

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

November 10, 2014

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

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

Zoning Board Members Absent: None

Staff Present: Stephen Rolle, Division of Planning and Regulatory Services
Domenica Tatasciore, Division of Planning and Regulatory Services
Michelle Smith, Division of Planning and Regulatory Services
David Horne, Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

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

1. 10 Pullman Street (MBL 23-01A-00007) (ZB-2014-046)

Special Permit: To allow a Salvage Recycling Operation in a MG-0.5 (Manufacturing, General) zone (Article IV, Section 2, Table 4.1, Manufacturing Use #8)
Petitioners: Materials Management Group
Present Use: A ~120,000 SF warehouse structure and associated off street parking and loading
Zone Designation: MG-0.5 (Manufacturing, General)
Petition Purpose: To use a ~30,000 SF portion of the property as a recycling center operation
Public Hearing Deadline: 12/10/14

Ms. Tatasciore stated that the applicant requested a Leave to Withdraw Without Prejudice and a full fee refund because they are now pursuing the adjacent property at 6 Pullman Street.

Upon a motion by Mr. Valeri and seconded by Mr. Michajlow, the Board voted 6-0 to grant the Leave to Withdraw Without Prejudice and refund the application fee minus the cost of the legal ad.

2. 32 Burncoat Street (MBL 09-037-0016A) (ZB-2014-047)

Special Permit: Extension, Alteration, or Change of a Privileged Pre-existing Nonconforming Structure (Article XVI, Section 4)
Special Permit: To allow a Multi-Family Dwelling, Low-Rise, Use in a RL-7 (Residential, Limited) zone (Article IV, Section 2, Table 4.1, Residential Use #11)
Petitioners: Edward J. Bradley, III and Renee A. Mikitarian-Bradley
Present Use: A three-family detached dwelling and associated off-street parking
Zone Designation: RL-7 (Residential, Limited)
Petition Purpose: To add an additional dwelling unit to the existing structure and construct a three-car detached garage with another dwelling unit above, to re-configure the parking layout in order to provide 10 off-street parking spaces, along with additional site improvements

Public Hearing Deadline: 12/11/14

Attorney Steven Madaus stated that they are requesting a Leave to Withdraw Without Prejudice because the proposal they applied for is not allowed by the Zoning Ordinance.

Upon a motion by Mr. Michajlow and seconded by Mr. Wanat, the Board voted 6-0 to grant the Leave to Withdraw Without Prejudice and refund the application fee.

List of Exhibits

- Exhibit A: Special Permit Application; received October 7, 2014; prepared by Edward J. Bradley III & Renee A. Mikitarian-Bradley.
- Exhibit B: 32 Burncoat Street Plan; dated September 29, 2014; prepared by Finlay Engineering Services.
- Exhibit C: Rendering; dated October 21, 2014; prepared by SoftPlan Architectural Design Software.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 32 Burncoat Street - Special Permits; dated November 5, 2014.

NEW BUSINESS

3. 10 Kelley Street (MBL 39-002-00120) (ZB-2014-045)

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

Variance: For relief of 15.10 ft. from the 20 ft. front-yard setback requirement for a single-family detached dwelling in an RS-7 (Residence, Single-family) zoning district (Article IV, Section 4, Table 4.2)

Petitioners: Joshua and Laura Berg

Present Use: A single-family detached dwelling

Zone Designation: RS-7 (Residential, Single-family) and within the WR (GP-3) Overlay District (Water Resources Protection)

Petition Purpose: To enclose the existing front porch and construct a new landing and stairwell encroaching further into the front-yard setback at property located at 10 Kelley Street. The present structure is existing non-conforming with regards to the front-yard setback (20 ft. required, 9.1 ft. provided)

Public Hearing Deadline: 12/06/14; Constructive Grant Deadline: 1/10/15

Josh Berg stated that the house is non-conforming with regards to the front yard setback, (12.2 ft. existing, 20 ft. required). He seeks to extend a new set of stairs and associated landing, which is required per building code, into this front-yard setback, exacerbating the pre-existing nonconformity further (4.9 ft. proposed). He stated that he wants to enclose the existing open air porch into a three-season porch within the porch's existing footprint.

Mr. Rolle stated that the Board has previously required a variance in situations where a privileged, pre-existing dimensional nonconformity was to be increased or intensified. Review of recent case law interpretations of Massachusetts General Law Chapter 40A confirms that specifically for one and two family residential uses, a special permit is the appropriate consideration. Only an increase or intensification of a pre-existing nonconformity may be granted by special permit; introduction of a new nonconformity requires a variance. In considering whether to grant a special permit, the Board must find that allowing the extension of the existing nonconformity is not substantially more detrimental to the neighborhood. The Board must determine if this is an intensification of the existing non-conformity and if so, then the variance is not needed.

Mr. Michajlow stated that he considered it intensification of the non-conformity.

Mr. Loew was identified as the voting alternate.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0-1 (Mr. Haddon abstained) To approve the requested Special Permit for an Extension, Alteration, or Change of a Privileged Pre-existing Nonconforming Structure having found that said extension is an intensification of an existing non-conformity and will not be substantially more detrimental to the neighborhood with the conditions in staff's memo, as follows:

1. That the structure be constructed in substantial accordance with the final approved plot plan, dated September 18, 2014.
2. That the existing Japanese Maple Tree, located in the front-yard setback, remain and be protected (with no disturbance within the drip line) during and after construction;

3. That the applicant provide 6 copies of to-scale plan of land showing the following revisions to the Division of Planning and Regulatory Services prior to issuance of a building permit:
 - a. That each side of the driveway remains as green space and not be paved and be labeled as such.
 - b. That any proposed tree species shall be of a non-Asian Longhorned Beetle susceptible species;
 - c. That the two required parking spaces shall be located outside of the front-yard setback and shown on revised plans;

The Board approved the petitioner's request for Leave to Withdraw Without Prejudice for the requested Variance for relief of 15.10 ft. from the front-yard setback requirement and approved the waiver for labeling abutters within 300 ft.

List of Exhibits:

- Exhibit A: 10 Kelley Street Special Permit & Variance Application; received 10/2/2014; prepared by Joshua & Laura Berg.
- Exhibit B: 10 Kelley Street Plan; dated 9/18/2014; prepared by Ducharme & Dillis Civil Design Group, Inc.
- Exhibit C: Photos of 10 Kelley Street facade; undated; received 10/2/2014; prepared by Joshua & Laura Berg.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 10 Kelley Street Special Permit & Variance; dated 11/5/2014.

4. 474 Grove Street (MBL 20-025-0002B) (ZB-2014-048)

- Special Permit: Extension, Alteration, or Change of a Privileged Pre-existing Nonconforming Use to a Use of a Similar Nature (Article XVI, Section 4)
- Petitioner: James Chacharone
- Present Use: A ~5,800 SF Funeral Home and associated ~50 off-street accessory parking spaces
- Zone Designation: RL-7 (Residence, Limited)
- Petition Purpose: To change the existing nonconforming use of the property (Funeral Home - Business Use #9) to a different non-conforming use (General and Professional Office uses - Business Uses #18 & #19)
- Public Hearing Deadline: 12/11/14

Patricia Gates, representing the applicant, introduced the applicant's son, Mel Chacharone, who handles the real estate matters of the business. Ms. Gates stated that they are seeking to use the existing ~5,800 SF funeral home (1st Floor and basement) as general and professional offices (two

non-conforming uses of a similar nature) and retain the existing 50+ space parking lot configuration and site layout. They are proposing a dumpster in an area farthest away from any residential structures. They are amenable to the suggested conditions of approval.

Ms. Gates stated that they had a neighborhood meeting and no one expressed concerns with the petition. She also requested a waiver for labeling abutters within 300 ft.

Ms. Smith pointed out that one of the conditions of approval is that circulation shall be one-way on site with signage directing such traffic flow to be installed prior to issuance of a certificate of occupancy.

Ms. Gates stated that the parking space requirement is only 20 spaces and they have 50 spaces so they have plenty of space for snow storage. The lighting will not change and is already conditioned, due to a previously approved Variance, that it not flood abutting properties.

Mr. Haddon was identified as the voting alternate.

Richard Madaio, 480 Grove Street, stated that this proposal will add to their traffic issues.

Kathleen Freeman, 6 Judson Road, stated that she would not want to see the grassed buffer abutting the condos disappear.

Ms. Smith stated that was part of the conditions of approval for the previously approved variance and the Board can choose to reinforce those conditions in their decision.

Mr. Michajlow stated that he did not see an increase in traffic with this petition because a funeral home has a lot of cars during wake hours.

Upon a motion by Mr. Wanat and seconded by Mr. Michajlow, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Valeri, the Board voted 5-0-1 (Mr. Loew abstained) to approve the findings of fact as modified by staff and the Special Permit with the conditions in the memo, as follows:

- 1) That the site be operated in substantial accordance with the site plans, dated April 27, 1960.
- 2) That a minimum 6 ft. stockade fence be provided to screen any proposed dumpster and that the dumpster location be located out of view from Grove Street;
- 3) That any proposed trees be of the non- Asian Longhorned Beetle susceptible species;
- 4) That all deliveries and servicing of any dumpster(s) on site take place between 8 a.m. and 6 p.m. Monday through Saturday.
- 5) That circulation shall be one-way on site with signage directing such traffic flow to be installed prior to issuance of a certificate of occupancy;

- 6) That the parking area be re-stripped and that circulation be demarcated onsite;
- 7) That the three required handicap parking spaces be sited, striped, and placarded in accordance with ADA and AAB requirements; and
- 8) That all existing vegetation shall remain.

The Board also conditioned that all previous Conditions of Approval for the original Variance are reinforced with the exception of all conditions pertaining to the funeral home/Caswell King. The board further conditioned that the dumpster be located in the northeast corner of the parking area and to approve the waiver request for labeling abutters within 300 ft.

List of Exhibits

- Exhibit A: 474 Grove Street – Special Permit Application; received 10/7/2014; prepared by James Chacharone.
- Exhibit B: 474 Grove Street – Special Permit Plan; dated 4/27/1960; prepared by Palmer and Schoettley Associates.
- Exhibit C: Photos; undated; received 10/7/2014; prepared by James Chacharone.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 474 Grove Street – Special Permit; dated 11/5/2014.
- Exhibit E: Variance Decision for Use of property as a Funeral Undertaking Establishment; Registry of Deeds Book 4087, Pages 59-60; dated 1/21/1960.

5. 28 Wigwam Avenue - Tracts 1 & 2 (MBL 17-013-23+24) (ZB-2013-054 A & B)

Tract 1:

- Variance: Relief of 3000-sf from the 8000-sf lot area dimensional requirement for a proposed two-family detached dwelling
- Variance: Relief of 20-ft from the 70-ft frontage dimensional requirement for a proposed two-family detached dwelling

Tract 2:

- Variance: Relief of 3000-ft from the 8000-ft lot area dimensional requirement for an existing two-family detached dwelling
- Variance: Relief of 20-ft from the 20-ft rear yard setback dimensional requirement for an existing two-family detached dwelling
- Variance: Relief of 5 ft. from the front yard setback dimensional requirement for an existing two-family detached dwelling

- Petitioners: Marco V. Charamella
- Present Use: A vacant lot on Tract 1 and a two-family detached dwelling on Tract 2
- Zone Designation: RL-7 (Residence, Limited)
- Petition Purpose: To construct a two-family detached dwelling with 2 attached garages at 28 Wigwam Avenue – Tract 1. On February 3, 2014 the Board voted 4-0 to

approve the above-listed relief with conditions and a decision was filed with the City Clerk's office on February 25, 2014. The petitioner seeks clarification regarding which conditions specified in the Board's decision apply to each individual tract.

Michelle Smith stated that the property at 28 Wigwam Ave is comprised of two tracts, the conditions were not specific to the tract of land it applied to and the petitioner is seeking to mortgage a portion of the property and the bank had a problem with the fact that the conditions were not specific to the tract that it pertained to. There was also an error in the decision and this will serve as a scrivener's error to fix the decision.

Mr. Michajlow left the meeting.

Upon a motion by Mr. Loew and seconded by Mr. Valeri, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Wanat and seconded by Mr. Loew, the Board voted 4-0-2 (Mr. Michajlow and Mr. Valeri abstained) to amend the decision per the scrivener's error to clarify that conditions were specific to Tract 1, with none being for tract 2, and to sign scriveners error and clarification decision.

APPROVAL OF THE MINUTES

Upon a motion by Mr. Abramoff and seconded by Mr. Wanat, the Board voted 4-0-1 (Mr. Valeri abstained) to approve the minutes for May 19, 2014 and June 16, 2014.

6. Communications – None

7. Signing of Decisions from prior meetings

The Board signed the following decisions:

- 586 Grafton Street (LTW)
- 304-8 Park Avenue (SPs)
- 113-117 Highland Street (SPECNAs & Vs)
- 22 Sherer Trail (SP & V's)
- 50 Winneconnett Road (SP)
- 28 Wigwam Ave. – Scriveners & clarification

ADJOURNMENT

Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 5-0 to adjourn the meeting at 6:30 p.m.