.

Mr. Rubin stated that the results of the College Hill case should apply to their property and that the violation does not apply to 73 Downing Street.

Mr. Rolle stated that the case cited specifically interprets State Law, but not the city’s Zoning Ordinance. The city enforces lodging house violations under the Zoning Ordinance, which was not affected by the College Hill decision. The city’s lodging house regulations as defined by the Zoning Ordinance were upheld in *City of Worcester v. Bonaventura* (Exhibit C). The *City of Worcester v. College Hill* case acknowledges the *City of Worcester v. Bonaventura* decision and notes that the city’s Zoning Ordinance contains a distinctive definition of “dwelling” not found in the State Law. In *City of Worcester v. Bonaventura*, the Court found that in considering the various provisions of the city’s Zoning Ordinance; “Taken together, a lodging house is clearly defined as a dwelling unit that is rented to four or more persons not constituting a family.”

Mr. Michajlow stated that he reviewed the case and agrees with the petitioner. The City should revise or amend the Ordinance to account for these cases.

Mr. Abramoff stated that common sense would dictate that this particular case is not a lodging house but the Zoning Ordinance defines it as such and that’s what the inspectors have to uphold.

Mr. Abramoff asked if the City Solicitor has prepared a legal opinion on this case. Mr. Rolle responded that while he has conferred with the Law Department, a legal opinion has not been issued on this matter.

Mr. Abramoff stated that the City Solicitor, should provide the city's position on the matter because the Board is being asked to determine which law supersedes the other and what is beyond the board's purview.

Mr. Rolle stated that the matter before the Board was whether the Building Commissioner enforced the Zoning Ordinance the way it was enacted. The Board can continue the matter and staff can get a legal opinion from the Law Department.

Mr. Michajlow stated that it did not make sense that the City would still follow local ordinance when a higher court has ruled differently. Mr. Abramoff stated that there are other matters in which the Board can only approve or disapprove based on a higher court decision so he asked why that wasn't the case this time.

Mr. Rubin stated that federal court decisions are necessarily binding to a state but a state ruling is binding to the cities in that state.

Mr. Wanat stated that the answer is fairly clear if they consider if Code upheld the Zoning Ordinance appropriately.

Mr. Abramoff stated that he wanted a legal opinion that answered which ordinance to follow in this case.

Mr. Rolle stated that the law department expressed that the Zoning Ordinance still has standing and is enforceable by Code.

Mr. Michajlow stated that he understands that the Inspector was following the rules but the rules need to be changed since a higher court interpreted the rules differently.

Mr. Rolle stated that the Supreme Judicial Court ruled on the state law, not the city law and while there are similarities, there are differences as well.

Jo Hart, Worcester resident, stated that having a blanket rule for this is inhumane. She stated that she agreed with the applicants.

John Provost, Castle Street resident, stated that there are many arrangements like this in the City and these individuals have a lease but are unrelated.

Upon a motion by Mr. Wanat and seconded by Mr. Michajlow, the Board voted 5-0 to continue the item to allow the law department to provide a legal opinion explaining why the College Hill legal case decision does not apply for this consideration.

### **List of Exhibits**

- Exhibit A Cease and Desist Order, dated September 3, 2009 for property at 10 Boyden Street, signed by John Nordberg and John Kelly.
- Exhibit B Administrative Appeal Application, with attached memorandum of December 13, 2013 from Blake J. Rubin, attorney representing himself and the other petitioners.
- Exhibit C Massachusetts Cases ([www.masscases.com](http://www.masscases.com)), City of Worcester v. Anthony Bonaventura and others, 56 Mass. App. Ct. 166. Decided September 30, 2002. Retrieved January 29, 2014.

Exhibit D Massachusetts Cases ([www.masscases.com](http://www.masscases.com)), City of Worcester v. College Hill Properties, LLC and another, 465 Mass 134. Decided May 15, 2013. Retrieved January 30, 2014.

**APPROVAL OF THE MINUTES**

Upon a motion by Mr. Loew and seconded by Mr. Michajlow the Board voted 3-0-2 (as Mr. Wanat and Mr. Haddon were not part of the Board then) to approve the minutes from March 26, 2012.

**OTHER BUSINESS**

The Board signed decisions for: 61 Lafayette Street (ZB-2013-046); 5 Newton Avenue (ZB-2013-057); and 60 & 72 Shrewsbury Street & 12 Leo Turo Way (ZB-2013-063).

**ADJOURNMENT**

Upon a motion by Mr. Haddon and seconded by Mr. Wanat the Board voted 5-0 to adjourn the meeting at 8:31 P.M.