

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

DECEMBER 18, 2006

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Morris Bergman, Vice-Chair
Jerry Horton
Matthew Armendo
Thomas Hannigan
David George
Andrew Freilich

Staff Present: Joseph Mikielian, Department of Code Enforcement
Joel Fontane, Division of Planning & Regulatory Services
Judy Stolberg, Division of Planning & Regulatory Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

APPROVAL OF THE MINUTES

Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo, and David George to approve the minutes of the October 30, 2006, November 13, 2006 and November 27, 2006 meetings.

REQUESTS FOR WITHDRAWAL

- 1. 41 Lancaster Street (Z-06-145) – Special Permits:** Mark Lee, representative for the petitioner, informed the Board that the petitioner requested Leave to Withdraw without prejudice for the Special Permits for the expansion or change of a pre-existing nonconforming use/structure and lodging house and will file a new petition. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Thomas Hannigan and Matthew Armendo to grant the petitioner Leave to Withdraw Without Prejudice.

UNFINISHED BUSSINES

- 2. 611 Millbury Street (Z-06-154) – Special Permit and Variance:** Michael O'Rourke, petitioner, presented the petition to the Board. Mr. O'Rourke stated he was seeking a Variance for relief of four (4) parking spaces from the off street parking requirement and a Special Permit

for the expansion or change of a pre-existing nonconforming use/structure for the purpose of converting commercial space in Building #1 into two (2) residential units. Mr. Fontane informed the Board that the site plan addressed comments from the Board at the November 27, 2006 meeting. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo and Thomas Hannigan to close the hearing. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Jerry Horton, Matthew Armendo, Morris Bergman and Thomas Hannigan to approve the following:

- **Special Permit: Expansion or change of a pre-existing, nonconforming use/structure**
- **Variance: Relief of 4 parking spaces from off-street parking requirement**

3. **70 James Street (Z-06-155) – Rescind Vote for a Special Permit for a Personal Wireless Service Facility:** Mr. Fontane explained to the Board that the abutter’s list for the hearing notification was incorrect because it was for the wrong parcel and MBL number. Said problem occurred because the James Street Complex has been using 70 James Street as its mailing address while the legal address according to the Assessor’s Office was 68 James Street. The Assessor’s records show 70 James Street as the large vacant parcel to the south. The addresses have now been changed for the two parcels and the James Street Complex is 70 James Street and the vacant parcel is 72 James Street. Ultimately, proper notification did not occur per MGL requirements because the wrong parcel was highlighted for the Certified List of Abutters necessitating the rescission of the vote taken at the September 25, 2006 meeting to approve the Special Permit. Mr. George questioned the rescission of the Special Permit vote and not the Variance vote as well. Mr. Fontane answered that since the Board voted to deny the requested Variance, abutters were not impacted and the vote to deny did not require rescission. Upon a motion by Jerry Horton and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo and Thomas Hannigan to rescind the vote taken at the September 25, 2006 meeting approving a Special Permit for installation of a personal wireless service facility.

4. **70 James Street (Z-06-155) – Re-open Public Hearing for a Personal Wireless Service Facility:** The public hearing was re-opened. Kate Rugman, representative for the petitioner, OmniPoint Communications, informed the Board that Omnipoint had paid all tax arrearages to the City. Mr. Fontane confirmed this. Upon a motion by Morris Bergman and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo and Thomas Hannigan to close the public hearing. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 4-1 by Morris Bergman, Jerry Horton, Matthew Armendo and Thomas Hannigan (Leonard Ciuffredo voted no) to approve the following:

- **Special Permit: To allow installation of a personal wireless service facility**

The Special Permit was approved with the following conditions:

- **The applicant must submit, prior to the issuance of any building permit, six copies of a site plan to the Division of Planning and Regulatory Services depicting the location of the proposed personal wireless service facility in accordance with all of the requirements of the City of Worcester Zoning Ordinance as amended, including, but not limited to, fall zone setbacks.**
- **This Special Permit is valid for not more than the 15 years from the date of the Board's final action, provided it is in compliance with all applicable governmental codes.**
- **Revised site plan must be in compliance with all Federal, State and City requirements.**

5. **155 Ararat Street (Z-06-178) – Administrative Appeal:** Gary Brackett represented the petitioner. Mr. Brackett stated that he was appealing the Planning Board's denial of a Parking Plan on August 16, 2006. Mr. Brackett argued that an appeal must be filed within thirty days from the date of the written decision and not the actual date the vote was taken as the Law Department maintains. He stated the appeal had been filed in a timely fashion and should be heard by the Board. He referred to the procedures set forth in Article V, Section 5(3)(A) as applicable to the decision of the Planning Board. He also referred to *Vokes v. Avery W. Lowell, Inc. from the Mass.Ap.Ct 471, 479 (1984) review denied*. The Law Department opinion stated the Planning Board is not required by Article IV, the Board's Regulations promulgated thereunder, or Chapter 40A to render, issue or file a written decision with the City Clerk or the applicant. The opinion further stated that it is incongruous that an appeal period would be triggered by an event which is not required. Timothy McGee, an abutter and representative of neighbors, supported the Law Department opinion. Mr. Horton said the Law Department opinion is specific and clear. He further stated that the Salter School has other remedies available to it. Upon a motion by Jerry Horton and seconded by Matthew Armendo, it was voted 4-1 by Leonard Ciuffredo, Morris Bergman, Jerry Horton and, Matthew Armendo (Thomas Hannigan voted no) to dismiss the appeal because the appeal was not filed in a timely fashion and is not properly before the Board.

6. **23 Lorenzo Street (Z-06-184) – Special Permit:** Matthew Armendo recused himself. Joe Boynton represented the petitioner. Mr. Boynton stated the petitioner was requesting a Special Permit to allow single-family attached dwellings in an RL-7 district. He stated the land was a family homestead and would continue to be occupied by family. Mr. Bergman asked to see a rendering. Mr. Boynton provided a rendering and some pictures. Upon a motion by Jerry Horton and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Thomas Hannigan, and David George to close the hearing. Upon a motion by Jerry Horton and seconded by Morris Bergman, it was voted 4-0-1 by Morris Bergman, Jerry Horton, Thomas Hannigan and David George (Leonard Ciuffredo abstained) to approve the following:

- **Special Permit: To allow single-family attached dwellings in an RL-7 district**

The Special Permit was approved with the following conditions:

- **Approval is for dwellings as depicted in the rendering shown to the Board.**
- **Each dwelling's primary entrance must be constructed to face the street.**

Thomas Hannigan leaves the meeting.

7. **30-32 Greenwood Street (Z-06-182A) – Special Permit and Variance:** Joe Boynton, representative for the petitioner, presented the petition. Mr. Boynton stated the petitioner was seeking a Variance for relief of ten (10) parking spaces from the off street parking requirement and a Special Permit for the expansion or change of a pre-existing nonconforming use/structure. Joel Fontane told the Board that the Planning Board had voted its determination that the resubmittal proposal differs in substantial detail from that of the original submission enabling the Zoning Board of Appeals to hear the new proposal. Matthew Armendo asked the owner if a sign company operated on the site. Julio Romero said the sign shop is not operating currently at the site. Mr. Boynton informed the Board that a Cease and Desist Order had been issued. Mr. Mikielian stated that the Code Enforcement Department had found the sign shop operating on at least one occasion and had issued a Cease and Desist Order. Subsequent visits have not found the sign shop operating. Mr. Bergman asked if there were two identifiable tenants. Mr. Boynton informed the Board that one future tenant is a clothing retail store and one is a sign shop. Mr. Mikielian said a sign shop is not necessarily retail with incidental manufacturing but could be manufacturing with incidental retail. Mr. Boynton said the application is for a retail sign shop and no welding should occur at the site. Charlotte Trombley, Beverly Maurais and Ha Nguyen were very concerned about the welding that had been done on the site. Ms. Trombley said Mr. Romero had misled the Board. Mr. Bergman inquired about the terms of the lease and was told by Mr. Boynton that the tenants were tenants at will. Mr. Horton inquired as to what other types of business could locate at the site. Mr. Romero responded that a travel agency, beauty salon or something similar could locate there. Mr. Boynton said the market would dictate what type of business would be interested in the location and that parking would be an issue for certain types of businesses. Mr. Freilich noted that the proper tenancy in the building will enhance the area but the owner must choose the tenants carefully. He went on to say that an empty building would be far worse for the neighborhood. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Jerry Horton, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo and Andrew Freilich to approve the following:

- **Variance: Relief of 10 parking spaces from the off-street parking requirement**
- **Special Permit: Expansion or change of a pre-existing nonconforming use/structure for the clothing retail store only**

8. **70 Sears Island Drive (Z-06-193) - Special Permit:** Dennis Horan, owner and petitioner, presented the petition. Mr. Horan stated he was requesting a Special Permit for the expansion or change of a pre-existing nonconforming use/structure to add a sunroom on to the existing deck. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo, and David George to approve the following:

- **Special Permit: Expansion or change of a pre-existing, nonconforming use/structure**

The Special Permit was approved with the following condition: Must be in accordance with submitted site plan.

9. 1 Pond Street (Z-06-204) - Special Permit and Variance: Nhi Teresa Lai, petitioner, presented the petition. Ms. Lai stated she was requesting a Special Permit for the expansion or change of a pre-existing nonconforming use/structure and a Variance for relief of fourteen (14) parking spaces from the off street parking requirement to increase the seating capacity of the existing restaurant from 52 to 80 seats. Board members established the property is the former site of the Coral Seafood restaurant. Mr. Armendo asked the petitioner if she had tried to find any parking in the area to lease. She responded that she had found nothing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to close the hearing. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo, and Andrew Freilich to approve the following:

- **Special Permit: Expansion or change of a pre-existing, nonconforming use/structure**
- **Variance: Relief of 14 parking spaces from off street parking requirement**

10. 10 Webster Street (Z-06-206) – Special Permits: Peter Duffy, representative for the petitioner, and Anthony Brooks, petitioner, presented the petition. Mr. Duffy stated the petitioner was requesting a Special Permit for the expansion or change of a pre-existing nonconforming use/structure and a Special Permit to allow automobile and metal salvage recycling operation in an MG2.0 district (uses #5 & #7) to buy and sell second-hand motor vehicle parts. Mr. Brooks described his business operation. In response to a question from Mr. Armendo, the petitioner informed the Board that approximately 200 cars would be on the site. Mr. Armendo stated he visited the current location and it was what he referred to as a well organized junk yard. Mr. Brooks said they would provide a fence with screening panels and they try to keep the site as clean as possible. Alfred Chaput said that no matter how well organized the junk yard is, it is not going to be a clean operation. He expressed his concerns regarding quality of life issues such as noise, odors, gas vapors and oil spillage. He was also concerned about any decline in property values as a result of the business. George Potvin and Tom Rex, representing two businesses in the area, were concerned about storage of chemicals and screening respectively. Mr. Rex suggested that mature plantings be used for screening purposes. Mr. Fontane explained to the Board that the business had to move at the request of the City to make way for the South Worcester Industrial Park. The petitioner is requesting a waiver of the fee and Timothy McGourthy, Director of Economic Development, sent a letter supporting the request. Mr. Bergman suggested the petitioner and abutters meet to effect compromise. It was disclosed that a Purchase and Sale Agreement had not been signed yet by Mr. Brooks. Jerry Horton supported continuing the hearing to settle the Purchase and Sale Agreement, set hours of operation and resolve issues such as security, signage, lighting, landscaping, capture of emissions. Mr. Bergman urged both sides to come to reasonable amicable solutions. Upon a motion by Matthew

Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Jerry Horton, Matthew Armendo, and David George to continue the hearing until January 8, 2007.

OTHER BUSINESS:

- 11. 133 Puritan Avenue – Extension of Time – Variance - Update:** Mr. Fontane informed the Board that after the meeting, it was discovered that the Variance for 133 Puritan Avenue had expired prior to the submission of the request for an Extension of Time. Therefore, the Extension of Time for the Variance for relief of 125 square feet from the gross dimensional requirement has been determined a legal nullity by the Law Department. No action is required by the Board.

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 8:30 PM.