

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

MAY 16, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

Zoning Board Members Present: Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Vadim Michajlow
Timothy Loew, Alternate Member
Kola A. Akindele, Alternate Member

Staff Members Present: Joel Fontane, Division of Planning & Regulatory Services
Edgar Luna, 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.

APPROVAL OF THE MINUTES:

Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board vote 4-0 to approve the minutes.

NEW BUSINESS

Chair Abramoff stated that he was informed that the petitioner for item # 2 in the agenda, 11 Ericsson Street (ZB-2011-015), had submitted a letter requesting the Board to grant him Leave to Withdraw without Prejudice regarding his petition. Therefore, he decided to address this petition first.

- 1. 11 Ericsson Street (ZB-2011-015) – Administrative Appeal:** Chair Abramoff asked the audience if the petitioner, or a representative of the petitioner was present to address the petition, but no one responded. Mr. Luna informed the Board that Stephen Rei, petitioner, submitted a letter requesting the Board to grant him Leave to Withdraw without Prejudice regarding his petition, and to refund the petition's fee. He stated that the objective of the petition was to appeal the Cease and Desist Order relative to the operation of a fourth dwelling unit in an RG-5 zone, issued by David C. Horne, Senior Building Inspector, and John Kelly, Acting Building Commissioner.

Mr. Abramoff stated that while reading the documents regarding to this petition, he became aware that the general consensus was that the Zoning Board of Appeals was not the appropriate venue to address this matter. Therefore, he indicated that the request to grant the petitioner Leave to Withdraw without Prejudice seemed appropriate; however, he indicated that he would prefer to hear directly from the petitioner regarding the fee refund request. In addition, he indicated that the Board would benefit from further clarification regarding the genesis of the application, and who advised the applicant to submit his petition.

Mr. Fontane stated that his understanding was that the petitioner was advised to file an Administrative Appeal at the Division of Planning and Regulatory Services (DPRS), because he claimed that he was aggrieved by a Cease and Desist Order issued by the Department of Inspectional Services. In addition, Mr. Fontane stated that although he was not aware who had advised the applicant to file the petition, he stressed that the applicant did have the right to appeal such order under Massachusetts General Laws; however, he stated that the applicant appealed to the wrong entity.

Mr. Fontane also stated that in regards to the fee waiver, his recommendation was that the Board approve a partial refund of \$350.00, but not the total fee of \$500.00. He indicated that his recommendation to withhold \$150.00 was based on the fact that the petition was processed and reviewed by DPRS staff, as well as advertised twice as required. In addition, he indicated that \$150.00 was lowest fee in the fee schedule and that work incurred merited such fee. In addition, he indicated that although the petition involved less than a full review, it triggered the need for an opinion from the City's Law Department, and time discussing the matter with staff from other City Departments.

Mr. Abramoff stated that granting the Leave to Withdraw without Prejudice seemed to be the most appropriate action under such circumstances; however, he indicated that he was not sure if the Board's action would be the end for the petition, or, if the applicant would be allowed to resubmit the petition. Mr. Fontane stated that Board could render a decision based on the information submitted; however, he also said that the Board could continue the matter to a future meeting and request that the applicant be present to address the matter, or, address the fee request at a future meeting under Other Business. However, he stressed that the Board typically addresses similar requests at the same time.

Mr. Abramoff expressed concern that the petitioner was not present to address the matter, and indicated that he considered it to be unusual. Mr. Fontane concurred with Mr. Abramoff that the absence of the petitioner was unusual. Mr. Bilotta also expressed concern that the applicant was not present to discuss the fee refund request. Mr. Fontane asked Mr. Luna if the applicant had requested full refund, and Mr. Luna confirmed that the applicant had requested full refund which is \$500.00.

As the Board was discussing this matter, Stephen Rei, petitioner, stood from the audience, identified himself, and apologized for being late. Mr. Rei confirmed that he was requesting Leave to Withdraw without Prejudice regarding his petition, and full refund of the fee paid. Mr. Abramoff stated that withdrawing the petition seemed to be the appropriate decision; however, he stated that the Board needed additional information regarding his request for a full refund prior to rendering a vote on the refund.

Mr. Rei stated that after purchasing the house in November 2010, he completed an evaluation of conditions of the house and determined that the building needed to be

completely renovated. To that end, he decided to start by installing new electrical and heating systems, and proceeded to file for a Building Permit as required. While doing the work, he discovered that the fourth-floor had been used as an illegal dwelling unit because it had kitchen and bathroom facilities that had not been permitted. Thereupon, he decided to remove the facilities and convert the space into a heated storage area for the third-floor dwelling unit, and proceeded to do so. He indicated that when a Building Inspector visited the site to review the work being done, he assumed incorrectly that he was converting the attic space (4th floor), into a dwelling unit, which he claims he was not. Mr. Rei indicated that, in fact, what he did was to dismantle the illegal dwelling by removing the facilities aforementioned.

He also indicated that upon receiving the Cease and Desist Order, he contacted the Department of Inspectional Services (DIS) to discuss the significance of the document, explain the misunderstanding, and describe its impact on the project. Mr. Rei stressed that, in his opinion, the Cease and Desist Order was unjustified and caused him undue hardship. In addition, he indicated that while he was at Inspectional Services, he was informed that if he disagreed with the Order, he had the right to appeal it and submit an Administrative Appeal at the Planning Division Office, which he did.

Mr. Kelly confirmed that a Cease and Desist Order was issued for this address after a Building Inspector visited the site to inspect the construction work being done on site. He stated that when the Building Inspector arrived on the site, he noticed that construction workers were retrofitting the attic to what appeared to be an illegal dwelling unit, which was not part of the original Building Permit, and is not allowed in the zoning district; therefore, a Cease and Desist Order was issued. In addition, he indicated that, unfortunately, the current Cease and Desist Order is not specific as to where to file the Administrative Appeal, except that it says that the Order can be appealed.

Upon a motion by Mr. Bilotta and seconded by Mr. Akindele, the Board voted 4-0 to close the hearing. Upon a motion by Mr. Bilotta and seconded by Mr. Akindele, the Board voted 4-0 to grant the petitioner Leave to Withdraw without Prejudice regarding the Administrative Appeal filed by Stephen and Linda Rei. Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 4-0 to refund \$350.00 of the application fee to the petitioner.

- Exhibit A: Administrative Appeal application received March 24, 2011, and prepared by Stephen Rei.
- Exhibit B: Cease and Desist Order from the Department of Inspection Services to Stephen Rei dated February 25, 2011, regarding 11 Ericsson Street.
- Exhibit C: Memorandum from DPRS to the Zoning Board of Appeals dated May 10, 2011 regarding 11 Ericsson Street.
- Exhibit D: Letter from Stephen Rei to the Zoning Board of Appeals dated May 11, 2011 requesting Leave to Withdraw without Prejudice.
- Exhibit E: E-mail from Worcester Law Department to DPRS dated May 9, 2011, regarding 11 Ericsson Street.

NEW BUSINESS

2. **3 Knight Street (ZB-2011-010) - Variance:** Denise Ducimo (a.k.a. Denise Schwing), petitioner, presented the petition. Ms. Schwing stated that she was seeking approval for the following: (1) Variance for relief of six (6) parking spaces. She indicated that the hearing for this petition was continued from the April 25, 2011 meeting to allow her additional time to explore possibilities of providing on-site parking and submit a plot plan to scale showing the same. She stated that the petition's objective was to convert the residence into a three-family detached dwelling, and stressed that the Board asked her to consider providing on-site parking.

Mr. Abramoff reminded Ms. Ducimo that only 4 Board members were present to vote, and indicated that in order for the petition to be approved, she needed 4 affirmative votes; therefore, he asked her to indicate whether or not she wanted to move forward with the hearing or not. She responded affirmatively indicating that she was ready to move forward with the petition. Therefore, she asked the Board to open the hearing and address the petition.

She indicated that, as requested by the Board, she hired a Civil Engineer to survey the land and draw a plot plan to scale showing on-site parking spaces. Ms. Ducimo indicated that the survey demonstrated that the parcel had sufficient area to accommodate 4 parking spaces; therefore, a plot plan to scale was drawn and submitted to DPRS as requested. In addition, she stated that given the fact that she would be able to provide 4 parking spaces on site, she would only need relief for 2 parking spaces instead of 6 spaces, as stated in the application.

Ms. Ducimo stated that after submitting the plot plans, she was contacted by DPRS staff informing her that the 5-foot buffer shown on the plot plan was not required. She indicated that if the information was correct, she would be able to provide all 6 parking spaces on site, and the petition would be moot. Mr. Fontane stated that in regards to off-street parking requirements, the Zoning Ordinance states that except for single-family detached, single-family semi-detached, 3-family detached, and 2-family detached uses, parking areas shall be setback a minimum of 5-feet from the boundary line. Therefore, since the petitioner is seeking to convert the two-family structure into a three-family structure, the applicant is not required to maintain a 5-foot buffer and, consequently, able to provide 6 parking spaces on site.

Mr. Kelly stated that the parcel has 9,052 SF, and the left-side area appears to be 20' x 124' feet; therefore, the parcel has enough area to accommodate 8 vehicles, provided that the area is paved. Mr. Fontane concurred that the parcel had enough area to accommodate more than the required number of parking spaces. Mr. Abramoff indicated that given the size of the parcel, and if the petitioner were to agree to pave the left-side area, she would be able to accommodate the 6 parking spaces required and therefore, the petition would be moot. Mr. Fontane stated that DPRS had made the same observation at the April 25, 2011 meeting, and indicated that he still maintained the same position.

Ms. Ducimo stated that she had decided to incur the expenses of paving the left side of the parcel in order to provide on site the 6 parking spaces required for the proposed use. However, she lamented that City staff had not advised her from the beginning that by paving the left-side portion of the parcel, she would not have incurred the expense of

paying the petition's fee and hiring a Civil Engineer to draw plans to scale. Nevertheless, she stated that she was pleased that the process had ended well, and that her tenants would be able to park on site, and not on the street, which exacerbates parking problems during the winter months.

Mr. Fontane indicated that he wanted to make a statement on behalf of DPRS staff. He stated that DPRS staff does not advise individuals whether to apply or not, and in those instances where an applicant submits a plot plan that does not show parking spaces, he or she is encouraged to contact Inspectional Services to request a Zoning Determination Form (ZDF) in order to determine what relief is required. He also stated that an applicant can choose to provide the required parking by paving the area and showing the spaces in the parking plan, which would allow them to obtain a Building Permit. In this case however, DPRS staff was presented with an unclear realtor's plan, which was not to scale and did show any parking spaces; nevertheless, it was the applicant's choice to do so, and not DPRS staff telling them what to do. In addition, he stated that DPRS staff, first and foremost, look for zoning compliance; however, in this case, the plan submitted did not show any parking spaces, therefore, it was determined that a Variance was needed.

Mr. Abramoff stated that providing on-site parking was a benefit to Ms. Ducimo because it would enhance the site and would likely to increase its value. Mr. Kelly indicated that when applying for a Building permit, the applicant would be required to submit a plot plan to scale showing the 6 required parking spaces for the proposed use.

Mr. Loew stated that a utility pole seemed to be located in the area where the entrance of the proposed parking area will be located. Ms. Ducimo indicated that she was an electrical engineer, and that based on her experience, the utility pole on site was not needed and could be relocated. Therefore, she informed the Board that she would be contacting National Grid to relocate it.

Upon a motion by Mr. Akindele and seconded by Mr. Loew, the Board voted 4-0 to close the hearing. 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 regarding the Variance for the relief of six (6) parking spaces.

List of Exhibits:

- Exhibit A: Variance Application prepared by Louis and Denise Ducimo (aka Denise Schwing), received on March 16, 2011.
- Exhibit B: Mortgage Inspection Plan prepared by Edward J. Moran, dated October 25, 1995
- Exhibit C: Lot Division Knight Street Plan dated May 4, 2005, prepared by Donald J. Frydryk.
- Exhibit D: Memorandum from DPRS to the Zoning Board of Appeals regarding 3 Knight Street, dated April 23, 2011.
- Exhibit E: Plan of Land prepared by Robert D. O'Neil Jr. dated May 3, 2011, received May 6, 2011.

OTHER BUSINESS

Adjournment: Chair Abramoff adjourned the meeting at 6:50 pm.