

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

JUNE 26, 2006

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Matthew Armendo
Thomas Hannigan
Morris Bergman
David George

Staff Present: Richard Trifero, Division of Code Enforcement
Joel Fontane, Division of Planning and Regulatory Services
Edgar Luna, Division of Planning & Regulatory Services
Lara Bold, Division of Planning & Regulatory Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

CONTINUATIONS

- 1.) **3 Bleeker Street (Z-06-73) Special Permit and 3 Bleeker Street (Z-06-94) Variances:**
Samuel Rosario, representative for Pasquale Algieri, petitioner, presented the petition. Mr. Rosario stated that the applicant had discussed the plan with his neighbors, as requested by the Board. He indicated that the existing commercial garage on the property does not fit in with the residential character of the neighborhood. Robert Webster requested clarification regarding whether or not the applicant was parking in the front yard setback of the property. Mr. Rosario stated that the front doors of the house do not face Bleeker Street; therefore the applicant is technically parking vehicles in the side yard. David George requested clarification as to whether or not the Zoning Ordinance contains any design guidelines relative to constructing additional units onto existing dwellings. Joel Fontane, Director of Planning & Regulatory Services, informed the Board that Article IV, Section 9 of the Zoning Ordinance, states that residential conversions should not change the external appearance of the structure. Matthew Armendo stated that the removal of the garage would be beneficial to the neighborhood. Mr. Rosario stated that the proposed unit would be attached to the existing building with a fire wall and that the protrusion shown on the plot plan is a chimney. Morris Bergman stated that while the Board generally looks unfavorably upon dwellings constructed sideways on a lot that he would consider approval of the petition due to the pre-existing, non-conforming nature of the structure. Leonard Ciuffredo informed Mr. Webster that he has the right to appeal if he feels aggrieved by the Board's final decision for 3 Bleeker

Street. He also encouraged Mr. Webster to contact Richard Trifero, Acting Director of Code Enforcement, regarding any code violation concerns. Mr. Rosario stated that, after construction, the road would be repaved to its current condition, as required. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 4-1 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, and Morris Bergman (David George opposed) to approve the following:

- Special Permit for expansion or change of a pre-existing, nonconforming structure for the proposed addition of a single-family attached dwelling to the existing duplex.

Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 4-1 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, and Morris Bergman (David George opposed) to approve the following:

- Variance for 1600 square feet of relief from the gross dimensional requirement
- Variance for 4 feet, 6 inches of relief from the rear yard setback requirement
- Variance for 9 feet of relief from the front yard setback requirement

with the following condition:

- Parking on the side of the house must be horizontal parking.

- 2.) **Wigwam Hill Drive (Z-06-75) Variance:** Joe Boynton, representative for Domenic Giuliani, applicant, presented the petition. Mr. Boynton indicated that he would like to discuss a possible continuation of the hearing with his client, since Jerry Horton would not be present for the vote. Chair Leonard Ciuffredo agreed to postpone the hearing.
- 3.) **61 Chandler Street (Z-06-88) Special Permit:** Damien Jacob, representative for Sponsorspot and for George Maldonado, petitioner, presented the petition. David George expressed concern that Chandler Street has a high traffic volume and is already visually congested with commercial signage. He stated that the proposed sign could be a visual distraction for drivers and could, therefore, pose safety issues for pedestrians crossing at the crosswalk in front of 61 Chandler Street. Mr. Trifero requested that the Board consider continuing the hearing to a later date to allow his staff additional time to review whether the proposed wall sign is a non-accessory sign. Matthew Armendo stated that he was not in favor of approving the petition because of the precedent such approval would set for cluttering wallsapes. The Board requested that the Law Department issue a legal opinion stating whether or not the proposed sign meets the definition of a non-accessory sign. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to continue the hearing until July 24, 2006 to allow the Code Department and Law Department sufficient time to further review the necessary relief.
- 4.) **Wigwam Hill Drive (Z-06-75) Variance:** The hearing was reconvened. Joe Boynton, representative for Domenic Giuliani, petitioner, presented the petition. Mr. Fontane stated that the Planning Board had not taken any action regarding the removal of Totem Trail. Mr.

Boynton stated that the proposed house would be a pre-fabricated, cape-style house with a garage underneath and with the front doors facing Wigwam Hill Drive. Matthew Anderson expressed concern regarding drainage of the road. Ania Busza stated that Wigwam Hill Drive is not passable during and following bad weather and expressed concern regarding the potential damage that could be caused by construction trucks. Eric Tanga also expressed concern with the negative impact additional runoff could have on the road. Mr. Boynton stated that drainage issues would be addressed through Site Plan review by the Planning Board. He also stated that the sewer is located at the back of the lot, which is most likely where the sewer for the proposed house would be connected. Mr. Boynton stated that the site's hardship is that it is an old lot which is steeply graded and that the shape of the lot prohibits development of a single-family dwelling without additional relief. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by David George and seconded by Morris Bergman, it was voted 4-0 by Leonard Ciuffredo, Matthew Armendo, Morris Bergman, and David George to approve the following:

- Variance for 588 square feet of relief from the gross dimensional requirement
- Variance for 6.72 feet of relief from the side yard setback requirement
- Variance for 22.25 feet of relief from the frontage requirement

5.) **765 West Boylston Street (Z-06-81) Variances:** Ken Strom, Robert Branca, Matthew Doyle, and Brian Beisel, representatives for J & M Batista Family, petitioners, presented the petition. Mr. Strom stated that the current Dunkin Donuts location has numerous unnecessary curb cuts, an inadequate escape lane, and poses a danger for pedestrians due to its proximity to a bus stop. He stated that the applicants have redesigned the site, based on feedback provided by the Board, and have, therefore, proposed a new dumpster location farther away from the abutters, added three parking spaces for employees, and added an 860 square foot second story to be used as office space for Dunkin Donuts. He also stated that the curb cut was widened to 24 feet and that the drive-through lane was re-designed to stack 14 vehicles. Mr. Strom stated that any re-routing of the lane from its proposed location would cause a reduction in parking spaces. Mr. Branca stated that the drive-through service does not constitute the majority of their business. William Jose expressed concern that cars exiting the McDonald's site and the Dunkin Donuts site at the same time could cause traffic problems. Brian Beisel, a traffic engineer with Conley Associates, stated that it is preferable to have exits lined up directly across from each other or more than 200 feet apart. Mr. Fontane stated that the proposed project design is better than the current Dunkin Donuts site. Matthew Armendo expressed concern with the re-location of the employee parking spaces. Mr. Doyle indicated that employees always arrive before Dunkin Donuts opens, and, therefore, customers would not be able to park in the employees' parking spaces. Mr. Strom stated that the re-designed escape lane meets the intent of the ordinance, which requires that all vehicles must be able to exit safely in case of an emergency. Mr. Doyle stated that at peak business hours, vehicles will be parked in the employee parking spaces and visitors will not get trapped in by vehicles in the drive-through lane. William Jose expressed concern that Dunkin Donuts customers would park against the concrete wall on his property and also that vehicles may accidentally enter through his driveway. Bruce Bollivar expressed concerns with safety, traffic, and delivery trucks' ability to access the site. Mr. Branca indicated that delivery

times would be staggered throughout the day. He also stated that while the current site has a traffic light, due to the multiple curb cuts, drivers often try to avoid the traffic light by entering and exiting at various locations on the site. Mr. Branca stated that the proposed design for the new site includes only two curb cuts, which is a safer design. Mr. Jose also expressed concern with the requested relief from the landscaping buffer. Mr. Branca indicated that the site includes a proposed landscaping bed and stated that no utilities were found under the proposed landscaping bed. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, Morris Bergman and David George to approve the following:

- Variance for 30 feet of relief from the drive-through/escape lane length requirement
- Variance for 5 feet of relief from the five-foot parking setback requirement
- Variance for relief from the landscape buffer requirement

with the following condition:

- Applicant must install bollards at the employee parking spaces along the retaining wall with an “Employee Parking Only” sign on the retaining wall.

6.) **6 Mohican Road (Z-06-89) Special Permit:** Don O’Neil, representative for Real Estate Alternatives, Inc., petitioner, presented the petition. Mr. O’Neil indicated that the applicant had reduced the number of proposed units to three units. He also stated that access for the site would be from Plantation Street. Mr. O’Neil indicated that the applicant could build a duplex by right, and through the ANR process, could acquire sufficient square footage to construct an additional single-family dwelling, which would create a total of three units, amounting to the same density as the proposed plan for three single-family attached dwelling units. Mr. O’Neil requested the minutes reflect that his client would not have incurred the additional expense of re-engineering plans if he had known the Board’s opposition to townhouse development on the site. Mr. Fontane reminded the Board of its recent similar decisions in the neighborhood regarding townhouse development (Belcourt Street). Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by Thomas Hannigan, it was voted 3-2 by Thomas Hannigan, Morris Bergman, and David George (Matthew Armendo and Leonard Ciuffredo opposed) to approve the requested Special Permit to allow single-family attached dwelling units (townhouses). Therefore, the motion did not pass, and the petition was denied.

7.) **9 Falcon Street (Z-06-93) Special Permit:** Nora Elias-Atchue and Richard Atchue, representatives for George and Elizabeth Elias, petitioners, presented the petition. Mr. Trifero indicated that, while the handicap accessible ramp is exempt from zoning requirements, the proposed foyer triggers the need for a Variance. Upon a motion by Thomas Hannigan and seconded by Morris Bergman, the Board voted 5-0 to close the public hearing. Upon a motion by Thomas Hannigan and seconded by Morris Bergman, it was voted 5-0 by Leonard

Ciuffredo, Thomas Hannigan, Matthew Armendo, Morris Bergman and David George to approve the following:

- Variance for 1.8 feet of relief from the side yard setback requirement for the proposed enlargement of the side entry to accommodate a handicap accessible ramp and foyer.

8.) **1068 West Boylston Street (Z-06-98) Special Permit:** James Gardner and Ellen Gardner, petitioners, presented the petition. Mr. Fontane stated that in order for the petitioners to implement their proposal, they would also need to obtain a Special Permit for expansion or change of a pre-existing, nonconforming structure/use from the Zoning Board of Appeals and Parking Plan Approval from the Planning Board, if nine or more vehicles would be parked on site. He also stated that the applicants should get a determination from the Division of Code Enforcement regarding the necessity of a Special Permit from the Planning Board for the continued use of the auto repair and/or expansion thereof, relative to the regulations set forth in Article XII of the Zoning Ordinance regarding the Water Resources Protection Overlay District. Additionally, Mr. Fontane indicated that while a Special Permit to operate an auto repair shop was granted in 1995 by the Zoning Board of Appeals, it had never been filed at the Registry of Deeds. The petitioners indicated that this information had not been disclosed with the deed or mortgage and, therefore, they were unaware that their property was located in a Water Resources Protection Overlay District. Mr. Gardner also explained that the previous owner, Rocco Ciociolo, was ultimately responsible for the current environmental remediation costs. David George stated he would have been more critical of the Special Permit consideration had he known that the use was located in a Water Resources Protection Overlay District. David George explained to the petitioners that they could continue with the hearing or could ask the Board for Leave to Withdraw without Prejudice. Mr. Gardner requested Leave to Withdraw without Prejudice. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to grant the petitioner the following:

- Leave to Withdraw without Prejudice relative to the requested Special Permit to allow motor vehicle sales in a BL-1.0 zone.

NEW HEARINGS

9.) **9 Oakview Street (Z-06-101) Special Permit:** Emanuel Tortorelli, petitioner, presented the petition. Mr. Tortorelli explained that he had allowed fill to be dumped on the lot at 9 Oakview Street in order to create additional usable yard space. He stated that he had received a Cease and Desist order from the Division of Code Enforcement and had been told that one option is to obtain a Special Permit for placement of fill. David George asked the petitioner why he had not submitted documentation as staff had requested him by letter relative to the requirements for placement of fill outline in Article IV, Notes to Table 4.2 D, of the Zoning Ordinance. Lorna Tortorelli explained that she and her family were unsure which documents to submit and how to obtain those documents. Mr. Trifero suggested that the applicants and neighbors meet with a Building Inspector to review the site conditions. Patty Tiscione expressed concern regarding the type of fill that had been placed and with illegal dumping on

the property. Ms. Tiscione provided the Board with photographs of household appliances and garbage supposedly on the property. Ms. Tortorelli stated that the items in the photographs were not on her property. Mr. Trifero informed the Board that he would review the petition based on the requirements set forth in Article IV, Notes to Table 4.2D of the Zoning Ordinance. Upon a motion by Matthew Armendo and seconded by Thomas Hannigan, the Board voted 5-0 to continue the hearing until July 24, 2006 to allow the applicant time to meet with a Building Inspector. The Board requested staff re-notify abutters of the continued hearing and of the site visit.

10.) 8 Dartmouth Street (Z-06-109) Variance: Cornelius Murphy, petitioner, presented the petition. Mr. Fontane informed the Board that only one foot of relief was necessary for the proposed deck. Upon a motion by Morris Bergman and seconded by Matthew Armendo, the Board voted 5-0 to close the public hearing. Upon a motion by Morris Bergman and seconded by Thomas Hannigan, it was voted 4-1 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, and Morris Bergman (David George opposed) to approve the following:

- Variance for one (1) foot of relief from the side yard setback requirement for the construction of a deck on the west side of the dwelling on the third floor.

11.) 8 South Harlem Street (Z-06-110) Special Permit: Edward O'Donnell, petitioner, and Candice Reynolds, presented the petition. Ms. Reynolds, the architect for the project, stated that the proposed structure would be built using the same footprint of the previous structure, which was destroyed by fire, but would include some minor changes. These changes include: 1.) the expansion of the porch sidewall 6" to accommodate a new stair, 2.) extension of the length of the structure by less than 5' to facilitate construction formwork, 3.) a new 3 foot covered area to provide protection from the weather at the secondary entrance, 4.) widening the existing covered area at the front entrance 8" to accommodate the change in location of the door, 5.) rebuilding former porches in the same footprint. Mr. Trifero stated that the Special Permit was necessary even due to the proposed minor changes. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Matthew Armendo, Thomas Hannigan, Morris Bergman, and David George to approve the following:

- Special Permit for expansion or change of a pre-existing, nonconforming structure, in order to rebuild the structure with changes as outlined in the application.

12.) 1337 Main Street (Z-06-111) Variance and Special Permit: Don O'Neil, representative for Steve Tran, petitioner, presented the petition. Mr. O'Neil indicated that the petitioner plans to operate a grocery store that caters to the needs of the Southeast Asian communities. He indicated that Mr. Tran plans to reside in the apartment above the store and rent out the third floor apartment. Mr. O'Neil also indicated that the neighborhood is comprised of similar mixed-use with businesses/residences and also stated that the available on-street parking would be sufficient for the proposed grocery store. Mr. Fontane stated that the DPW reviews each ZBA application and, most likely, would consider this particular request to be de minimus. Mr. O'Neil stated that the beer and wine sales for the store was a key factor in

the economic feasibility of the store. Steve Tran stated that the first floor would include a floor to ceiling glass window to differentiate it from the residences above. The Board indicated that the applicant must obtain the appropriate liquor license from the License Commission for beer and wine sales. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, Morris Bergman and David George to approve the following:

- Variance for relief of four (4) off-street parking spaces.
- Special Permit for expansion or change of a pre-existing, nonconforming structure for a proposed retail store with groceries, beer, wine and other convenience store items.

with the following conditions:

- The hours of operation will be 9 a.m. to 9 p.m., Monday through Saturday and 12 p.m. – 5 p.m. on Sundays.
- The first floor retail store will be visually differentiated from the residential units.

13.) 2 Pullman Street (Z-06-112) Special Permit: Peter Tamm and Jack Manning, representatives for Clinton Recycling, LLC, petitioner, presented the petition. Mr. Tamm indicated that the proposed facility would process paper products only and that all required operations, including the sorting, bailing and marketing of paper, would take place inside the building. Mr. Tamm informed the Board that he had notified a representative for Price Chopper Supermarkets of the proposed use, and stated that said representative had expressed no concerns with the proposed use and/or the associated traffic volume. He indicated that the proposed use would be similar to the previous use, that there would be no waste transfer and that a traffic study demonstrated that the proposed traffic volume would not negatively impact the surrounding uses. Mr. Tamm stated that the proposed use would generate approximately 90 vehicle trips per day, including employee trips. Mr. Manning stated that the tractor-trailer trucks and the roll-off container trucks, transporting paper products to/from the site would be closed vehicles. Mr. Manning stated that the proposed operations would not use any chemicals onsite except for household cleaners and lubrication materials. He also indicated that he did not anticipate a physical expansion of the business because the proposed site is 30,000 square feet larger than the current location they are moving from and because the business is expected to become more efficient over time. Mr. Manning also stated that the approximate two million dollar up-front costs for the proposed use would come from private investment. Ray Malouso asked if the applicant had submitted a copy of the lease with the application and informed the Board that Waste Management had been a potential tenant for a previous petition filed for 30 Pullman Street. Mr. Tamm agreed to provide a copy of the lease. He also stated that the parking required for the use would be less than 34 spaces, which had been previously approved for the site. In addition, Mr. Tamm informed the Board that he had recently discussed the necessity of a Special Permit for expansion or change of a pre-existing, nonconforming use with Jody Kennedy-Valade. Mr. Fontane stated that the Board may benefit from hearing both Special Permits requests at the same time. Matthew Armendo and David George indicated they would like to hear both

Special Permits together. Mr. Tamm stated he was prepared to make a presentation regarding the parking configuration for the Board and indicated that the applicants were not seeking to change the current parking and/or loading configuration. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to continue the public hearing until July 10, 2006.

14.) 8 Marsh Avenue (Z-06-113) Variances: Don O'Neil representative for Kathy Luu, petitioner, presented the petition. Mr. O'Neil stated that the proposed structure is consistent with the lot size of the neighborhood and that the applicant will meet all required setbacks. He stated that the petitioner seeks to build a 2,000 square foot colonial-style single-family dwelling with a two-car garage underneath and indicated that these lots were configured in 1926. Jeff Baker and Mary Anne Conrad requested a rendering. Upon a motion by Matthew Armendo and seconded by Morris Bergman, the Board voted 5-0 to continue the hearing until July 24, 2006 to allow the applicant time to submit a frontal elevation of the proposed structure and discuss concerns with her neighbors.

15.) 67 & 91 Stafford Street (Z-06-115) Special Permits: Tony Gaval, petitioner, presented the petition. David George asked for clarification on the location of the barber shop. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the public hearing. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, Morris Bergman and David George to approve the following:

- Special Permit to allow a personal service shop in an ML-2.0 zone.
- Special Permit for expansion or change of a pre-existing, nonconforming use.

16.) 10 Fourth Street (Z-06-114) Special Permit: Mark Schulman, petitioner, presented the petition. Matthew Armendo expressed concern that three units would not fit into a neighborhood with mostly duplexes. Joseph Zwirblia stated that he has advocated for preserving open space in the neighborhood on previous petitions such as the cluster subdivision at 47 Fourth Street. He expressed concern that the proposed [townhouse development] and associated vehicular traffic would exacerbate current traffic problems in the neighborhood, caused by the icy conditions of the road during severe winter weather. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 by Leonard Ciuffredo, Thomas Hannigan, Matthew Armendo, Morris Bergman and David George to grant the petitioner:

- Leave to Withdraw without Prejudice relative to the requested Special Permit to allow single-family attached dwelling units in an RL-7 zone.

OTHER BUSINESS

17.) ZBA appointments: Mr. Fontane explained that a team of City staff was involved in the interview and recommendation process of new Board members and that a new member is expected to be appointed by July 18, 2006.

18.) Approval of the Minutes: Upon a motion by Thomas Hannigan and seconded by Morris

Bergman, the Board voted 5-0 to approve the June 12, 2006 minutes.

ADJOURNMENT

Chair Leonard Ciuffredo adjourned the meeting at 9:00 p.m.