

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

June 6, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present:

Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Vadim Michajlow
Timothy Loew, Alternate Member

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 Abramoff called the meeting to order at 5:30 PM. Andrew Freilich was not present.

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

- 1. 10 Claremont Street (ZB-2011-011):** Special Permit to allow a Lodging House use in an RG-5 zone: Son Van Nguyen, petitioner, requested a Leave to Withdraw Without Prejudice because the permitting process was more difficult than what he anticipated. He stated that he will probably come back in front of the Board in the future. Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 4-0 to approved the requested Leave to Withdraw Without Prejudice of the petition. Mr. Fontane recommended that Mr. Nguyen follows-up promptly with the Department of Inspectional Services in order to determine if the dwelling is a two-family or a three-family.

Exhibits:

- Exhibit A: Special Permit Application; received March 21, 2011; prepared by Son Van Nguyen.
- Exhibit B: Special Permit Application Plan; dated March 4, 2011; prepared by Robert D. O'Neil Jr.
- Exhibit C: Proposed House Rules for 10 Claremont Street; received April 22, 2011.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 10 Claremont Street; dated April 23, 2011, revised June 3, 2011.

- Exhibit E: Request to Leave to Withdraw Without Prejudice by Son Van Nguyen; received May 30, 2011.
- Exhibit F: Opposition Letter from Clark University to the Zoning Board of Appeals; re: 10 Claremont Street ; dated April 25, 2011; received April 25, 2011 (at the meeting).

2. **74 Chilmark Street (ZB-2011-018):** Special Permit to allow a nonconforming use of a similar nature (Business Use #27 - Service shop, personal services): Daniel Simmler, representative for Abusado Sports, LLC, petitioner, requested a Leave To Withdraw Without Prejudice of the petition because the owner of the building has sold the property. Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 4-0 to approve the requested Leave To Withdraw Without Prejudice. Mr. Simmler requested a fee waiver. Mr. Fontane stated that staff would be amenable to at most a \$150 fee waiver in order to defray the costs of advertisement and staff review. Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 4-0 to approve a fee waiver of \$100.

Exhibits:

- Exhibit A: Special Permit Application prepared by Daniel Simmler and received May 4, 2011.
- Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals regarding 74 Chilmark Street, dated June 1, 2011.
- Exhibit C: Leave to Withdraw Letter prepared by Daniel Simmler and received June 1, 2011

3. **63 and 69 Downing Street (ZB-2011-013A and ZB-2011-013A):** Chair Abramoff stated that Mr. Freilich is not present and Mr. Michajlow would have to recuse himself because he was not present at the hearing the last time, and therefore, the remaining 3 members do not constitute a quorum. Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 4-0 to continue the hearing to June 27, 2011. David and Christine Bogoian, abutters, were opposed to the continuation of the hearing.

NEW BUSINESS

4. **29 Sarah Drive (ZB-2011-016):** Variance - relief of 12.02 ft from an exterior side yard setback requirement: Richard Novick, petitioner, stated that he is seeking relief from the 15 ft exterior side yard setback (from an approved street that has not yet been constructed) requirement for existing covered carport and storage shed.

The Board took a recess.

Mr. Freilich joined the meeting.

Mr. Abramoff confirmed that regardless of whether or not the road (Forsythia Trail) was approved, the petitioner would need a variance to comply with dimensional requirements. Mr. Kelly stated that the petitioner would not comply with the side yard setback if there was no approved road next to his property. Mr. Fontane stated that the subdivision was approved by the Planning Board, but not yet recorded with the Registry of Deeds, and if the petitioner applied for a Building Permit, the permitting staff would have told him of the setback requirements. Chair Abramoff asked the petitioner why he did not get permits prior to construction. Mr. Novick stated that he was pressed for time and storage, and that after the completion of construction and following an anonymous complaint to the Inspectional Services, he met with Mr. Sansoucy (of Department of Inspectional Services) and now “wants to comply with the law”. Mr. Freilich asked if the petitioner is a builder and what was the pressing need. Mr. Novick stated that he has some construction experience and that he had built the car-port and the storage shed and that he needs to park his vehicles and motorcycles there. Mr. Freilich asked if the structures were built in accordance with the Massachusetts Building Code. Mr. Kelly stated that the petitioner did not yet apply for a Building Permit, and therefore the structures were not yet inspected. Mr. Michajlow stated that criteria for granting variances are strict and that the petitioner did not explain his hardship in the application. Mr. Freilich asked when the structures were built. Mr. Novick stated that he built them in the latter part of 2008 and early 2009.

Mr. Kelly suggested the applicant submits a plan on how he plans to comply with the 15-ft setback in case the Board does not approve his petition.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to continue the item to July 18, 2011 in order to provide the petitioner time to submit the following to the Board:

1. Revised findings of fact, since the Board could not approve the petition based on the findings proposed by the applicant;
2. An alternative building design and/or location if granted less relief;
3. An affidavit of the inspection of the car port and shed by an independent, licensed 3rd party architect or registered engineer.

Exhibits:

Exhibit A: Variance Application; received 4/26/2011; prepared by Richard Novick.

Exhibit B: Variance Plan; dated 4/16/2011; prepared by Robert D. O’Neil Jr, Professional Land Surveyor.

Exhibit C: Photographs of property submitted by the petitioner at the Zoning Board of Appeals hearing on June 6, 2011.

5. **15 Ancona Road (ZB-2011-017):** Variance for relief of 7.3 feet from the front yard setback requirements and Special Permit for expansion or change of the pre-existing nonconforming use and structure: Patrick McCarty of the McCarty Engineering, Inc., representative for Teresa and John Travaglio, petitioners, stated that the petitioners are seeking to construct a 15 by 32 ft addition to the western side of the existing dwelling. He

stated that Ms. Travaglio lives in the house with her husband and 4 children and that the house has been operating as a single-family dwelling since it was purchased a couple of years ago. He stated that the owner received a poor advice from the hired builder regarding Building Permit application which led to issues with the Department of Inspectional Services, but that the petitioner is anxious to correct the problems.

Mr. Fontane stated that upon further review of this project and consultation with Inspectional Services and the Law Department, staff agrees that a variance is not needed for the proposed development. He stated that this is due to the Zoning Ordinance's grant of special privileges to single and two-family dwellings.

Mr. Freilich asked if the dwelling can revert back to a two-family dwelling. Mr. Fontane stated no, that two-family dwelling is not an allowed use in this zoning district and that the Zoning Ordinance does not allow "use variances". He mentioned applicable Zoning Ordinance Article XVI, Section 4 – (E)(1) Termination of Privilege - "By Revision – If a privileged nonconforming use reverts to a use permitted in the district in which it is located, it may not be changed again to any use prohibited in the district. If a privileged nonconforming use is changed to a more restricted use, it may not be changed back to the previous use or to another nonconforming use."

Mr. Kelly suggested that as a condition of approval, the petitioner submits a Building Permit application for conversion of a two-family to single-family dwelling unit, to clarify on record the revision.

Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Mr. McCarty requested a Leave to Withdraw Without Prejudice for the requested Special Permit for expansion or change of the pre-existing nonconforming use and a Variance for relief of 7.3 feet from the front yard setback requirements.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to approve the requested Leave to Withdraw Without Prejudice the requested Special Permit for expansion or change of the pre-existing nonconforming use and a Variance for relief of 7.3 feet from the front yard setback requirements, because they are not required for the proposed use and change of property.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to approve the requested Special Permit for expansion or change of the pre-existing nonconforming structure with the following conditions of approval:

- That prior to issuance of a Building Permit, the petitioner submits to the Department of Inspectional Services a change-of-use application to convert from a two-family detached dwelling to a single-family detached dwelling;
- That one (1) tree, minimum 3.5-inch caliper, is planted in the front yard or exterior side yard setback; said tree shall be a non-invasive specie that is Asian Longhorned Beetle resistant;

- That the petitioner shall submit to the Division of Planning & Regulatory Services six (6) copies of final revised plans showing provision of minimum two off-street parking spaces on the parcel and the above-mentioned condition of approval regarding the tree;
- That the structure shall be constructed in substantial accordance with the final approved plan on file with the Division of Planning & Regulatory Services and in compliance with all governmental codes.

Exhibits:

- Exhibit A: Special Permit & Variance Application; received April 27, 2011; prepared by John & Teresa Travaglio.
- Exhibit B: Special Permit & Variance Plan; dated 4/11/2011; prepared by Tauper Land Survey Inc.
- Exhibit C: A Cease & Desist Order from Department of Inspectional Services to Theresa Travaglio; re: 15 Ancona Rd; Dated March 7, 2011.
- Exhibit D: Letter to the Zoning Board of Appeals from Teresa Travaglio; e-mail; dated 6/2/2011.
- Exhibit E: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 15 Ancona Road; dated June 6, 2011.

OTHER BUSINESS

- 6. Zoning Board of Appeals Application Fees:** Mr. Fontane asked the Board to take a vote to advertise the proposed Board's Fee Schedule Amendment for a hearing on June 27th, 2011. Chair Abramoff asked to see the comparison of current v. proposed fees. Mr. Fontane stated that he will provide this information. Mr. Freilich asked if the amendment might alleviate staffing shortages of the DPRS. Mr. Fontane stated that these are general revenue fees not allocated to any particular department and designed to defray some of the costs and to make up for inflation. He stated that the fee schedule attempts to capture 50% of the costs through fees in an average year, but that this year has been unusual. Chair Abramoff asked why the fee for Personal Wireless Service Facilities is not proposed to increase. Mr. Fontane stated that due to recent federal cases, the scope of review of PWSF has been reduced, and therefore a fee increase was not warranted. Mr. Freilich stated that he believed the PWSF fees need to be increased as well. Chair Abramoff suggested \$800. Upon a motion by Chair Abramoff and seconded by Mr. Freilich, the Board voted 5-0 to advertise the Zoning Board of Appeals Application Fees amendment for the June 27, 2011 with an amended proposed fee for PWSF of \$800.
- 7. Worcester Sign Company:** Mr. Fontane referred to the ZBA's decision appeal regarding signs the Board members have received. He stated that the Board has taken action in March, and that it appears the appeal has been filed after the expiration of the 20-day appeal period.

Adjournment: Chair Abramoff adjourned the meeting at 7:27 pm.