

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

November 4, 2013

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present: Vadim Michajlow
Joseph Wanat
Timothy Loew
Robert Haddon

Zoning Board Members Absent: Lawrence Abramoff

Staff Present: Luba Zhaurova, Division of Planning & Regulatory Services
Marlyn Feliciano, Division of Planning & Regulatory Services
Michelle Smith, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

Board Site Views

CALL TO ORDER

Mr. Michajlow called the meeting to order at 5:33 p.m.

REQUESTS FOR CONTINUANCES, POSTPONEMENTS, WITHDRAWALS

Mr. Michajlow stated to the petitioners that there were only 4 board members in attendance and therefore decisions had to be unanimous. He asked if any of the petitioners would like to postpone the hearing of their petition so that it could be heard by 5 board members at the next meeting.

No petitioners requested a postponement.

New Business

1. 205 Burncoat Street (ZB-2013-045)

Variance: Relief of 6-ft from the 15-ft height dimensional requirement for a detached accessory structure
Petitioner: David Francis Reed
Present Use: ~2,700 single-family dwelling and ~360 SF detached garage
Zone Designation: RS-7 (Residence, Single Family)
Petition Purpose: Demolish the existing garage and construct a 945 SF garage in its place; the new structure is proposed to be 21-ft in height and will be located in the rear of the property

Mr. Reed explained to the commission that he needs a variance to gain relief from the 15 foot height limit on garages. He requested an extra 6 feet in height for the roof he is proposing for his garage renovation. Mr. Reed stated that he intends to build a gambrel style roof on his garage to match the roof on his house and that this style of roof requires the extra height because he has already built the walls to 11ft. Mr. reed stated that he plans to use the garage to house his vehicles and for storage.

Ms. Zhaurova stated that when the application was originally submitted it was requesting allowance for a dwelling unit above the garage; however, the applicant changed his mind. Ms. Zhaurova further stated that the proposed garage is three times the footprint of the existing garage but that this was not out of character for the neighborhood.

Ms. Zhaurova stated that staff recommends approval of the petition with conditions as outlined in the memo from DPRS Staff to the Board dated October 31, 2013:

- No habitable area is to be included above the garage
- The garage addition is not to be used for commercial or business purposes
- No increase in impervious surface
- Project is constructed in accordance with final approved plans

Mr. Michajlow asked Mr. Reed if he had seen the conditions proposed by Staff.

Mr. Reed stated that he had seen the conditions and would comply with the conditions.

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 to approve the petition subject to the conditions in the DPRS memo dated October 31, 2013.

List of Exhibits:

- Exhibit A: 205 Burncoat Street Application; received 9/6/2013; prepared by David Francis Reed.
- Exhibit B: 205 Burncoat Street Plan; dated 3/21/2013; prepared by P.N. Associates, Inc.
- Exhibit C: Rendering; dated 5/27/2013; prepared by Sulo Construction.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 205 Burncoat Street; dated 10/31/2013.
- Exhibit E: Revised Variance Findings of Fact; dated 10/31/2013; prepared by David Francis Reed.
- Exhibit F: Revised Plot Plan; dated 10/31/2013; prepared by David Francis Reed.
- Exhibit G: Image of garage under construction; dated 10/31/2013; photo by David Francis Reed.
- Exhibit H: Revised rendering prepared by Sula Construction; dated 5/27/2013; submitted by the applicant on 10/31/2013.

2. 6 Flint Pond Road (ZB-2013-050)

Variance: Relief of 5-ft from the 15-ft height dimensional requirement for a detached accessory structure
Petitioner: Amie D’Errico & Jeffrey Marchese
Present Use: ~2,500 SF single-family dwelling
Zone Designation: RS-7 (Residential, Single Family)
Petition Purpose: Construct a 1,120 SF detached garage in the rear of the property, 20-ft in height

Amy D’Errico stated that she and her husband Jeffrey Marchese have a three car garage and that Mr. Marchese works on antique cars. The need for additional storage space is the reason for requesting relief of 5 feet from the 15 foot height requirement. They would like to renovate the garage to include a 20 feet high roof.

Ms. Zhaurova stated that the lot is 24,000 square feet and that the applicant had already received Conservation Commission approval for the garage renovations which was required due to the proximity to a nearby pond. Ms. Zhaurova stated that staff recommends approval of the petition with conditions including:

- No habitable area is to be included above the garage;
- The garage addition is not to be used for commercial or business purposes;
- The structure and use are to be in substantial accordance with the final approved plan;
- DPRS requires six copies of the plans with the appropriate annotations and with revisions made in accordance with the discrepancies outlined by the staff memo dated October 31, 2013.

Ms. Zhaurova asked the petitioner if the final dimensions of the garage would be 28 feet x 40 feet or 28 feet x 42 feet. Ms. D’Errico stated that the garage would be 28 feet by 42 feet.

Ms. Zhaurova asked if working on antique cars was a hobby or a business. Ms. D’Errico stated that it was a hobby. Mr. Marchese stated that he was an engineer and likes to work on antique cars with his kids as a hobby.

Mr. Loew asked if the petitioner understood the conditions of approval. Mr. Marchese stated that he understood the conditions and was amenable to them.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, 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 to approve the petition subject to the conditions in the DPRS memo to the Board dated October 31, 2013.

List of Exhibits:

Exhibit A: Variance Application; prepared by Amie D’Errico & Jeffrey Marchese; received September 26, 2013 (supplemental received October 30, 2013).
Exhibit B: Plot Plan; prepared by Jarvis Land Survey, Inc.; dated July 21, 2013.

- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 6 Flint Pond Road; dated October 31, 2013.
- Exhibit D: Fire Department Project Review for 6 Flint Pond Road; received October 7, 2013.

3. 1280 & 1284 Main Street (ZB-2013-051)

- Special Permit: Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Use (Article XVI, Section 4)
- Petitioners: Salloom Realty Corporation
- Present Use: *1280 Main St*- Office/retail building with an accessory 22-space accessory parking lot
1284 Main St - parking lot (with a recently demolished commercial building)
- Zone Designation: *1280 Main St* - BL-1.0 (Business, Limited)
1284 Main St - BL-1.0 and RS-7 (Residential, Single Family)
- Petition Purpose: Construct/expand a 28-space accessory parking lot at 1284 Main Street to serve 1280 Main Street business uses

Attorney Joel Green, representing the petitioner, stated that the property at 1280 Main St. is occupied and has its parking unfortunately one of the tenants is a tax accounting firm and during tax season the parking area is not sufficient to serve the building. Mr. Green stated that this makes it difficult to lease out the rest of the unoccupied office space. Mr. Green further stated that the owner feels that he lost tenants due to the lack of parking.

Mr. Green requested relief on behalf of his client to add parking on the 1284 Main Street lot which is a paved area that had previously been used for parking by the former owner. Mr. Green stated that his client would be adding lighting, storm water management, and landscaping to the lot and that it would be an economic benefit. He further stated that this proposal would result in no substantial loss in tax base because the majority of the assessment for 1284 is land value. Mr. Green presented to the board a letter from a neighbor supporting the proposal.

Ms. Zhaurova stated that a portion of the 1284 lot is in the RS-7 Zoning District and this is why the petitioner was required to come before the Zoning Board of Appeals. Ms. Zhaurova stated that Staff recommends approval of the petition with conditions which include moving the proposed dumpster area to the back of the lot or building a screen for the dumpster area so that it is not prominently visible from Main Street.

Mr. Green stated that his client would be happy to put a surrounding around the dumpster but clarified that his client had proposed the dumpster location so as to keep it away from neighboring houses. He further stated that the proposed stockade fencing in conjunction with the proposed landscaping would shield the view of the dumpster from Main Street.

The applicant, Mr. Edward Salloom, stated that he moved the dumpster location to keep on good terms with the neighbors by reducing the noise impact to adjacent homes.

Mr. Michajlow asked where snow storage would be located on the site. Mr. Green stated that the snow storage location was shown on the plans.

Mr. Haddon asked if the dumpster for the 1280 Main Street lot was located on site prior to the petitioner's acquisition of the 1284 Main Street lot. Mr. Green stated yes.

Mr. Haddon stated that that he was concerned that the new dumpster location would cause it to become a publicly used dumpster. Mr. Salloom stated that moving the dumpster to the 1284 Main Street lot opened up one more parking space on the 1280 Main Street lot. Mr. Wanat stated that if the dumpster area was properly screened and had a lock on it that he was in amenable to approving the petition. Mr. Green confirmed that the dumpster area will be screened and landscaped.

Mr. Loew asked what the pedestrian flow from the building to the dumpster would entail. Mr. Green stated going to the dumpster would require walking down the public sidewalk since the two lots are not connected due to a grade change.

Mr. Loew asked if there would be any traffic related issues related to the proposed development of the 1284 Main Street lot. Mr. Kelly stated that the Department of Public Works would look at this issue and may comment on it as part of the Planning Board review.

Upon a motion by Mr. Haddon and seconded by Mr. Wanat, 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 to approve the petition subject to the conditions in the DPRS memo dated October 31, 2013 including the requirement of a stockade fence and landscaping to screen the dumpster area, but not relocating the dumpster.

List of Exhibits:

- Exhibit A: Special Permit Application; received 9/30/2013; prepared by Salloom Realty Corporation.
- Exhibit B: Parking Plan; dated September 24, 2013; prepared by Thompson-Liston Associates, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1280-1284 Main Street (ZB-2013-051); dated October 31, 2013.
- Exhibit D: Letter of support from Peter O'Rourke, Sr. dated October 14, 2013 and received November 4, 2013.

4. 126 Southwest Cutoff (ZB-2013-052)

Special Permit: To allow motor vehicle sales in BL-1.0 zoning district (Business Use #15)
Petitioner: Carworld, Inc.
Present Use: Truck terminal
Zone Designation: BL-1.0 (Business, Limited)
Petition Purpose: Operate motor vehicle sales for a total of 105 cars
November 4, 2013

Attorney Jonathan Finkelstein, representing the Mr. Russell, owner of Carworld, Inc., stated that the petitioner would like to use a portion of his truck terminal lot for car sales. He stated that his client was proposing the same plans that had been approved by the ZBA in 2005 but was never implemented. The petitioner understands that the 2005 site plans do not meet the updated regulations and requirements therefore, this request is for a 12 month trial period to use the lot for car sales on a trial basis. Carworld would pave the entry way and would place grindings on the lot as part of the proposed 12 month trial period but would refrain from paving the lot and doing the other required improvements to drainage, lighting, etc until the business proved to be successful.

Mr. Finkelstein stated that after the 12 month trial period, pending the successful outcome of the business, the petitioner would come back before the board with updated plans that include paving, drainage, lighting, and landscaping that meet the updated regulations.

Mr. Finkelstein stated that he had a letter from neighbors outlining conditions for the proposed use of the site. He stated that his client was in agreement with most of the conditions in this letter as well as the conditions proposed by DPRS Staff.

Mr. Finkelstein stated that one of the conditions that asked for a fence to be put up as a barrier would be addressed after the 12 month trial period. He stated that the proposed operational hours would be curtailed on Sunday to stop at 6 p.m.

Ms. Zhaurova stated that there are quite a few lots along this stretch of road that are not paved. She stated that if the petitioner is required to pave the lot now and then the business proves to be unsuccessful, the City will be left with a large impervious surface and that this impervious surface would have to be off-set per EPA permit requirements that the City is obligated to meet.

Ms. Zhaurova stated that given the multiple egresses to the site, the entrance should be paved to avoid confusion on where to enter the lot. She stated that Staff is requesting paving markings and signage to better direct the flow of traffic in the vicinity of the lot.

Ms. Zhaurova stated that Staff generally supports the 12 month conditional approval that the petitioner is seeking. If approved, the petitioner must come back after 12 months and comply with all regulations.

Mr. Finkelstein stated that all 22 conditions are acceptable except for condition #12 which requires a fence as was previously discussed during the hearing.

Mr. Ray Griffin, an abutter to the Carworld lot asked how many spaces the applicant was asking for. Mr. Michajlow stated that the plans are for 126 parking spaces. Mr. Griffin stated that he had provided the Mr. Russell with 12 written concerns and that he and Mr. Russell had sat down to discuss the concerns. Mr. Griffin stated that Mr. Russell had been most accommodating and had satisfied 11 of the 12 concerns.

Mr. Griffin stated that the one outstanding concern had to do with public safety. He stated that with the current road configuration that vehicles traveling from Route 20 trying to merge on Southwest Cutoff Road to enter the Carworld lot could pose a safety issue.

Mr. Finkelstein stated that he was not an expert in traffic flow, however, there are 3 existing curb cuts and that the public entrance to the lot would be the through the northeasterly curb cut.

Mr. Kelly asked Mr. Finkelstein if DPW had provided comments on which curb cut entry to use. Mr. Finkelstein stated that in his discussion with DPW they had only discussed using the one proposed curb cut entrance and they never brought it up as an issue.

Mr. Kelly stated that if the petition is approved, is issue could be re-examined and amended after the 12 month trial period, if necessary.

Mr. Haddon stated that Mr. Griffin's letter mentioned a 10' buffer zone and asked what this was in reference to. Mr. Griffin stated that in 2005 a 10' residential landscape buffer was added as a required condition so as to keep people from accessing the commercial lot through a residential neighborhood. Mr. Griffin stated that he wanted to make sure this requirement was carried through to the current required conditions. Ms. Zhaurova stated that condition #8 stated that a minimum 10' landscape buffer is required.

Mr. Finkelstein stated that the existing chain link fence would be maintained.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, 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 to approve the petition subject to the conditions in the DPRS memo dated November 1, 2013 amended per the following: condition #12 regarding the fence is not required, hours of operation should be Mon – Sat from 7 am – 9 pm and Sundays from 7 am - 6 pm, the chain link fence along Saybrook Road is to be maintained.

Mr. Finkelstein asked the Board when the 12 month period would begin. Ms. Zhaurova stated that the 12 month period would begin the day the decision is filed with the city clerk.

List of Exhibits:

- Exhibit A: Carworld, Inc. Application; received 10/1/2013; prepared by Carworld, Inc.
- Exhibit B: 126 Southwest Cutoff Plan; dated 9/30/2013.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 126 Southwest Cutoff; dated October 30, 2013.
- Exhibit D: Letter from Raymond J. and Donna M. Griffin of 19 Saybrook Road to Worcester Zoning Board of Appeals c/o Division of Planning and Regulatory Services; re: Public Hearing Notice for 126 Southwest Cutoff; dated October 21, 2013.

- Exhibit E: Emails from Jonathan Finkelstein, Attorney for Carworld, Inc., to Luba Zhaurova and Michelle Smith; re: 126 Southwest Cutoff; dated October 29 & 30, 2013.
- Exhibit F: Letter from the Applicant's Attorney, Jonathan Finkelstein to the Zoning Board of Appeals; re: 126 Southwest Cutoff; dated November 1, 2013.
- Exhibit G: Letter from the Department of Public Works and Parks to the Zoning Board of Appeals; re: 126 Southwest Cutoff Special Permit Petition – ZB 2013-052; dated November 1, 2013.

Other Business:

5. Communication Received:

- a. 61 Lafayette Street (ZB-2013-046) – Request for a determination on whether or not the petition is repetitive per M.G.L., Ch. 40A, § 16**

Hussein Haghanizadeh, a civil engineer spoke on behalf of the applicant. He stated that the property is currently a vacant lot. Earlier this year the applicant applied for relief to build a 2-family duplex on the lot. It was denied because the board determined that the 2-family side by side duplex did not fit with the character of the neighborhood. The applicant has re-applied but changed the design plans to have a 2 family up and down structure built on the lot and the relief requested is different.

Mr. Haghanizadeh stated that he was seeking a determination from the Board that the new application was substantially different from the previous application because they were applying within the two years after the date of final unfavorable action, which would be considered a repetitive petition.

Ms. Zhaurova stated that the nature of the previously denied use (a duplex) is substantially similar to the two-family detached dwelling use which requires similar dimensional requirements, however, the area requirement is different - 10,000 for the duplex and 5,000 SF for the two-family detached. She stated that the zoning for the lot is BG-3 zoning district which requires 5 a minimum of 40 feet of frontage per dwelling unit, therefore a duplex would require 80 feet of frontage. The Board needs to make a finding as to whether or not it believes that the newly submitted petition is substantially different from the one denied in May of 2013 (i.e. less than 2 years ago).

Ms. Zhaurova stated that the applicant is applying for a 2-family detached dwelling which is different from what was previously applied for. Ms. Zhaurova stated that the process was for the Board to determine if this application was substantially different at which point it would go to the Planning Board where they would also have to determine that it was substantially different before it would come before the Zoning Board to be heard.

Mr. Haghanizadeh stated that the previous comments from the Board was that a duplex would essentially cut the lot in half and there would be two driveways, however, if the house is a two-family, it still looks like a single family home. He stated that his client would only move forward if he was allowed to build a 2- family home because building a single family home on the lot was not economically feasible and that this proposal was substantially different from the previous proposal.

Mr. Zhaurova stated that the new application sought less relief for area but the same amount for frontage. Ms. Zhaurova also stated that the original reason that the Board denied the application was because the applicant did not show up for the meeting that they were scheduled for and the Board needed to take action because of the constructive grant deadline.

Mr. Haghanizadeh stated that his client was not aware that they could have requested a continuance and they did not show up at the meeting because the new drawings were not complete by the date of the meeting.

Mr. Kelly stated that if the application was approved, he would require an as-built showing a 36' set back in the front to accommodate 2 parking spaces. The current plans shows only 35.7' set back. Mr. Haghanizadeh stated that this would not be a problem and that in fact the newest plans show 36.03' set back.

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

Upon a motion by Mr. Loew and seconded by Mr. Haddon, the Board voted 4-0 to find that that the application was not repetitive and is substantially different than the application for which the applicant was denied in May of 2013.

- b. Land Court Decision & Judgment re: (212 Summer St) Murray Marketing, Inc., Plaintiff v. City of Worcester Zoning Board of Appeals (10 MISC 422507 JCC)); dated October 9, 2013.**

Mr. Michajlow stated that this case had been dismissed by the Land Court meaning the Board's decision had been upheld. No action was needed.

6. Election of Officers

This item was postponed until the December 2, 2013 meeting until all members are present.

7. 21 Heywood Street (ZB-2013-043) Decision correction regarding Application Waivers.

This item was held until the December 2, 2013 meeting.

APPROVAL OF THE MINUTES

Upon a motion by Mr. Wanat and seconded by Mr. Haddon, the Board voted 4-0 to approve the minutes for the 10/21/13 meeting.

DECISIONS FROM PRIOR MEETINGS

Decisions from prior meeting were signed.

ADJOURNMENT

Upon a motion by Mr. Haddon and seconded by Mr. Loew, the Board voted 4-0 to adjourn the meeting at 7:11p.m.