

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

MARCH 12, 2007

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Morris Bergman, Vice-Chair
Matthew Armendo
David George
Andrew Freilich
Lawrence Abramoff

Staff Present: John Kelly, 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 5:35 PM.

APPROVAL OF THE MINUTES

The minutes of the February 26, 2007 meeting were held so the Board could review them.

REQUESTS FOR WITHDRAWAL

- 1. 90 East Central Street (Z-07-14) – Special Permit and Variances:** Donald O’Neil, representative for James Belletete, Trustee, petitioner, requested Leave to Withdraw without prejudice for the requested Special Permit for expansion or change of a pre-existing nonconforming use/structure, Variance for 40 feet of relief from frontage requirement, Variance for 3,000 square feet of relief from gross dimensional requirement, and Variance for relief of two parking spaces from the off-street parking requirement. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to grant the petitioner Leave to Withdraw Without Prejudice.

UNFINISHED BUSINESS

- 2. 25-41 Granite Street (Z-07-01) – Amendment to Special Permit:** Enver Hyskaj, petitioner, requested an Amendment to a previously approved Special Permit for the purpose of expanding into another space for a take-out restaurant. Mr. Armendo asked for a time frame for the paving of the parking lot. Tam Nguyen, owner of the premises, responded that the lot would be paved within four months. Mr. George asked if there were any lighting in the lot and the petitioner

responded that there was not. He said there were spotlights on the building that would light the lot. Mr. Kelly advised the Board that one parking space should be designated as handicapped parking. In response to a question by Mr. Bergman, Mr. Nguyen stated that, as owner of the premises, he would be responsible for the paving work. Upon a motion by Matthew Armendo and seconded by David George, the Board voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to approve the following:

- **Special Permit: for expansion or change of a pre-existing nonconforming use/structure**

The Special Permit was approved with the following conditions:

- **Proposed restaurant is for take-out only.**
- **The 11 parking spaces are only for the current use and the proposed take-out restaurant. Owner must submit a new petition for any additional uses.**
- **Parking lot must be paved with asphalt or concrete and striped with one parking space designated as handicapped parking.**
- **Occupancy can commence prior to paving of the lot providing all relevant permits have been obtained.**

- 3. 129 Lincoln Street (Z-07-02) – Variance:** Frank Voci, petitioner, presented the petition. The petitioner is seeking a Variance for 44 square feet of relief from the signage dimension requirement for the purpose of adding a 3'x 8' illuminated sign to the existing 4'x 8' illuminated sign at the corner of the property. This hearing was continued on February 26, 2007 to March 12, 2007 to determine if an additional Variance to allow a free-standing sign in an RG-5 district was necessary. Mr. Fontane informed that Board that, after consulting with Code Enforcement, it was determined that an additional Variance was not necessary because the professional office was permitted by Special Permit and Section 6(C)(2) is interpreted to apply to all Special Permit uses. As such, the use is allowed to have one identification sign. A previous approval allowed a 32 square foot sign, more than double what is permitted, and this petition is requesting an additional 3'x 8' reader board sign to be placed on top of the existing sign. Under Article IV, Section 6, C, 1, which supercedes Table 4.3, the amount of square feet of relief is reduced from 44 square feet to 41 square feet to allow the petitioner to add the 3'x 8' reader board on top of the existing sign. Mr. Fontane also indicated that no such sign may be located nearer to a street lot line than ½ the depth of the required setback at that location. Mr. Bergman noted that the area was predominantly commercial uses. Mr. Abramoff inquired as to how many jobs had been created by Mr. Voci and he responded that there were thirty people working for him. Upon a motion by Morris Bergman and seconded by Lawrence Abramoff, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to close the hearing. Upon a motion by Morris Bergman and seconded by Matthew Armendo, it was voted 4-1 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo and Lawrence Abramoff (David George voted no) to approve the following:

- **Variance for 41 square feet of relief from signage dimension requirement**

The Variance was approved with the following conditions:

- **The relief approved is 41 square feet rather than the requested 44 square feet.**
- **There shall be no motion signs on the site.**

4. **41 Lancaster Street (Z-07-06) – Special Permit and Variance:** John Altomieri and Ben Clark, representatives for the petitioner, and Jay Hummer, petitioner, presented the petition. The petitioner is seeking a Special Permit for expansion or change of a pre-existing nonconforming use/structure and Variance for 10 feet of relief from the frontage requirement for the purpose of altering the interior of the structure to convert the former nursing home into a four-unit multi-family apartment building. Chair Ciuffredo asked about the number of unrelated people occupying a dwelling unit. Mr. Fontane responded that not more than three persons who are not within the second degree of kinship can reside in a dwelling unit according to the definition of “family” in the Zoning Ordinance. Four or more unrelated persons who are not within the second degree of kinship can reside in a “lodging house” as defined in the Zoning Ordinance with grant of a Special Permit. Mr. Hummer responded that without the four bedroom apartments, the project would not work financially. Given Mr. Hummer’s response, Mr. Bergman was concerned about the potential sale of the property to a nonprofit in the future and suggested a condition restricting the approval to this particular owner. However, Mr. Altomeiri said it would be an undue burden for the petitioner because it would affect marketability if the building were to be sold in the future. David Sriberg, an abutter, stated the neighborhood would prefer apartments to the alternatives. Mr. Freilich said he did not want to see the building revert to what it was. Mr. Abramoff expressed concern about limiting the approval to this owner because the owner’s ability to market the site would be diminished if he chose to sell it. Mr. Bergman requested an opinion from the Law Department regarding the Board’s ability to condition an approval to a particular owner. Upon a motion by David George and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to close the hearing. Mr. Bergman then suggested a condition that should the property be sold to a nonprofit entity that wants to change the use, the Special Permit must be amended. Upon a motion by David George and seconded by Matthew Armendo, it was voted 4-1 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo and David George (Andrew Freilich voted no) to include the condition. Upon a motion by David George and seconded by Matthew Armendo, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to approve the following:

- **Special Permit for expansion/change of a pre-existing nonconforming use/structure**
- **Variance for 10 feet of relief from frontage requirement**

The Special Permit and Variance were approved with the following conditions:

- **Should premises be sold to an entity that wants to change the use, the Special Permit must be amended.**

- **Additional Arborvitae be provided from the end of the six-foot vinyl fence to meet up with the proposed Arborvitae to fully screen parking areas from neighboring properties. Plantings must be 7' high and planted 4-feet on center along the length.**
- **Trees and shrubs proposed at the corner of Highland and Lancaster Streets should not be planted in the clear-view triangle. Low plantings no higher than 2.5 feet can be planted there instead.**

NEW BUSINESS

- 5. 86 Bowker Street (Z-07-16) – Variance:** George Hayeck, petitioner, requested a continuance because he was unable to attend the meeting. The petitioner is seeking a Variance for 1 foot, 2 inches of relief from the frontage requirement for the purpose of dividing the land into two single-family lots. Upon a motion by Matthew Armendo and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to continue the hearing to March 26, 2007.
- 6. 82 Dorchester Street (Z-07-18) – Extension of Time for Variances:** Steve Cook, representative for the petitioner, presented the petition. He stated that Variances had been approved on March 27, 2006 for the purpose of constructing a single-family detached dwelling. Mr. Cook explained the extension of time was needed because the State had not announced a funding round and was not expected to do so until late May or early June. Mr. Fontane informed the Board that Oak Hill Community Development Corporation appeared on the City's REAP list as owing back taxes for two properties under its ownership. Mr. Cook said he would contact the Treasurer's office to determine if Oak Hill did, in fact, owe any back taxes on any of its properties. Upon a motion by Andrew Freilich and seconded by Morris Bergman, the Board voted 5-0 to close the hearing. Upon a motion by David George and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to approve the following:

- **Extension of Time for Variances: Six months**

The Extension of Time was approved with the following condition:

- **Oak Hill Community Development Corporation address any outstanding tax issues to the satisfaction of the City Treasurer and Collector.**

- 7. 38 Aetna Street (Z-07-19) – Extension of Time for Variances:** Steve Cook, representative for the petitioner, presented the petition. He stated that Variances had been approved on March 27, 2006 for the purpose of constructing a two-family dwelling. Mr. Cook explained the extension of time was needed because the State had not announced a funding round and was not expected to do so until late May or early June. Mr. Fontane informed the Board that Oak Hill Community Development Corporation appeared on the City's REAP list as owing back taxes for two properties under its ownership. Mr. Cook said he would contact the Treasurer's office to determine if Oak Hill did, in fact, owe any back taxes on any of its properties. Upon a motion by Andrew Freilich and seconded by Morris Bergman, the Board voted 5-0 to close the hearing.

Upon a motion by David George and seconded by Morris Bergman, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Andrew Freilich to approve the following:

- **Extension of Time for Variances: Six months**

The Extension of Time was approved with the following condition:

- **Oak Hill Community Development Corporation address any outstanding tax issues to the satisfaction of the City Treasurer and Collector.**

8. **Lot 4, Ascension Street (Z-07-11) – Variance:** Hossein Haghanizadeh, Ben Clark, Charles Ball and William Aholt presented the petition to the Board. Mr. Ball stated the petitioner is seeking a Variance for 4 feet, 9 inches of relief from the frontage requirement for the purpose of constructing eight single-family attached (townhouse) dwelling units. Chair Ciuffredo asked if the units would be rental or condominium units. Mr. Haghanizadeh responded that they would be sold as condominium units with a condominium association. He further stated they would be sold for \$240,000 to \$245,000. In response to a question from Chair Ciuffredo, Mr. Haghanizadeh said the project would not be phased but developed entirely at the same time. Mr. George said he would like to see the 10 percent for recreational space set aside delineated on the plan. Mr. Fontane informed the Board that, while the petition seeks 4 feet, 9 inches of relief, the actual relief necessary is 1.71 feet of relief. Mr. Armendo informed the petitioner that the Board wants to see renderings before approval. Mr. Fontane informed the Board that there was an outstanding tax bill for this property that must be addressed prior to approval. Upon a motion by Matthew Armendo and seconded by Lawrence Abramoff, the Board voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Morris Bergman, Matthew Armendo, David George and Lawrence Abramoff to continue the hearing to March 26, 2007 so the petitioner can provide a rendering and revise the plan.

Mr. Bergman left the meeting.

9. **334 Lake Avenue North (Z-07-13A) – Special Permit and Variances:** Kevin Quinn, representative for the petitioner, presented the petition to the Board. The petitioner is seeking a Special Permit for expansion/change of a pre-existing nonconforming use/structure, Variance for 17 feet, 3 inches of relief from the front yard setback requirement, Variance for 1,937 square feet of relief from gross dimensional requirement, Variance for 6 feet, 6 inches of relief from the frontage requirement, Variance for 4 feet, 4 inches of relief from the side yard setback requirement and Variance for relief of 1 parking space from off street parking requirement for the purpose of demolishing the existing house and shed and constructing a new single-family detached dwelling. James Zinkevich, Cynthia Pehl and Brian Pehl raised issues of overcrowding of the site, runoff from the site and lack of parking. Mr. Zinkevich complained about a tree that the petitioner had said he would remove from the site and had not done so yet. The Pehls were also concerned about the height of the structure. Mr. Kelly informed the Board that height is measured by the average grade to the peak of the roof and cannot exceed 35 feet. Mr. Freilich suggested the petitioner and neighbors meeting to try to settle their differences. Chair Ciuffredo

informed the petitioner that the Board has taken the position that it wants to see a rendering prior to approval. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Matthew Armendo, David George, Andrew Freilich and Lawrence Abramoff to continue the hearing to March 26, 2007 so the petitioner can meet with the neighbors and provide a rendering to scale.

10. 18 Christine Street (Z-07-23) – Variances: Heather Nejaimey, petitioner, presented the petition. She stated she was seeking a Variance for 1,501 square feet of relief from the gross dimensional requirement and Variance for 5 feet of relief from the frontage requirement for the purpose of splitting the lot to construct another single-family dwelling. Mr. Fontane informed the Board that there was an outstanding utility bill for the property that would have to be addressed prior to approval. He also provided the following background information: On November 8, 2004, a similar petition from Richard & Judith Nejaimey was submitted to build a single-family detached dwelling on Lot 1R that was unanimously denied by the Board. That petition showed a plan for three lots for 18 & 20 Christine Street, which they owned at the time. The petition included a request for 1,501 square feet of relief for #18 to split it into Lot 1R & 1L, but did not include the request for five feet of frontage relief because, at the time, they were able to provide 65 feet of frontage for all three lots.

The previous petitioner (Richard & Judith Nejaimey) still owns #20 and built a two-family on it in 2006. If they had built a single-family detached, all three lots could have conformed dimensionally for the frontage requirement and Lot 1R would only have needed 502 square feet of area relief for a second lot. But because the previous petitioner (Richard & Judith Nejaimey), who sold #20 to Heather Nejaimey, chose to build a two-family on #20 and therefore taking up frontage and lot area needed for a second lot for #18, they have created their own hardship. Additionally, the argument the petitioner makes that they could construct a single-family semi-detached dwelling (duplex) without a Variance or Special Permit is not accurate. The existing structure at 18 Christine Street is a dimensionally nonconforming structure (does not meet 20-foot front yard setback requirement) so the petitioner would have to petition the Board for a Special Permit for the expansion or change of a nonconforming use/structure and the “proposed sketch of land” for the duplex neither meets Zoning or Building Code requirements for duplexes.

Chair Ciuffredo and Mr. George concurred that the petitioner had created the hardship. Ms. Najimey stated other lots nearby are smaller than this particular lot. Chair Ciuffredo advised the petitioner that she could ask for Leave to Withdraw Without Prejudice rather than risk having the petition denied. Ms. Nejaimey did request withdrawal of the petition. Upon a motion by Matthew Armendo and seconded by David George, it was voted 5-0 by Leonard Ciuffredo, Matthew Armendo, David George, Andrew Freilich and Lawrence Abramoff to grant the petitioner Leave to Withdraw Without Prejudice.

11. 32 Bancroft Street (Z-07-12) – Variances: Edward Carroll, optionee and petitioner, presented the petition. He explained that he is seeking a Variance for 6.43 feet of relief from the rear yard setback requirement and a Variance for 1,071 square feet of relief from the gross dimensional requirement for the purpose of constructing a single-family detached dwelling. Mr. Fontane informed the Board that there was an outstanding tax bill that would have to be addressed prior to approval. Steve and John Freeman, owners of an abutting business, were concerned about the

lack of parking for trucks coming to their business if the lot were developed. Mr. George asked the petitioner if he had considered any other use for the property. Mr. Carroll said he had not. It was pointed out that the lot cannot be used for accessory parking for a nonresidential use because it is located in an RG-5 district. Upon a motion by Matthew Armendo and seconded by Andrew Freilich, it was voted 5-0 to close the hearing. Upon a motion by Matthew Armendo and seconded by David George, it was voted 2-3 by Leonard Ciuffredo and Andrew Freilich (Matthew Armendo, David George, and Lawrence Abramoff voted no) to approve the Variances. The motion failed, therefore the Variances were denied.

OTHER BUSINESS:

Mr. Fontane told the Board that he would be forwarding a recommendation for fee increases shortly. The Board would then need to review the fees and hold a public hearing to consider the new fee schedule. No action is necessary at this time.

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 9:30 PM.