

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

**January 10, 2011
WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

Zoning Board Members Present:

Lawrence Abramoff, Chair
William Bilotta
Vadim Michajlow
Timothy Loew
Kola Akindele

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Ruth Gentile, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

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

- 1. 242 & 242A Stafford Street (ZB-2010-050) - Special Permit for Expansion or Change of a pre-existing non-conforming use/structure.** Atty. Peter Keenan, representative, submitted a letter requesting a postponement to January 31, 2011 and to extend the public hearing deadline to March 1, 2011, as there were only four voting members for the item. Upon a motion by Vadim Michajlow and seconded by Timothy Loew, it was voted 4-0 to grant the postponement to January 31, 2011 and to extend the public hearing deadline to March 1, 2011.

Exhibits:

- Exhibit A: 242 -242A Stafford Street Application; received October 26, 2010; prepared by Atty. Peter Keenan on behalf of Michael McIntyre, applicant and owner of record, UB Properties, LLC.
- Exhibit B: 242-242A Stafford Street Plan; dated November 19, 2010 prepared by James F. Malley, Jr. PE.
- Exhibit C: Letter from Lara Bold, AICP, Chief Planner to Atty Peter Keenan; re: 242-242 A Stafford Street; dated November 23, 2010.
- Exhibit D: Letter / Affidavit – Thomas Mann from Atty. Peter Keenan to Lara Bold, Chief Planner, re: 242 -242A Stafford Street, dated December 9, 2010.
- Exhibit E Letter / Affidavit – Michael McIntyre from Atty. Peter Keenan to Lara Bold, Chief Planner, re: 242-242 A Stafford Street, dated December 17, 2010.

Exhibit F E-mail requesting a continuance by Atty. Peter Keenan, Jr., dated December 20, 2010

Exhibit G Letter of opposition to the Zoning Board of Appeals Chair from State Representative John J. Binienda, dated December 13, 2010; received December 21, 2010.

Exhibit H Zone Change – Stafford Street Area – Ordained February 2, 1988.

Exhibit I Special Permit decisions from Zoning Board of Appeals – April 26, 2005, September 26, 2005, and November 17, 2008.

Exhibit J - E-mail requesting a continuance by Atty. Peter Keenan, Jr., dated January 10, 2011.

2. **34 Thorne Street (ZB-2010-053) – Amendment to Special Permits:** To allow a professional office in an RG-5 zone and expansion or change of a pre-existing non-conforming structure. Mr. Finkelstein, representative stated that there was a condition placed on the Special Permit that it was granted for a year and that after that time the applicant was to show through Inspectional Service records and police records that the use was not a detriment to the neighborhood. The applicant produced records from Inspectional Services demonstrating that there were no complaints during the year and from the police department showing that the only complaint was that a tenant was the victim of a crime and no crime was committed on the premises. He stated that they would now like to have the condition removed from the Special Permit and that they would agree to the remainder of the conditions that were approved a year ago. Upon a motion by William Bilotta and seconded by Kola Akindele, it was voted 5-0 to close the public hearing. Upon a motion by William Bilotta and seconded by Kola Akindele, it was voted 5-0 by Lawrence Abramoff, Vadim Michajlow, William Bilotta, Timothy Loew and Kola Akindele to approve the requested Amendment to Special Permits to allow a professional office in an RG-5 zone and expansion or change of a pre-existing non-conforming structure with the following conditions: the applicant will be allowed to use the property as previously approved by the Special Permits with the remaining conditions: 1) the approved Special Permit cannot be transferred to another owner if the property is sold, 2) green space must remain as depicted on the plan dated 12/2/09 and labeled Exhibit “A”, 3) no additional impervious surface can be created, and 4) sign for business cannot be larger than 12” x 14” and 5) provided it is in accordance with plot plan submitted on file with the City of Worcester and in compliance with all governmental codes.

Exhibits:

Exhibit A – Amendment to Special permit Application with plan and Inspectional Service report received 12/6/10.

Exhibit B – DPRS Staff Memo to Zoning Board of Appeals dated 1/3/11.

Exhibit C – Police Incident Report, dated 12/17/10 and received 12/21/10.

3. **1 Fielding Street (ZB-2010-055) – Variance: Relief of 5 feet from the frontage requirement.** Mr. Hazanegadeh, representative, presented the plan. He stated that the lot has 60 feet of frontage, as most of the other lots in the neighborhood, and that all other dimensional controls will be satisfied. He said that the owner wants to build another house on the property for he and his family to live in. Mr. Michajlow asked if the conditions in the

staff memo were acceptable to the applicant. Mr. Fontane clarified that the applicant must apply for a frontage subdivision and not an ANR as is stated in the staff memo. Mr. Abramoff asked where the house would be positioned on the lot. Mr. Hazanegadeh stated that it will be on the east side of the existing house, set back 22 feet from the street and having 8 feet on each side yard and that the frontage will be on Apricot Street. Joanne Kimelaskas stated that she believed that the applicant is short 5 feet of frontage and is building a large house and is very close to her house at 163 Apricot Street. She is concerned with privacy and objects to the large house with the 2-car garage being built. Mr. Hazehagadeh stated that the plan is showing an 8-foot side yard setback and that a fence will be provided around the property. Mr. Bilotta questioned if the lot was undersized, Mr. Hazanegadeh said that the lot size is 7,680 SF and 7,000 SF is required. Mr. Abramoff stated that the petitioner is asking for relief but that he believes the lot is consistent with the area and they are willing to provide a fence. Nancy Senior stated that she has no objection to the plans that she has seen. Mr. Fontane questioned if the house will be recessed from the front garage. Mr. Hazanegadeh said that the house is 46 feet back from the street and the garage is closer to the street. Mr. Fontane clarified that there will be 18 feet of setback and 8 feet of open space and that the house will only be partially in the way of the house next door. Mr. Abramoff described the contents of "Exhibit X" as the approximate location of the proposed house and the Kimelaskas house and that the houses will not be side by side. Mr. Fontane said that the proposed fence should be on three sides of the property and that it should not obstruct the view in the front yard setback. Mr. Kelly stated that a fence on the side usually is scalloped down in height at the front yard. The Board asked if there was a law regarding which side of the fence should face an abutter. Mr. Kelly stated that there is no law but that a good neighbor puts the good side facing the neighbor. Upon a motion by William Bilotta and seconded by Vadim Michajlow, it was voted 5-0 to close the public hearing. Upon a motion by William Bilotta and seconded by Vadim Michajlow, it was voted 5-0 by Lawrence Abramoff, Vadim Michajlow, William Bilotta, Timothy Loew and Kola Akindele to approve the requested Variance for relief of 5 feet from the frontage requirement with the following conditions: 1) structure is to be built to submitted plan and rendering plan, 2) one ALB resistant 3" caliper tree is to be planted on Apricot Street, 3) the side of driveway is to remain greenspace, 4) garage is to be set back 21 feet from the street, 5) stockade fencing is to be constructed 1 foot inside the property line as follows: a) left side of house is to be 8 feet back from street and will rise from 3 feet to 6 feet in a 10 foot space, b) right side of house is to be 17 feet back from the street be 3 feet in height for a span of 10 feet to the corner of the house and then 6 feet in height for the rest of the length.

Exhibits:

- Exhibit A: Variance Application; received December 7, 2010; prepared by Anthony Corso.
- Exhibit B: Variance Plan; dated 11-30-10, prepared by HS&T Group, Inc.
- Exhibit C: Rendering; submitted December 7, 2010; prepared by Westchester Modular Homes, Inc.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1 Fielding Street (ZB-2010-055); dated January 3, 2011.

4. 1119 & 1121 Grafton Street (ZB-2010-056) – Special Permit: To allow food service with alcohol. Kevin Quinn, representative, presented the plan. He stated that the staff memo recommended a condition that prohibits parking except on the property at 1119 & 1121 Grafton Street. He stated that there are dimensional issues and that they are seeking the permit for the use. He stated that the ABC has issued a liquor license for the Heresaki Steak House which is a 4-star restaurant and this will allow the business to open. Mr. Bilotta stated that the handicapped parking spaces differ from the photo and the plan. Mr. Abramoff questioned what are the correct number of parking spaces. Mr. Quinn said that the plan was being modified to show the correct handicapped parking spaces and that there are 8 parking spaces in the rear and 21 parking spaces in the front of the building. Mr. Abramoff stated that he was concerned as the number of parking spaces directly relates to the number of seats allowed in the restaurant. He further questioned that if the number of parking spaces changed is there a way of tracking the number of restaurant seats. Mr. Kelly stated that the number of parking spaces would dictate the occupancy load for a permit. Mr. Quinn stated that they have been to Con Comm and that they were satisfied with two parking spaces on the south side being eliminated and fencing is installed on the retaining wall. Mr. Fontane clarified that the meeting notification was correct as the three parking spaces on the abutting property were eliminated from the plan and that only the 1119 & 1121 Grafton Street property was involved. He further said that the landscaping requirement has not been met and that will require an additional Special Permit consideration. Mr. Abramoff clarified that the Board is voting to approve the special permit with conditions a-d as outlined in the staff memo and that an occupancy permit will not be issued without items 1,2, and 3 being met. Mr. Kelly said that the business will open with a temporary occupancy permit. Mr. Abramoff questioned if a time limit must be set on the temporary occupancy permit. Mr. Kelly explained that a temporary permit is for 30 days and that only two extensions are allowed. Mr. Fontane stated that only item 1 a-d and item 2 need to be approved this evening. Mr. Bilotta stated that he was in favor of the project, but wants the petition satisfied. Ruth Davies was concerned that customers would park in her driveway. Mr. Quinn stated that there is a fence along the property line and that this is an enforcement issue. The Board suggested that the contact information for the manager on site be provided and signage to discourage parking be installed. Mr. Bianco stated that the pick up schedule for the dumpster is every other day and that chemicals are used to control insects and odors. Christine Davies was concerned with hours of operation. Mr. Quinn said that the restaurant would be opened six days a week with Tues through Thursday and Sunday hours being 5:00PM to 9:45PM and Friday and Saturday hours 5:00 PM to 11:00 PM. John Fresolo said that he supports the project and that this is a good looking building and that Mr. Bianco has built 691 Grafton Street and the Fallon Clinic Building further down Grafton Street. Mr. Michajlow was concerned with the size of the lot and snow removal. Mr. Quinn stated that the snow would be removed from the property. Upon a motion by William Bilotta and seconded by Kola Akindele, it was voted 5-0 to close the public hearing. Upon a motion by Vadim Michajlow and seconded by William Bilotta, it was voted 5-0 by Lawrence Abramoff, William Bilotta, Vadim Michajlow, Timothy Loew and Kola Akindele to approve the requested Special Permit to allow food service with alcohol with the following conditions:

- 1) That revised plans be submitted to the Zoning Board of Appeals showing:
 - a) Removal of the three (3) off-street parking spaces on Joseph Casella's property

- b) Removal of two (2) off-street parking spaces on the southern lot line near the transformer
 - c) Updated parking schedule noting a corresponding reduction of seats in the proposed restaurant as a result of removal of off-street parking spaces
 - d) Replacement of landscaping buffer along the southern lot line in the area of the two off-street parking spaces near the transformer.
- 2.) The site is constructed in accordance with the final amended Definitive Site Plan approved by the Planning Board and the amended order of Conditions of the Conservation Commission and that address staff's comments enumerated above.

3.) Other Relief Required and must be applied for within six months of this approval

The following additional relief would be necessary prior to issuance of a final certificate of occupancy should the applicant decide to go forward with the modified plan as described above (removal of the three off-street parking spaces on Joseph Casella's property).

- a.) Special Permit for a waiver from landscaping requirements. Specifically, landscaping relief is required to allow landscaping City's right of way as a mitigation measure for lack of five (5) foot landscape buffer along the front portion of the site. Additional landscaping relief is required for the side lot lines. Staff recommends that the applicant remove the two proposed off-street parking spaces on the southern lot line and replace with a landscape buffer as shown in the August 2009 approved Definitive Site Plan and include additional landscaping in the interior of the parking lot in the proposed raised "triangles".
 - b.) Special Permit for waiver of up to 10% of required off-street parking spaces.
 - c.) Amendment to Definitive Site is still required showing all final proposed changes to the site from the Nov. 2009 approved Def. Site Plan.
- 4.) Maintenance of landscaping on a semi-annual basis
- 5.) The hours of operation are to be Tues through Thursday and Sunday from 5:00PM to 9:45PM and Friday and Saturday from 5:00 PM to 11:00 PM.

Exhibits:

- Exhibit A: 1119 & 1121 Grafton Street Application; received December 7, 2010; prepared by Nancy Bianco on behalf of LGN, LLC.
- Exhibit B: 1119 & 1121 Grafton Street Plan; dated December 6, 2010, received December 7, 2010; prepared by Quinn Engineering.
- Exhibit C: Reduced size plan of August 26, 2009 approved Definitive Site Plan for 1119-1121 Grafton Street.

Other Business:

Approval of Minutes:

Upon a motion by William Bilotta and seconded by Timothy Lowe, it was voted 5-0 to approve the minutes of October 18, 2010.

Upon a motion by Timothy Loew and seconded by William Bilotta, it was voted 5-0 to approve the minutes of November 8, 2010.

Upon a motion by Timothy Loew and seconded by Kola Akindele, it was voted 5-0 to approve the minutes of November 29, 2010.

Decisions: The Board signed decisions.

Adjournment

Chair Abramoff adjourned the meeting at 7:17 pm.