

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

**January 9, 2012**

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

**Zoning Board Members Present:**

Andrew Freilich, Chair  
William Bilotta  
Vadim Michajlow  
Timothy Loew

**Staff Present:**

Joel Fontane, Division of Planning & Regulatory Services  
Luba Zhaurova, Division of Planning & Regulatory  
Services  
John Kelly, Department of Inspectional Services

**REGULAR MEETING (5:30 PM)**

**CALL TO ORDER**

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

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

1. **37 Fruit Street (aka 59 William Street) (ZB-2011-063):** The petitioner did not attend the meeting. Upon a motion Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 4-0 to postpone the meeting to January 30, 2012.
2. **0 (aka 13) Woodcliffe Avenue (ZB-2011-065):** Attn. Finkelstein, representative for the petition, requested a postponement of the hearing in order for the petition to be heard by a larger member Board. Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 4-0 to postpone the meeting to January 30, 2012.
3. **1200 & 1204 Main Street (ZB-2011-060):** Mr. Fontane indicated that staff did not properly re-advertise the petition and that he is requesting a postponement of the hearing to January 30, 2012. Upon a motion by Bilotta and seconded by Mr. Loew, the Board voted 4-0 to postpone the hearing and extend the public hearing deadline to January 30, 2012.

**UNFINISHED BUSINESS**

4. **10 Claremont Street (ZB-2011-058):** Son Van Nguyen, petitioner, submitted revised plans (Exhibit H) and revised third floor plans (Exhibit I) in response to staff's comments. Mr. Fontane stated that because a lodging house is a use different from 1, 2 or 3-family

residential dwelling uses, it must comply with different set of parking and landscaping requirements. Therefore, no backing out of the driveway is allowed and a 5-ft landscaping buffer along the entire length of the driveway is required. He stated that it appears the revised plans do not comply with the landscaping requirements, and suggested that the petitioner applies for relief of landscaping buffer requirements as the site appears too tight to accommodate the proposed parking and a 5-ft buffer along the entire length of the driveway. Mr. Fontane stated that he believes the revised plan did not demonstrate that there was sufficient width for a car to bypass the first parking space. He stated that the entire parking area on the driveway needed to be a minimum 16-ft wide. Mr. Fontane stated that the revised 3<sup>rd</sup> floor plans now show 2 bedrooms, instead of previously shown 3, thus demonstrating that 8, and not 9, bedrooms are proposed to be provided in the building. Mr. Fontane asked the applicant about his plans for a trash dumpster or receptacles.

Mr. Kelly stated that revised floor plans comply with the Building Code. He stated that it appears that the staircases and the door of the mudroom in the rear of the building may need to be removed to accommodate a proposed parking space. Mr. Nguyen stated that there is enough space to accommodate the stairs and the parking space and that there are two more egresses in the building. Mr. Kelly stated that the proposed plans show a better flow of vehicles on site. He stated that the petitioner would need to request permission from the DPW to construct a new curb cut off of Silver Street.

Chair Freilich was doubtful that the revised plans show enough space for one car to bypass a vehicle parked at the first parking space. Mr. Fontane concurred, and stated that parking standards indicate that a driveway should be minimum 16-ft for that to happen. He stated that with relief of the required landscaping buffer that might be feasible. Mr. Nguyen stated that he was not aware that 5-ft landscaped buffer is required along the entire length of the driveway, but that he can provide that.

Mr. Loew asked if the petitioner is proposing a dumpster on site. Mr. Nguyen said no, given site constraints, and stated that he will have trash receptacles on site. Mr. Fontane stated that due to a change of use, it is his understanding that the owner will need to contract with a private waste hauler.

Mr. Freilich stated that he wanted to see revised plan showing existing and proposed landscape buffers. Mr. Bilotta stated that he doesn't feel comfortable voting on the petition without all the information.

Mr. Kelly stated that the housing inspector inspected the property and reported that 3 people are currently living on the premises, so "the situation is remedied for now". He stated that prior to that, 8 people lived on premises.

Gregory Jararas, property owner of the abutting 10 Silver Street parcel with a 6 dwelling unit residential dwelling, submitted a photo-package (Exhibit J). He was concerned with a retaining wall along his property line, trash removal, snow removal, and whether or not there would be an on-site property manager. He stated that the driveway is too narrow to accommodate parking and snow plowing and stated that he believed his property will be encroached upon.

Nancy Hewitt of 8 Claremont Street and a President of the Condominium Association re-stated her concern (Exhibit E) with no proposed management on-site. She stated that she has not yet seen the last plan revision submitted by the petitioner this evening so she cannot comment on that.

Mr. Nguyen stated that he will address snow storage and removal in the subsequent revised plan. He stated that more than 3 unrelated people lived in the house prior to him purchasing it. He stated that depending on finances, he is planning on having an on-site manager. Mr. Nguyen stated that he submitted Lodging House rules (Exhibit G) that are very similar to the rules approved for 5 Claremont Street project.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 4-0 to continue the hearing to February 13, 2012 to allow the applicant sufficient time to apply for a Special Permit to partially waive landscaping requirement for off-street parking areas and to hear two Special Permits contemporaneously.

#### List of Exhibits:

- Exhibit A: Special Permit Application; received October 18, 2011; prepared by Son Van Nguyen.
- Exhibit B: Special Permit Plan; dated March 4, 2011, revised December 1, 2011 and January 6, 2012; prepared by Robert D. O'Neil Jr., R.P.L.S.
- Exhibit C: Event Log for 10 Claremont Street for the time period of 1/1/2011-11/10/2011; Department of Inspectional Services; received 11/10/2011.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals, re: 10 Claremont Street – Special Permit; dated November 17, 2011, revised January 5, 2012.
- Exhibit E: Letter of Opposition from Nancy A. Hewitt on November 21, 2011.
- Exhibit F: Floor plans for 10 Claremont Street; prepared by Acropolis Design Consultants; dated 12/15/2011.
- Exhibit G: 10 Claremont Street House Rules, received January 4, 2012.
- Exhibit H: Special Permit Plan; dated March 4, 2011, revised January 6, 2012; prepared by Robert D. O'Neil Jr., R.P.L.S.
- Exhibit I: Floor plans for 10 Claremont Street; prepared by Acropolis Design Consultants; dated 12/15/2011; as amended.
- Exhibit J: A photo-package submitted by Gregory Jararas at the 1/9/2012 ZBA meeting.

#### **NEW BUSINESS**

5. **37 (aka 49) Pleasant Valley Drive (ZB-2011-062):** Attorney Michal Dolan, of Brown Rudnick LLP, representative for New Cingular Wireless, PCS, LLC by AT&T Mobility Corporation, stated that the petitioner is seeking to add the following to the roof of the building: 3 panel antennas with 6 radio heads and 1 surge arrestor, with antennas, connected to an equipment shelter located at the base of the building. He stated that at the last meeting, he requested to postpone the hearing in order to have sufficient time to provide fiberglass screening for the proposed antennas on a top of the penthouse. Chair Freilich stated that he appreciated the applicant considering antennas' "clutter" as an issue and addressing it. He asked if AT&T is the only provider on site. Mr. Dolan stated that AT&T is the only provider on the top of the penthouse, but not the only one on the roof of the building. Chair Freilich

asked if the owner of the building was involved in the decision. Mr. Dolan stated that the owner was amenable to the applicant's initiative to provide screening. Chair Freilich stated that a standard condition of approval of paint matching is not applicable in this case. Mr. Dolan stated that color of the proposed screening will match the concrete of the building.

Chair Freilich commended the applicant on providing screening and stated that the type of screening provided is what the Board is looking for in terms of reducing cluttered look of some buildings with respect to proliferation of wireless facilities.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 4-0 to approve the requested Special Permit: Expansion or change of pre-existing non-conforming use and structure (a Personal Wireless Service Facility in a RG-5 zoning district) with the following conditions:

- That only authorized personnel are allowed onto the roof and public access is prohibited;
- That notice signs are posted at the roof access and at the installation point of all existing and proposed PWSF installations;
- That the structure is constructed in substantial accordance with the final approved plans submitted and the photo simulation package on file with the City of Worcester;
- **Cost of decommissioning:** That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;
- **Post-installation measurement of RFP:** That post-installation measurements of the total Radio Frequency Radiation emitted by all PWSF on the building and top floor of the building below the antennae and at all public access points are taken by a certified RF engineer; that results of these measurements demonstrate compliance with the Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy.
- **Post-installation measurement of sound:** That post-installation measurements of the noise emitted by all PWSF on the building are taken by a certified acoustical engineer; that results of these measurements demonstrate compliance with the noise standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy.

At a meeting of the Board on January 9, 2012, and on motion duly made and seconded, it was voted 4-0 by Board members Andrew Freilich, William Bilotta, Vadim Michajlow, and Timothy Loew to approve the requested the waiver from the following application requirements:

- Vicinity Plan: Vegetative cover on the subject property and immediately abutting adjacent properties. (Article IV, Section 12 (D)(7)(d)(iii)(aa))
- City-wide map showing the other existing Personal Wireless Service Facilities in the City and outside the City within one mile of its corporate limits. (Article IV, Section 12 (D)(7)(d)(ii))
- Design Filing Requirements: Landscape plan including existing trees and shrubs and those proposed to be added, identified by size of specimen at installation and species. (Article IV, Section 12 (D)(7)(d)(iv)(ff))
- Design Filing Requirements: Within 30 days of the pre-application conference, or within 21 days of filing an application for a Special Permit, the applicant shall arrange for a balloon or crane test at the proposed site to illustrate the height of the proposed Personal Wireless Service Facility. The date, time and location of such test shall be advertised in a newspaper of general circulation in the City at least 14 days, but not more than 21 days prior to the test. (Article IV, Section 12 (D)(7)(d)(iv)(gg)).
- Radio Frequency Radiation (RFR) Filing Requirements: The applicant shall provide a statement listing the existing and maximum future projected measurements of RFR from the proposed Personal Wireless Service Facility (Article IV, Section 12 (D)(7)(d)(vi)).

List of Exhibits:

- Exhibit A: Special Permit Application – 49 Pleasant Valley Drive; received November 9, 2011; prepared by AT&T, revised January 3, 2012.
- Exhibit B: Special Permit Plan, 49 Pleasant Valley Drive; dated August 5, 2011; prepared by Vertical Resources & SAI Communications, revised December 30, 2011 to include fiberglass screening wall.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; 37 Pleasant Valley Drive (aka 49 Pleasant Valley Drive); dated January 3, 2012.

6. **28 North Worcester Avenue (ZB-2011-064):** Attorney Diane Lorraine, representative for Victor B. Lawson, petitioner, stated that the petitioner has constructed a carport attached to the westerly side of the dwelling and is retroactively seeking relief from the side yard setback dimensional requirement. She stated that the petitioner thought he did not need permits and that he did not do the work maliciously. She stated that a black chain-linked fence has separated 28 and 36 North Worcester Avenue parcels for 40 years. She stated that the petitioner will work with the City’s inspector, David Horne, to see if the carport is “structurally correct”. Attorney Lorraine stated that she believed the carport was aesthetically pleasing and that it was used by the petitioner’s co-habitants to facilitate her egress from the house to the car. She stated that there was nowhere else on the lot where a carport could be placed.

Chair Freilich asked if the petitioner hired a licensed contractor to contract a carport. Attorney Lorraine stated that the contractor was not licensed, that the petitioner “is going after him”, and that his name was Ron Piers out of Sturbridge.

Mr. Fontane listed by-right alternatives to the petition:

- 1) Constructing an 8-ft wide *attached* carport (instead of 13-ft wide);
- 2) Installing an extended awning over the side entrance;
- 3) Constructing a ~10-ft wide *detached* carport on the side of the building (for which a 5-ft setback would be required)
- 4) Constructing a detached or attached carport in the rear of the property, though that would necessitate an increase in the impervious surface.

Suzanne Vantre of 36 North Worcester Avenue, an abutter, was opposed to the Variance and stated that she has lived in the house all her life, and that the carport is too close to her property. She stated that water runoff from the carport's roof is eroding soil on her property, that she can see the carport roof from the 2<sup>nd</sup> floor of her house, and that her property has been negatively affected by this expansion. Ms. Vantre stated that the carport is 32-ft long and is constructed for 1 car.

Chair Freilich stated that he did not feel that the retroactive relief being sought was a direct result of negligence by the owner and suggested conditions of approval dealing with water erosion prevention and additional screening between the two (2) properties.

David Vantre of 36 North Worcester Avenue, an abutter, stated his opposition to the petition and stated that he wants the carport to comply with the code and requested that the 4-ft chain-link fence separating the 2 properties is replaced with a 6-ft stockade fence. Ms. Vantre added that "at the very least, the carport should be big enough to house 1 car and not be 32-ft long."

Mr. Fontane stated that a stand-alone structure would need to be set-back minimum 5-ft and can be as high as 15-ft high, ~10-ft wide and with the length maximum depending on the size of the lot.

Attorney Lorraine stated that if the carport is to be narrower to be conforming with the side yard setback requirement, then the concrete steps would need to be cut, which would constitute hardship.

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

The Board discussed conditions of approval and re-opened the public hearing. Mr. Bilotta suggested that the gutters from the carport are channeled away from the abutter's property and that the roof is swept regularly of debris. Mr. Loew suggested installation of lattice with live plants for the side of the carport to augment a visual buffer between the two properties.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 4-0 to approve the requested Variance for relief of 5-ft from the 8-ft side yard setback dimensional requirement with the following conditions of approval:

- 1) That a landscape buffer consisting of densely planted shrubs (arbor vitae, hydrangea, forsythia) along the property line separating 28 and 36 North Worcester Avenue parcels is maintained and augmented to buffer the abutting property from the expansion;
- 2) That the carport's gutters channel water away from the side property line;
- 3) That the carport's roof is regularly swept;

- 4) That the petitioner install lattice screening with live plants on the side of the carport facing the abutting 36 North Worcester Avenue property.

List of Exhibits:

- Exhibit A: Variance Application; received 11/28/2011; prepared by Victor B. Lawson.
- Exhibit B: Variance Plan; dated 11/14/2011; prepared by PN Associates, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 28 North Worcester Avenue - Variance; dated 01/04/2012.
- Exhibit D: Cease or Desist Order issued by David C. Horne of Department of Inspectional Services to Mr. Bradford V. Lawson for 28 North Worcester Avenue; dated November 8, 2011.
- Exhibit E: A Letter of Opposition from Suzanne and David Vantre; received January 4, 2012.

**APPROVAL OF THE MINUTES**

Approval of the minutes was held.

**OTHER BUSINESS**

**Adjournment:** Chair Abramoff adjourned the meeting at 7:26 pm.