

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

August 29, 2016

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

Zoning Board Members Present: Lawrence Abramoff, Chair
Vadim Michajlow, Vice-Chair
George Valeri
Joseph Wanat
Robert Haddon, Alternate Member
Thomas Dillon, Alternate Member

Zoning Board Members Absent: Timothy Loew

Staff Present: Stephen Rolle, Division of Planning and Regulatory Services
Domenica Tatasciore, Division of Planning and Regulatory Services
Michael Antonellis, Division of Planning and Regulatory Services
John Kelly, Department of Inspectional Services
David Horne, Department of Inspectional Services

Call to Order – 5:30 pm

Approval of the Minutes – Upon a motion by Mr. Valeri and seconded by Mr. Wanat, the board voted 5-0 to approve the minutes for August 1, 2016.

Requests for Continuances, Extensions of Time, Postponements, Withdrawals

1. 124-126 Chandler Street (ZB-2016-032)

Administrative Appeal: Of the denial of a building permit application issued by the Commissioner of the Department of Inspectional Services (Article II, Section 6, A, 1) for a proposed change in use from a medical supply warehouse into a tire sales & repair use.

Petitioner: Gilberto Ledesma

Present Use: Presently on the premises is a medical supply warehouse.

Zone Designation: BG-3.0 (Business, General) & Commercial Corridors Overlay District (CCOD-E)

Petition Purpose: The petitioner is appealing the denial of a building permit application issued by the Commissioner of the Department of Inspectional Services on June 14, 2016 asserting that a proposed change in use from a medical supply warehouse to a tire sales and repair use is not allowed in the Commercial Corridors Overlay District.

Public Hearing Deadline: 9/17/16

Attorney Jonathan Finkelstein asked that the board grant a postponement to October 17th.

Upon a motion by Mr. Valeri and seconded by Mr. Michajlow, the board voted 5-0 to postpone the hearing to October 17, 2016.

List of Exhibits

- Exhibit A: Administrative Appeal Application; received July 14, 2016; prepared by Attorney Jonathan Finklestein.
- Exhibit B: Building Permit Denial Letter, dated June 14, 2016 for property at 124-126 Chandler Street, signed by Bruce LaBoffa and John Kelly (included in application materials).
- Exhibit C: Planning Board Decision and related exhibits, dated February 3, 2016.
- Exhibit D: Committee on Economic Development notice of vote; dated March 22, 2016.
- Exhibit E: City Council notice of vote; dated April 12, 2016.
- Exhibit F: MACRIS listing for 126 Chandler Street

2. 70 (aka 80) Gold Star Boulevard & 32 (aka 36) Millbrook Street (ZB-2016-037)

Amendment to Special Permit: To allow for food-service drive-through in a MG-2.0 (Manufacturing, General) zone (Article IV, Section 2, Table 4.1, Business Use #6)

Amendment to Special Permit: To modify parking, loading requirements, dimensional requirements, layout, and/or the number of required spaces and also landscaping requirements (Article IV, Section 7)

Petitioner: Chick-fil-A, Inc.

Present Use: Presently on the property is a ~6,000 SF retail building with ancillary parking and automotive sales

Zone Designation: MG-2.0 (Manufacturing, General)

Petition Purpose: The petitioner now seeks to amend the approval in order to re-configure utilities and add a cash-station along with associated site improvements.

Public Hearing Deadline: 9/22/16

Upon a motion by Mr. Valeri and seconded by Mr. Michajlow, the board voted 5-0 to postpone the hearing to September 19, 2016.

List of Exhibits

- Exhibit A: Special Permit Amendment Application; received July 19, 2016; prepared by Attorney Joshua Lee Smith.
- Exhibit B: Site Plan; dated June 23, 2016; prepared by Bohler Engineering.
- Exhibit C: ZBA Special Permit Decision; signed April 11, 2016 (included with application materials).
- Exhibit D: E-mail from Joshua Lee Smith; dated August 18, 2018.
- Exhibit E: Fire Department Comments; received August 2, 2016.

Unfinished Business

3. 2 (aka Lot 25) and 4 (aka Lot 24) Hillcroft Avenue (ZB-2016-029)

2 (aka Lot 25)

Variance: For relief of 1,000 SF from the lot area dimensional requirement for a single-family detached dwelling in an RL-7 Zoning District (Article IV, Section 4, Table 4.2)

Variance: For relief of 5 ft. from the frontage dimensional requirement for a single-family detached dwelling in an RL-7 Zoning District (Article IV, Section 4, Table 4.2)

Variance: For relief of 2.1 ft. from the front-yard setback dimensional requirement for a single-family detached dwelling in an RL-7 Zoning District (Article IV, Section 4, Table 4.2)

4 (aka Lot 24)

Variance: For relief of 1,000 SF from the lot area dimensional requirement for a single-family detached dwelling in an RL-7 Zoning District (Article IV, Section 4, Table 4.2)

Variance: For relief of 5 ft. from the frontage dimensional requirement for a single-family detached dwelling in an RL-7 Zoning District (Article IV, Section 4, Table 4.2)

Petitioner: Van Nguyen

Present Use: Presently located on the premises at 2 (aka Lot 25) Hillcroft Avenue is a single-family detached dwelling and located on Lot 24 Hillcroft Avenue is a vacant lot.

Zone Designation: RL-7 (Residence, Single-Family) zoning district

Petition Purpose: The petitioner seeks to construct a single-family detached dwelling, along with associated parking, grading, and site work on the property located at part of Lot 24 Hillcroft Avenue, with no changes proposed to the existing structure at 2 (aka Lot 25) Hillcroft Avenue.

Public Hearing Deadline: 8/26/16

Constructive Grant Deadline – Variance: 9/30/16

Attorney Donald O’Neil stated that, per the Board’s request, the new rendering was devised to better suit the topography. Attorney O’Neil stated that Planning Board review is required due to the slope on the land and further explained that a two-family dwelling would be permitted by right and that two separate and distinct lots with single family homes would be more aesthetically pleasing to the neighborhood.

Mr. Antonellis stated that staff would require that the submitted rendering be in substantial accordance to the plans submitted.

Mr. Abramoff opened the hearing to the public.

Denise Healey of Burncoat Street stated concerns over the maintenance of the home and the land. Ms. Healey read from a letter submitted to the board by another neighbor, Elisabeth and Jesse Knott, see Exhibit E.

Attorney O’Neil stated that efforts have been made to appease neighbors.

Jim Healey, 240 Burncoat Street, stated concerns over the grade of the land and maintenance of the property.

Daniel Johnson, 1 Bluehill Road, is appreciative of the new design.

Mr. Michajlow stated that a single family detached would be a better fit for that neighborhood.

Mr. Kelly stated the building height in a sloped area would have to include retaining alongside the driveway to stay under the height requirement.

Mr. Dillon was appointed by the Chair to vote on the petition.

Upon a motion by Mr. Valeri and Seconded by Mr. Wanat, 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 to approve the petition with conditions of approval as noted in the staff review memo with the waiver to include labeling abutters and abutters to abutters within 300 feet of the property.

List of Exhibits

- Exhibit A: Variance Application; received June 23, 2016; prepared by Donald J. O'Neil on behalf of Van Nguyen.
- Exhibit B: Variance Plan; dated June 20, 2016; preparer by B & R Survey, Inc.
- Exhibit C: Rendering submitted August 1, 2016.
- Exhibit D: Updated rendering submitted August 29, 2016.
- Exhibit E: Letter from abutter, Elisabeth and Jesse Knott.

New Business

4. 46-56 Granite Street (ZB-2016-027)

Special Permit: Extension, alteration, or change to a privileged non-conforming structure/use (Article XVI, Section 4)

Special Permit: To modify parking, loading requirements, dimensional requirements, layout and/or the number of required spaces (Article IV, Section 7)

Petitioner: MOR Realty LLC

Present Use: Presently on the property at 46-48 Granite Street is an existing one-story commercial structure and associated off-street parking. Presently on the property at 52-56 Granite Street is a multi-family dwelling with an attached vacant commercial space and associated off-street parking.

Zone Designation: RG-5 (Residence, General) zoning district

Petition Purpose: The petitioner seeks to convert the existing commercial space at 52-56 Granite Street into an additional residential dwelling unit, along with associated site work.

Public Hearing Deadline: 8/29/16

Attorney Jonathan Finkelstein stated that the plan shows the 11 parking spaces and that the building is existing nonconforming and any alteration requires a special permit.

Mr. Rolle stated that there is no alteration to the building but only the change in use. The parking layout includes nonconformities, and by including a 5-foot buffer, it would not benefit the circulation of the parking and that there is no net change in the overall amount of parking required.

Mr. Michajlow asked for clarification of the relief.

Mr. Abramoff asked for clarification on the discrepancy between plans submitted.

Mr. Abramoff opened the hearing to the public.

On a motion by Mr. Valeri, and seconded by Mr. Wanat, the board voted 5-0 to close the hearing.

Mr. Haddon was appointed by the chair to vote.

Upon a motion by Mr. Michajlow and seconded by Mr. Valeri the board voted 5-0 to approve the petition subject to the conditions of approval as noted on the staff review memo along with the waiver of the requirement to label abutters and abutters to abutters within 300 feet of the property.

List of Exhibits:

- Exhibit A: Special Permit Application; dated June 22, 2016 and revised on August 11, 2016; prepared by Michael O'Rourke.
- Exhibit B: Site Plan; dated March 17, 2016; prepared by B&R Survey, Inc.
- Exhibit C: Comments from Fire Department; received June 29, 2016.
- Exhibit D: ZBA Special Permit Conditions of Approval & Findings of Fact; signed December 23, 1988.
- Exhibit E: ZBA Special Permit Conditions of Approval & Findings of Fact; signed July 9, 1990.
- Exhibit F: Cease & Desist Letter from ISD; dated June 23, 2009.
- Exhibit G: Planning Board Definitive Site Plan Decision; signed October 7, 2009.
- Exhibit H: Approved Definitive Site Plan; dated July 10, 2009 and revised through to October 15, 2009.

5. 86 Warner Avenue (ZB-2016-031)

- Variance:** For relief of 3,924 SF from the lot area dimensional requirement for a three-family detached dwelling in an RG-5 zoning district (Article IV, Section 4, Table 4.2)
- Variance:** For relief of 10.94 feet from the frontage dimensional requirement for a three-family detached dwelling in an RG-5 zoning district (Article IV, Section 4, Table 4.2)
- Variance:** For relief of 7 feet from the front-yard setback dimensional requirement for a three-family detached dwelling in an RG-5 zoning district (Article IV, Section 4, Table 4.2)
- Variance:** For relief of 2.8 feet from the side-yard setback dimensional requirement in an RG-5 zoning district (Article IV, Section 4, Table 4.2)
- Variance:** For relief of 6 parking spaces from the parking requirement for a three-family dwelling (Article IV, Section 4, Table 4.4)
- Petitioner:** Susan C. and John M. Foley
- Present Use:** Presently on the property is a three-family detached dwelling.

Zone Designation: RG-5 zoning district

Petition Purpose: The petitioner seeks to continue the use of the existing structure in its current state.

Public Hearing Deadline: 9/16/16

Constructive Grant Deadline – Variance: 10/21/16

Attorney Harry Kotseas stated that the merger theory has led to the need for relief before the board and he proceeded to give a history of the parcels and explained that townhouse units were built on an abutting parcel in common ownership. A new easement for the driveway needs to be revised. Variances are requested to let 86 Warner Ave be allowed to continue as it is currently used.

Ms. Tatasciore stated the relief requested and reviewed the neighborhood analysis provided.

Mr. Abramoff asked for clarification regarding the proposed and existing parking. Attorney Kotseas stated that there is no designated parking but there would be a proposed parking area on the land, not to be designated as official parking. Relief of the full 6 parking spaces is still needed.

Mr. Abramoff opened the hearing to the public. No one present to be heard.

Mr. Dillon was appointed by the chair to vote.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, 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 to approve the petition with the conditions of approval as stated in the staff review memo, striking number 2, and with the approval of the waiver of the requirement to label abutters and abutters to abutters within 300 feet.

List of Exhibits

Exhibit A: Variance Application; received July 12, 2016; prepared by Susan C and John M. Foley.

Exhibit B: Variance Plan; dated July 12, 2016; prepared by B&R Survey, Inc.

Exhibit C: ANR Plan for 86 & 84 Warner Avenue; endorsed June 14, 1954.

Exhibit D: Deed for property at 84-86 Warner Avenue; dated February 24, 1954.

Exhibit E: ANR Plan for 88-92 Warner Avenue; endorsed February 6, 2013.

Exhibit F: Letter of Opposition from Ernest F. Jost, Sr. & Carla Jost; dated August 19, 2016.

6. 45 Greenhalge Street (ZB-2016-033)

Variance: For relief of 2 feet, 8 inches from the side-yard setback dimensional requirement in an RS-7 zoning district (Article IV, Section 4, Table 4.2)

Petitioner: Audrey and Stephan Bonczyk

Present Use: Presently on the property is a three-family detached dwelling.

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

Petition Purpose: The petitioner seeks to construct an addition to the existing structure, along with associated site work.

Public Hearing Deadline: 9/21/16

Constructive Grant Deadline – Variance: 10/26/16

Steve Bonczyk presented his application to construct an addition to his home for the purposes of an attached garage. He also stated that he is considering using a cistern, underground storage container, on the property to catch stormwater. He submitted Exhibit E, showing pictures of the property.

Mr. Antonellis stated the relief requested and staff comments noted in the staff review memo.

Mr. Abramoff opened the hearing to the public

Lois Zukowski stated concerns about possible blasting for the work. Mr. Bonczyk stated that blasting is not to be expected, but may be needed.

Mr. Kelly stated that blasting would not be of concern but there are regulations in place and advised Ms. Zukowski to contact his office if a problem should arise.

Mr. Rolle suggested striking #2 from suggested conditions.

Upon a motion by Mr. Valeri and seconded by Mr. Wanat, the board voted 5-0 close the public hearing.

Mr. Haddon was appointed by the chair to vote.

Upon a motion by Mr. Michajlow and seconded by Mr. Valeri the board voted 5-0 to approve the petition with the recommended conditions of approval, striking number 2, and with the waiver of the requirement to label abutters and abutters to abutters within 300 feet of the property.

List of Exhibits

- Exhibit A: Variance Application; received July 21, 2016; prepared by Audrey and Stephan Bonczyk.
- Exhibit B: Variance Plan; dated June 1, 2016; prepared by GEO/Network Land Survey Inc.
- Exhibit C: Rendering; dated September 19, 2015; prepared by JK Development Group.
- Exhibit D: Memorandum from the City of Worcester Fire Department to the Zoning Board of Appeals; dated July 29, 2016.
- Exhibit E: Pictures submitted by the petitioner showing trees on the property.

7. 711-715 West Boylston Street (ZB-2016-034)

- Variance:** For relief of 24 parking spaces from the parking requirement for a food service/lounge/nightclub use (Article IV, Section 4, Table 4.4)
- Petitioner:** 711 West Boylston Street, LLC
- Present Use:** Presently on the premises located at 711 West Boylston Street is an accessory surface parking lot associated with a commercial structure, used as a food-service establishment, located at 715 West Boylston Street.
- Zone Designation:** ML-0.5 (Manufacturing, Limited)
- Petition Purpose:** The petitioner seeks to increase the occupancy of the existing food-service establishment.

Public Hearing Deadline: 9/21/16

Constructive Grant Deadline – Variance: 10/26/16

David Officer stated the hours and types of operation associated with the property. He informed the Board that the location is within walking distance of the neighborhood that that patrons would likely walk to the restaurant, lessening the need for parking. Mr. Officer indicated there were un-official, non-binding agreements with local businesses to help serve the restaurant’s parking needs.

Mr. Abramoff opened the hearing to the public. No one was present.

Mr. Dillon was appointed by the chair to vote.

Upon a motion by Mr. Valeri, and seconded by Mr. Wanat, 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 to approve the petition with conditions as noted in the staff review memo with additional conditions that the outside seating not displace parking or exceed 20, and that the maximum occupancy not exceed 98. The Board also approved the waiver of the requirement to label abutters and abutters to abutters within 300 feet of the property.

8. 20 (fka 40) Quinsigamond Avenue (ZB-2016-035)

Special Permit: To allow an automobile refueling station in an MG 2.0 (Manufacturing, General) zoning district (Article IV, Table 4.1., Business Use #17)

Amendment to Special Permit: To allow accessory storage of flammable liquids/gasses/explosives in a MG 2.0 (Manufacturing, General) zoning district (Article IV, Table 4.1, Manufacturing Use #1)

Amendment to Special Permit: To modify parking, loading requirements, dimensional requirements, layout and/or the number of required spaces (Article IV, Section 7)

Petitioner: Alternate Vehicle Service Group, LP (AVSGLP)

Present Use: Presently on the property is infrastructure associated with a large capacity compressed natural gas facility.

Zone Designation: MG-2.0 (Manufacturing, General)

Petition Purpose: The petitioner now seeks to amend these approvals and add an automobile refueling station (e.g. fueling dispensers, canopy, etc.) to the property, along with associated site improvements.

Public Hearing Deadline: 9/22/16

Michael Manning presented his application and stated that his clients would be commercial entities for fleet vehicles. The portion out front is for all vehicles, in the rear would be for distribution vehicles of natural gas. Mr. Manning discussed the security plan and emergency management for the property.

Mr. Abramoff asked for clarification in regards to the emergency response plan.

Mr. Rolle stated that “and any subsequent revision” to be added to the condition that mentions the emergency response plan.

Mr. Manning stated that the Belmont site is gate and fence-free. The MassDOT is the primary customer at that location which currently has no surveillance system. The new site is proposed to have much more onsite control.

Upon a motion by Mr. Valeri and Seconded by Mr. Michajlow the board voted 5-0 to close the hearing. Mr. Haddon was appointed by the chair to vote.

Upon a motion by Mr. Michajlow and seconded by Mr. Valeri, the board voted 5-0 to approve the petition with conditions of approval as noted in the staff review memo with an amendment to condition #1 to read “that the site complies fully with the updated emergency response plan and any subsequent revisions as required by the Worcester Fire Department.” The Board also approved the waiver of the requirement to label abutters and abutters to abutters within 300 feet of the property.

List of Exhibits

- Exhibit A: Special Permit Amendment Application; received July 19, 2016; prepared by Michael Manning.
- Exhibit B: Site Plan; dated August 1, 2014 and revised through to December 15, 2015; prepared by Methuen Construction.
- Exhibit C: ZBA Special Permit Decision; signed May 19, 2014.
- Exhibit D: Emergency Response Plan (ERP), Rev. B.; dated August 15, 2016; prepared by AVSG LP and iNATGAS, LLC.
- Exhibit E: Fire Department Comments; received August 18, 2016.

9. 3 Bourne Street (aka 1 Gosnold Street) (ZB-2016-036)

- Variance:** For relief of 145.31 feet from the frontage dimensional requirement for a residential dwelling in an BL-1.0 zoning district (Article IV, Section 4, Table 4.2)
- Petitioner:** Stephen A. Manzi, on behalf of 3 Bourne Street Worcester Realty Trust
- Present Use:** Presently on the premises is a multi-family dwelling and a second structure, currently used as an additional residential dwelling unit (aka 1 Gosnold Street).
- Zone Designation:** BL-1.0 (Business, Limited)
- Petition Purpose:** The petitioner seeks to continue the current residential use of the property.
- Public Hearing Deadline:** 9/22/16
- Constructive Grant Deadline – Variance:** 10/27/16

Attorney John Murphy described the property in detail and stated that it has been used continuously as a residential unit for the past 30 years. The stand-alone dwelling was previously granted a permit to operate as a restaurant. The property has a significant amount of frontage but only the Bourne Street frontage is available.

Attorney Murphy stated there are no plans to alter the structure. Mr. Murphy requested the waiver of the 300 feet requirement.

Mr. Abramoff opened the hearing to the public. No one is present

Upon a motion by Mr. Valeri and seconded Mr. Wanat the board voted 5-0 to close the hearing.

Mr. Dillon was appointed to vote by the chair.

Upon a motion by Mr. Michajlow and seconded by Mr. Valeri, the board voted 5-0 to approve the petition subject to #2 of the recommended conditions of approval as noted in the staff review memo including a waiver to labelling abutters and abutters to abutters within 300 feet of the property.

List of Exhibits

- Exhibit A: Variance Application; received July 19, 2016; prepared by Stephen A. Manzi, Trustee of 3 Bourne Street Worcester Realty Trust.
- Exhibit B: Variance Plan; undated; preparer unknown.
- Exhibit C: ZBA Special Permit Decision; approved November 19, 1980 & pertinent section from the April 29, 1980 City of Worcester Zoning Ordinance.
- Exhibit D: Memorandum from the City of Worcester Fire Department to the Zoning Board of Appeals; dated July 29, 2016.
- Exhibit E: Cease and Desist Letter, Dated October 20, 2014.

Other Business

10. Communications

- a. E-mail from Patricia Burke, received August 2, 2016, re: Legal Opinion on Oncor Smart Meter Fires.
- b. E-mail from Patricia Burke, received August 2, 2016, re: National Grid Smart Meters and Oncor Decisions re: Smart Meter Fire Concerns.
- c. E-mail from Patricia Burke, received August 3, 2016, re: Grid Modernization

11. Signing of Decisions from prior meetings

Adjournment

The board adjourned at 7:22pm