

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

May 20, 2013

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present: Lawrence Abramoff
Vadim Michajlow
William Bilotta
Joseph Wanat
Timothy Loew
Robert Haddon

Zoning Board Members Absent: None

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Marlyn Feliciano, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

Board Site Views

CALL TO ORDER

Vice-Chair Abramoff called the meeting to order at 5:32 p.m. Mr. Abramoff introduced the two new members and welcomed them to the Board.

APPROVAL OF THE MINUTES

The minutes for April 29, 2013 were not approved since the Board did not have an opportunity to review them prior to the meeting.

REQUESTS FOR CONTINUANCES, POSTPONEMENTS, WITHDRAWALS

1. 7-11-15 Lancaster Street (ZB-2013-006)

Relief Requested: **Special Permit:** To allow a dormitory use in the BO-1.0 zoning district (Business, Office)

Petitioner: Massachusetts College of Pharmacy and Allied Health Sciences

Present Use: Multi-family residential buildings and 19 associated off-street parking spaces

Petition Purpose: Renovate the three low-rise existing buildings to construct a total of 18 residential dwelling units (36 total beds)

Zone Designation: B0-1.0 (Business, Office)

The petitioner requested a postponement to June 17, 2013. Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 6-0 to postpone the item to June 17, 2013.

List of Exhibits.

- Exhibit A: Special Permit Application; received February 19, 2013; prepared by Massachusetts College of Pharmacy, ATTN: Deborah A. O'Malley.
- Exhibit B: Existing Conditions Site Plan; dated February 3, 2013; prepared by B&R Survey, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re:7, 11 & 15 Lancaster Street; dated May 17, 2013.
- Exhibit D: Request for Postponement from Atty. Mark Donahue, representative for Massachusetts College of Pharmacy and Allied Health Sciences to the Zoning Board of Appeals; dated April 1, 2013; and postponed to May 20, 2013 dated April 24, 2013.
- Exhibit E: Supplemental Letter from Atty. Mark Donahue dated and received February 21, 2013.

2. 184 Highland Street (ZB-2013-014)

- Special Permit: To allow a Lodging House in a RG-5 (Residence, General) zoning district
- Petitioner: D&E Realty LLC
- Present Use: Single-family dwelling
- Zone Designation: RG-5 (Residential, General)
- Petition Purpose: Convert the dwelling to a Lodging House for 10 occupants with five (5) off-street parking spaces

The petitioner requested a postponement to June 17, 2013. Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 6-0 to postpone the item to June 17, 2013.

List of Exhibits.

- Exhibit A: Special Permit Application; received March 26, 2013; prepared by D & E Realty LLC.
- Exhibit B: Special Permit Plan; dated February 28, 2013, last revised; prepared by Land Planning, Inc.
- Exhibit C: Floor Plans; dated 1/4/2013; prepared by R. C. Searles, Associates.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 184 Highland Street (ZB-2013-014); dated May 17, 2013.

3. 0 Tory Fort Lane (aka 30 Tory Fort Lane) (ZB-2013-021)

Special Permit: To allow a Personal Wireless Service Facility in the RS-7 (Residence, Single-Family) zoning district

Petitioner: Massachusetts Electric Company d/b/a National Grid

Present Use: Existing Cooks Pond Electric Substation

Zone Designation: BL-1.0 (Business, Limited)

Petition Purpose: Install, operate, and maintain 1 WiMAX mounted antenna located on a 10' mast extension attached to a new 80' lattice tower that would replace the existing 55' wooden pole; Install co-axial cables from antennas to the a ground mounted concrete pad, and a radio/transceiver unit

Betsy Mason, Attorney with Anderson & Krieger representing Massachusetts Electric, requested a postponement for more time to discuss the proposed further with the community. Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 6-0 to postpone the item to June 17, 2013.

List of Exhibits.

Exhibit A: Special Permit Application; received April 16, 2013; prepared by Massachusetts Electric Company d/b/a national Grid that includes:

1. Location Map
2. Site Plan
3. Elevations
4. Existing conditions photographs
5. Equipment Brochure

UNFINISHED BUSINESS

4. 37 Fruit Street and 59 William Street (ZB-2012-076)

Amendment to Special Permit: Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Use and Structure (Article XVI, Section 4)

Petitioners: Christopher and Marjorie Bruce

Present Use: Residential and commercial

Zone Designation: BO-1.0 (Business, Office) (37 Fruit St) and RL-7 (Residential, Limited) (59 William St)

Petition Purpose: Amendment to the Special Permit granted by the Zoning Board in January 2012 to remove the condition (condition #15) that the Special Permit expires within one year

Mr. Loew recused himself. Mr. Abramoff stated that because this was a continued item and there are two new members on the Board who had not heard the previous testimony, they did not have a quorum. Mr. Fontane stated that we would need to re-advertise the matter in order to have the new members participate. Mr. Abramoff instructed the applicant to withdraw the item and re-submit his application and suggested a possible fee waiver request.

Mr. Hultgren stated they had received a cease and desist and wondered if they could continue with the work. Mr. Kelly stated that he should contact his office in the morning to work that out.

List of Exhibits.

- Exhibit A: Special Permit/Variance Application – 37 Fruit Street; 59 William St; received December 24, 2012 prepared by Christopher Bruce.
- Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 37 Fruit Street, 59 William Street dated January 23, 2013, revised May 17, 2013.
- Exhibit C: Two Enforcement Orders from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Christopher Bruce, owner for 37 Fruit Street dated December 12, 2011.
- 1.) Two Enforcement Orders from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Christopher Bruce, owner for 59 William Street dated December 12, 2011
 - 2.) Two Enforcement Orders from John Kelly, Building Commissioner to Christopher Bruce, owner, 37 Fruit Street and 59 William Street dated December 16, 2011.
- Exhibit D: Special Permit and Variance – Findings of Fact and Decision for 7 Fruit Street & 59 William Street (MBL 02-046-00036).
- Exhibit E: Letter from Nancy Tran, Division of Planning & Regulatory Services to Christopher Bruce, dated December 3, 2012.
- Exhibit F: Email from Amanda Wilson, Director of Housing/Health Inspections- Inspectional Services to Nancy Tran, Division of Planning & Regulatory Services, dated January 10, 2012.
- Exhibit G: Email from Katie Donovan, Division of Inspectional Services to Abby McCabe, Division of Planning & Regulatory Services, dated January 23, 2013.
- Exhibit H: Postponement Request Form dated January 28, 2012 to the Zoning Board of Appeals.
- Exhibit I: Letter & Plans from Carl Hultgren, Quinn Engineering, Inc. to Planning & Regulatory Services; Re: 37 Fruit Street / 59 William Street.

Mr. Loew returned to the meeting.

5. 61 Lafayette Street (ZB-2013-002)

- Variance: Relief of 2,899 SF of the 5,000 SF minimum lot area requirement (2,101 SF is proposed)
- Variance: Relief of 2,872 S2 of the 5,000 SF minimum lot area requirement (2,128 SF is proposed)
- Variance: Relief of 12.33 ft from the 40-ft frontage requirement (27.67-ft is proposed)
- Variance: Relief of 12.34 ft from the 40-ft frontage requirement (27.66-ft is proposed)
- Petitioners: Tom Hoang
- Present Use: Vacant undeveloped land
- Zone Designation: BG-3.0 (Business, General)
- Petition Purpose: Construct a single-family semi-detached (duplex) dwelling on one lot that will be divided into two lots (lots 1R and 1L)

There was no one present representing this matter. Mr. Fontane stated that this has been continued before and recommended waiting to the end of the meeting to give the applicant a chance to show up.

Nicholas Olihovik, 59 Lafayette, stated he was concerned about what would be built because the area is prone to flooding. He stated that the applicant wanted to build a larger property than what the area can currently sustain.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 4-0 (only Abramoff, Michajlow, Bilotta, and Loew can vote) to accept the testimony heard and table the matter until the end of the meeting.

At the end of the meeting this was taken up again.

Mr. Fontane, Director of Planning & Regulatory Services, stated that the constructive grant deadline was not until June 19, 2013 but if there is a quorum issue (since only four members can vote on it because it is a continued item) for the June 17, 2013 meeting then the item would be constructively granted. Mr. Fontane stated that staff had reservations about the configuration and the amount of relief they were requesting. Therefore, he recommended the Board take action on the matter.

Mr. Kelly stated that the lot is located in the flood zone and the applicant has to be in compliance with code regarding building in the flood zone.

Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 4-0 to re-open 61 Lafayette street.

Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 4-0 to close the hearing.

Upon a motion by Mr. Loew and seconded by Mr. Bilotta, the Board voted 0-4 to approve the requested variances. The motion failed and the petition has been denied.

List of Exhibits.

- Exhibit A: Variance Application; received January 8, 2013; prepared by Tom Hoang.
- Exhibit B: Variance Plan; dated December 11, 2012; prepared by HS&T Group.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 61 Lafayette Street; dated February 6, 2013, revised April 22, 2013 & May 16, 2013.

NEW BUSINESS

6. 1413 Grafton Street (ZB-2013-011)

- Special Permit: To allow a retail sales use (Business Use #26, Table 4.1) in the ML-0.5 and MG-0.5 zoning districts
- Special Permit: To allow a bank or food service use with a drive-through in the BL-1.0, MG-0.5, and ML-0.5 zoning districts (Food Service, Business Use # 6, Table 4.1, Bank/Credit Union, Business Use #4, Table 4.1)
- Special Permit: To modify the parking layout with respect to the drive-through lane length (Article IV, Section 7)
- Petitioner: 1413 Grafton Street Realty Trust
- Present Use: Vacant undeveloped land
- Zone Designation: BL-1.0 (Business, Limited), ML-0.5 (Manufacturing, Limited), and MG-0.5 (Manufacturing, General)
- Petition Purpose: Construct a ~14,400 SF retail building, 48 associated off-street parking spaces, a loading space, and a 24' wide drive-through

Mr. Abramoff designated Mr. Loew to vote on this matter.

Carl Hultgren, Quinn Engineering, stated that the petitioner seeks to construct a ~14,400 SF building for retail development, 48 associated off-street parking spaces in front of the proposed building, a 12' x 50' loading space at the rear of the building, and a 24' wide drive-through (12' drive-through service lane and a 12' escape lane). The site is currently vacant undeveloped land in an area split zoned BL-1.0 (Business, Limited), ML-0.5 (Manufacturing, Limited), and MG-0.5 (Manufacturing, General).

Mr. Hultgren stated that the loading space is temporary since deliveries will most likely be made late in the night. They are proposing to use public water and sewer services. There is a sign proposed at the front corner of the building. Mr. Hultgren stated that the Conservation Commission granted an Order of Conditions and the Planning Board continued the hearing until it had gone before the Zoning Board.

Mr. Fontane stated that the applicant wants to pre-permit the site and will market it that way. Staff looked at the site and determined it was substantially compliant with the ordinance. Mr. Fontane read the following finding of fact recommended by staff "Staff believes that the temporary loading space will not interfere with the drive-through escape lane. The drive-through point of service on the building's westerly façade will provide sufficient vehicle queuing around the building as the entire length of the drive-through and escape lane is over 330 ft. The building

is setback 117 ft from the front property line allowing for vehicle circulation in the front of the building prior to entering the drive-through lane.)” Therefore staff doesn’t believe there will be any vehicle queuing issues but per the Fire Department’s comments staff recommends that no parking signs be posted along the drive-thru area.

Mr. Fontane stated that one additional interior tree be provided in the central parking island on the eastern side. Mr. Fontane recommended approval with the following conditions of approval:

- That eight (8) copies of the final revised plans addressing the following be submitted to DPRS¹:
 - That signage identifying the temporary loading area be installed;
 - That no parking signage be installed along the entire length of the drive-through;
 - That all site and building lighting be shielded and directed downward to prevent glare onto abutting properties and detail specifications be submitted to DPRS;
 - Provide more than one Asian Longhorned Beetle tree species (only Northern Red Oak is proposed);
 - Provide an additional interior tree for the 17 parking spaces in the center of the lot in the island on the eastern side of the lot;
 - List the ZBA’s granted relief and any conditions of approval.

Mr. Hultgren stated he was amenable to the conditions.

Mr. Abramoff asked if the loading space in the rear was able to handle larger trucks. Mr. Hultgren stated that the applicant has a tentative agreement with Family Dollar to go into the center portion. Therefore, the plans were made with the type of deliveries that they would receive and it was designed to accommodate the larger rigs.

Jo Hart, Worcester resident, stated that this proposal was not pedestrian friendly.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 (Mr. Loew voted) to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 (Mr. Loew voted) to approve the petition with the conditions of approval in the DPRS memo and accept the findings of fact as modified by staff.

List of Exhibits.

- Exhibit A: Special Permit Application; received March 25, 2013; prepared by John M. Richard.
- Exhibit B: Definitive Site Plan (sheets 1-8); dated March 12, 2013; revised on March 15, 2013; prepared by Quinn Engineering.
- Exhibit C: Color Rendering; undated.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1413 Grafton Street (MBL 41-028-00061) – Special Permit Application; dated May 20, 2013.

¹ Eight copies to be for the ZBA, Planning Board, Conservation Commission and staff.

- Exhibit E: Memorandum from the City of Worcester Department of Public Works & Parks to the Planning Board; re: 1413 Grafton Street – Revised Definitive Site Plan – PB-2013-009; dated May 8, 2013.
- Exhibit F: Memorandum from City of Worcester Division of Planning & Regulatory Services to the Planning Board; re: 1413 Grafton Street – Definitive Site Plan Approval; dated May 14, 2013.
- Exhibit G: Fire Department Project Review/Comment Sheet; dated March 28, 2013.
- Exhibit H: Request for Postponement from John Michael Richard, applicant, to the Zoning Board of Appeals; dated April 26, 2013.

7. 428 Shrewsbury Street (ZB-2013-015)

- Special Permit: To allow a Professional Office use (Business Use, # 19, Table 4.1) in the RG-5 zoning district
- Special Permit: To modify the parking lot with respect to the buffers and setbacks (Article IV, Section 7, Table 4.4, Note 5 and Article V, Section 5,1) (additional relief).
- Petitioner: Frank Fechner
- Present Use: Doctor’s office (Business Use #19, Table 4.1)
- Zone Designation: RG-5 (Residential, General) and BG-3.0 (Business, General)
- Petition Purpose: Expand the existing professional office use to the existing garage and to construct an addition to connect the two buildings, and a total of sixteen (16) associated off-street parking spaces. Relief from the landscaped buffer along the side and rear property lines.

Alternate Robert Haddon was selected by the Chair to vote on this matter.

Kevin Quinn, Quinn Engineering, introduced Frank Fechner, applicant, and Dan Benoit, project architect. Mr. Quinn stated that the proposal is to make an addition to unify both the existing building and garage, extending the existing professional use into the residential area. The parking will remain mostly unchanged although they will be adding some parking on the east side of the site and a dumpster will be added. The existing retaining wall doesn’t allow them to accommodate the landscape buffer without cutting into the parking spaces on the north side of the site.

Mr. Fontane stated that they are improving the site and staff respectfully recommends approval of the item with a condition that:

- The structure be constructed in substantial accordance with the final approved definitive site plan;
- Snow is removed off-site and not stored in the required parking landscaping buffers.

Mr. Bilotta asked if they plan to keep and maintain the growth that already exists to the north of the property. Mr. Fechner stated he would.

Mr. Loew asked if they have plans to keep the signage the same dimensions and the applicant responded that he will.

Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 (Robert Haddon voted) to approve the petition with the conditions in the DPRS memo and to accept the findings of fact as modified by staff.

List of Exhibits.

- Exhibit A: Special Permit Application; received March 26, 2013; prepared by Frank Fechner. Revised findings of fact submitted May 14, 2013.
- Exhibit B: Definitive Site Plan; dated March 20, 2013; prepared by Quinn Engineering, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 428 Shrewsbury Street (ZB-2013-015); dated April 26, 2013, revised May 17, 2013.

8. 1098 West Boylston Street (ZB-2013-027)

Amendment to Special Permit: To allow for a single-family attached dwelling (Residential Use # 12, Table 4.1) with three dwelling units in the RL-7 (Residence, Limited) zoning district

Amendment to Variance: Relief of 44.30 ft from the 75 ft dimensional requirements for frontage (30.7 ft provided)

Petitioner: Ricky and Kelly Sampson

Present Use: Vacant land

Zone Designation: RL-7 (Residential, Limited), WR (GP-3) (Water Resources Protection Overlay District)

Petition Purpose: Amend previous Special Permit to allow for a three-unit attached dwelling (Residential Use # 12, Table 4.1) from the previously approved three-family detached dwelling (Residential Use # 16, Table 4.1) and to provide 6 off-street parking spaces (2 garage spaces per unit)

Robert O'Neil, representing the applicant Ricky Sampson, stated that this was an amendment to a plan that was approved last April. The original design was a three family with each floor approximately 1200 SF in size with 6 exterior parking spaces. They are proposing to change that to three units townhouse style, two car garage per unit, larger footprint on building by 600 SF but they are still decreasing the amount of pavement by 25%. The limit of disturbance is 20 feet farther from the back of the property line. They have maintained many features from the previous plan such as: the landscape buffer, the water quality structure and ground water infiltrator recharger.

Mr. Fontane stated that if approved

- The project be constructed in substantial accordance with the final approved plans.
- Additional green space along the parking area to reduce the pavement in the front yard setback.

- That the proposed driveway / parking areas be constructed with permeable pavers and be maintained as pervious surface.
- That the façade include more articulation to breakup this building face.
- That six (6) copies of the final revised plans be submitted to the Division of Planning & Regulatory Services showing:
 - List the ZBA’s relief granted and any conditions of approval
 - Update the title block to include the street address for “Amended Plan of Land in Worcester, MA, 1098 West Boylston Street”.

Mr. O’Neil stated that he did add some landscaped areas in the front for holly bushes to be planted.

Mr. Abramoff asked if the permeable pavers that was suggested was an option. Mr. O’Neil stated that he had discussed it with his client and they felt that because of the required maintenance of pavers they prefer using the water quality structure instead.

Mr. Abramoff identified Mr. Loew to vote on this matter.

Mr. Haddon asked if these units were going to be rented or sold individually. Mr. O’Neil responded that they will be owned by one owner.

Mr. Kelly, Inspectional Services Commissioner, stated he would like to see turnarounds in the driveway because West Boylston Street is very busy. Mr. O’Neil stated that there is an area that will be paved that will provide sufficient space for cars to turnaround prior to exiting the driveway.

Mr. Bilotta suggested that both male and female holly bushes be planted in the front so that they can grow.

Mr. Loew asked about the width of the garage. Mr. O’Neil stated that the width will be 13 ft.

Katherine McCarthy, resident at 1102 West Boylston Street, and John Brand, resident at 1104 West Boylston Street passed out Exhibit H and read the following concerns:

1. “18 cars accidents have occurred in this spot in the last two years and this driveway will be directly located across from Cumberland Street and therefore create a four way intersection in a congested area.
2. We have considerable concerns with this proposal's handling of snow removal.
3. Where will visitors for each dwelling unit park? If all units had visitors at the same time, or even one unit had a visitor, where would they all park and how would there be access in and out of the units to the street for all owners?
4. We would like clarification as to whether the proposed single family attached dwellings would be rental units or sold individually. If they are to be sold, how will the land be titled?
5. Will there be a master insurance policy? How will issues of property maintenance, snow removal, and landscaping be handled by future owners?
6. Will there be any sewage impact by the increase in the number of toilets from the last approved plan to this plan?
7. What is the status of the Conservation Commission's requirement of a tank/pump system they required for this property in order for Mr. Sampson to build on this land?

8. While we realize the issues of tree removal are not the full concern of the zoning board, we would like to make note that we have contacted the Worcester ALB group, as Mr. Sampson has cut and sold all the trees on the property, located within the Longhorn Beetle area, including trees that as Ms. Healy points out were on her property and clearly marked. They are currently investigating.”

Mr. Abramoff stated that some of the concerns were beyond the board’s purview and that the applicant was just seeking an amendment to something which has already been approved and this proposal has less impact than the previous proposal.

Susan Healy, resident of 1100 West Boylston Street, stated that currently there is a pile of trash there containing broken porcelain sinks, car parts, rubble from buildings, freshly cut trees, etc. Mr. Healy stated that there is hydraulic equipment stored there and a large tractor trailer seemed to be renting the space along with a few others. She stated that there are large containers on the property with gasoline, oil, and other fluids. These containers are not covered and when it rains they overflow and the wetlands are only 10 feet away.

Mr. Abramoff stated that those issues are not under the purview of the board and instructed her to file a complaint regarding this matter through the city’s formal complaint center.

Mr. Bilotta responded that she would need to obtain forms to prove that someone is operating an illegal land fill: the first is one from the Department of Environmental Protection and one from the Department of Public Health stating that they have not given permission to operate a landfill.

Mr. O’Neil stated that there will be sufficient space in the driveway to park one more vehicle and there are four exterior parking spaces as well. The water quality structure will also help capturing the water as snow melts.

Mr. Wanat asked if any of the items proposed through the Conservation Commission had changed and Mr. O’Neil stated that they were keeping everything the same.

Upon a motion by Mr. Bilotta and seconded by Mr. Michajlow, the Board voted 5-0 (Mr. Loew voted) to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 to approve the petition and the findings of fact as modified by staff. Mr. Abramoff added a friendly amendment that no further development (cutting of trees or paving) take place other than that which is directly related to the area in which the building is to be constructed and that at least 10 (3.5” caliper) additional ALB resistant trees be planted in the rear of the lot.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 to modify conditions to eliminate the permeable pavers and allow the area to be fully paved.

List of Exhibits.

Exhibit A: Special Permit & Variance Application; received April 16, 2013; prepared by Ricky L. and Kelly A. Sampson.

- Exhibit B: Plan of Land; dated May 1, 2012, revised June 15, 2012; prepared by Robert D. O’Neil Jr.
- Exhibit C: Amended Plan of Land; dated April 1, 2013; prepared by Robert D. O’Neil Jr.
- Exhibit D: Amended Rendering and Floor Plans; dated March 28, 2013; prepared by Residential Design, Inc.
- Exhibit E: Rendering and Floor Plans; dated April 10, 2012; prepared by Residential Design, Inc.
- Exhibit F: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1098 West Boylston Street – Amendment to Special Permit & Variance (ZB-2013-027); dated May 17, 2013.
- Exhibit G: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1098 West Boylston Street (ZB-2012-011).
- Exhibit H: Concern of 1102-1104 West Boylston Street, Worcester, MA 01606 prepared by Kathleen McCarthy and John & Kristina Brand, submitted May 20, 2013.

RECESS – a recess was called at 6:49 p.m. The meeting was called back to order at 6:54 p.m.

9. 127 Piedmont Street (aka 129 Piedmont Street) (ZB-2013-018)

- Variance: Relief of 1 ft from the side yard setback dimensional requirement of 5 ft for accessory structures in a residential district (Article IV, Section 8, B 10)
- Variance: Relief of 162 SF from the maximum floor area of the unattached garage (Article IV, Section 8, B, 2)
- Petitioner: Edward Jiminez
- Present Use: Commercial building and two car garage
- Zone Designation: RG-5 (Residence, General)
- Petition Purpose: Demolish existing garage and construct a new ~912 SF garage

Daniel Lahey, representing the owner, stated that there are two tracts of land, held in common ownership, which currently have an existing business and a two car garage. They are proposing to remove the front wall and side wall to expand the garage eight feet towards the front and 8 feet towards the side.

Mr. Abramoff identified Mr. Haddon to vote on this matter.

Mr. Fontane stated that we had incorrectly advertised it as two variances because the proposal was to demolish the entire structure but in fact because they are retaining two walls this change can be covered by two special permits. If the applicant is amenable the Board can take the matter up as two special permits since the applicant filled out the application for both the variance and the special permits and everyone that needed to be notified was notified.

Mr. Wanat asked if it would remain a two car garage after the expansion and Mr. Lahey responded that it would.

Mr. Abramoff asked the applicant if he was amenable to the two conditions proposed by DPRS.

- 1) That the chain-linked fence along the southern property line be replaced with a 6-ft stockade fence.
- 2) That the proposed structure is to be non-habitable.

Mr. Lahey stated he was amenable.

Upon a motion by Mr. Bilotta and seconded by Mr. Haddon, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 5-0 (Mr. Haddon voted) to approve the petition with the conditions outlined in the DPRS memo and the finding of fact as amended by staff relating to the special permits only.

List of Exhibits.

- Exhibit A: Special Permit Application; received April 16, 2013; prepared by Edward Jiminez.
- Exhibit B: Mortgage Inspection Plan; dated 2/28/2013; prepared by James B. Kalloch.
- Exhibit C: Renderings; undated; submitted April 16, 2013.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 127 Piedmont Street (aka 129 Piedmont Street) (ZB-2013-018); dated May 20, 2013.

10. 29R Wigwam Avenue (aka 45 Frank Street) (ZB-2013-019)

- Special Permit: To allow a Personal Wireless Service Facility in the RL-7 (Residence, Limited) zoning district
- Petitioner: Massachusetts Electric Company d/b/a National Grid
- Present Use: Existing electric Bloomingdale Substation with a 75 ft tall transmission structure
- Zone Designation: BL-1.0 (Business, Limited)
- Petition Purpose: Install, operate, and maintain 1 WiMAX antenna and 1 microwave antenna attached to a 10' extension above the transmission structure; Install co-axial cables from antennas to a ground mounted concrete pad, and a radio/transceiver unit

Mr. Bilotta recused himself therefore both alternates will vote on the matter.

Betsy Mason, Attorney with Anderson & Krieger representing Massachusetts Electric, introduced Jason Small, Project Manager for the Worcester SMART Grid pilot program, Michael Key, consultant to National Grid, and Steven Coast, National Grid.

Ms. Mason stated that each antenna proposed will be a part of a high-speed two-way communication system and that each one is needed for coverage as presently this is a brand new program and coverage does not exist.

Mr. Small stated that the program is to provide advanced technology to increase reliability and service to approximately 15,000 customers in a certain area of Worcester. This system is expected to have the ability to identify a fault in the system and be able to isolate it. This should save the time that it takes a crew to go onsite to assess a situation and then begin to fix it. The system needs a communication infrastructure to allow the devices to communicate.

Mike Key stated that the site is the Bloomingdale substation at Wigwam Ave has an existing 75' transmission structure and extend it with a 10 ft pipe mast with the antennae mounted thereon. The equipment will be mounted on a five foot wide rack, one cabinet will be roughly the same size of a carryon suitcase (30" x 25" x 12") and the battery cabinet will be roughly the size of a roll-on computer bag. These will be installed at the base of the structure. Mr. Key stated that there is no noise from these devices as they are enclosed cabinets.

Ms. Mason stated that coverage maps were submitted and Mr. Key would explain why the antennas are needed where proposed.

Mr. Abramoff asked Mr. Fontane to clarify what the Board can vote on today. Mr. Fontane stated that there is federal case law regarding these matters that restricts the Board's purview in terms of denial to lack of coverage or the inability of presenting that in a satisfactory way. In this case, there is no coverage because this is an entirely new system. Mr. Abramoff stated that the Board has no purview over the location or height of what is proposed.

Mr. Loew asked why this was considered to be a Personal Wireless Facility and Mr. Fontane stated that it was decided that it fell under the same category.

Mr. Key explained the coverage maps to the Board and the audience.

Mr. Coast stated that there is a limit the FCC sets for RF emissions, which is .001 watts /cm² on the body, measured at the person. Mr. Coast stated that the worst case scenario, where an individual would be directly below the antennae and the antennae would be pointing down at them the RF emissions would be 0.000176 for the microwave radio and the WiMAX radio is 0.000000354, both systems are over 1,000 times under allowed RF emissions. All these antennas will be pointing at one another in order to communicate.

Mr. Fontane stated that there are standard conditions, one of which is to provide a letter that states the RF emission after installation.

Mr. Abramoff read the following recommended conditions from the DPRS staff memo:

- **Cost of decommissioning:** That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Paint color matching:** That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a term of at least two years, and be adjusted for inflation every two years.

The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;

- ***Post-installation measurement of RFP:*** That post-installation measurements of total Radio Frequency Radiation emitted by the PWSF on the site are taken by a certified RF engineer; that results of these measurements demonstrate compliance with the Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy;
- That the structure is constructed in substantial accordance with the approved plans submitted on file with the City of Worcester and in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

Mr. Wanat asked how the applicant plans to prevent vandalism. Mr. Key stated that there are within the substation fences that are erected today so there is a six foot high fence with barb wire at the top. These are locked facilities to prevent civilians from electrical exposure.

Bill Gregorian, Worcester resident on Highland Street, asked if these structures would attract lightning.

Mr. Key stated that the transmissions structures that they are mounting on are already grounded and the facility itself and antenna feed lines are also grounded.

Mary Moule, 42 Vernon Street resident, stated that she was an attorney in Connecticut and asked the Board to postpone making a decision to allow her time to investigate the matter because she only found out about this today.

Claire Donaghan, non-Worcester resident, stated that she agreed with Ms. Moule's request. She stated that this was advertised but people do not understand what they are reading. She stated that if the residents understood what the ramifications are for this type of network they would appear in droves. She also stated that she believed the benefits of this program were virtually non-existent for the customers but were astronomical for National Grid and that everywhere else this type of program was being implemented it was getting serious pushback.

Erica McBride, 9 Roycroft Road resident, stated that she lives within 300 feet of the Naples Road substation. She stated that she was concerned about the radio waves' effects to her family and pets. She stated that when the service trucks show up they are loud and inconsiderate. They park on her property. She stated that there have been fires in the past and National Grid did not respond in a timely manner. They do not shovel out the fire hydrant or upkeep the property at all. She also stated that she has seen several individuals jumping the barb-wired fence and they do nothing about it. She stated that National Grid had not done their due diligence in informing residents about what they are doing and that the only information she received was the notification of the public hearing.

Ms. Mason stated that they are only before the Board to get approval for a specific type of equipment that will be installed in already existing structures. They are not talking about the SMART Grid meter or anything else.

Mr. Abramoff stated that part of the conditions of approval will be to provide actual measurements, after installations, that this meets all FCC regulations. He asked the applicant how would you increase or secure the sites better.

Mr. Fontane stated that the Board can discuss security measures with the applicant to see if they are sufficient but he stated that he did not believe that this installation would attract any more attention to the site than it is today.

Mr. Small stated that they are currently in compliance with regulation as to their security measures.

Jo Hart, Worcester resident, stated that she was ignorant of this pilot program and insisted that more public hearings be held regarding this matter.

Mr. Abramoff suggested that the applicant should meet with the neighbors to allay their concerns.

Ms. Moule stated that the notification did not include any information regarding these towers being used for Smart Grid program.

Mr. Fontane stated that National Grid has communicated with City Council regarding the Smart Grid pilot program. He also stated that there is a direct mail to the 15,000 households that were selected to participate and people are allowed to opt-out.

Mr. Michajlow stated that the post installation measurement of the RFP should allay a lot of the safety concerns.

Erica McBride, 9 Roycroft Road resident, stated that she didn't receive any of the communication that the Board stating was sent out.

Mr. Abramoff stated that the notification she had in hand from the Zoning Board was the only one that went out regarding the public hearing before the Board. Any other communication from National Grid was not under the purview of the Board.

Christine Falls, 78 Rich Street resident, lives near the Tory Fort Lane substation. She asked that the Board postpone all items so that all the items are heard together.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 (Bilotta recused himself) to close the hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 (Bilotta recused himself) to approve the petition with the conditions of approval in the DPRS memo.

Upon a motion by Mr. Loew and seconded by Mr. Michajlow, the Board voted 5-0 (Bilotta recused himself) to approve the waivers as modified by staff.

List of Exhibits.

Exhibit A: Special Permit Application; received April 16, 2013; prepared by Massachusetts Electric Company d/b/a national Grid that includes:

1. Location Map
2. Site Plan
3. Elevations
4. Existing conditions photographs
5. Equipment Brochure

Exhibit B: Waiver Request; prepared by Anderson & Kreiger LLP; dated May 17, 2013.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 29R Wigwam Avenue (aka 45 Frank Street) (ZB-2013-019); dated May 17, 2013.

11. 10 Gloucester Road and 245 Vernon Street (aka 233 Vernon Street) (ZB-2013-020)

Special Permit: To allow a Personal Wireless Service Facility in the BG-2.0 (Business, General) zoning district

Petitioner: Massachusetts Electric Company d/b/a National Grid

Present Use: Existing Vernon Hill No. 8 Electric Substation

Zone Designation: BL-1.0 (Business, Limited)

Petition Purpose: Install, operate, and maintain 1 WiMAX antenna and 1 microwave antenna on a 10' extension to the existing 54' tall transmission structure; Install co-axial cables from antennas to a ground mounted concrete pad, and a radio/transceiver unit

Please refer to Item #10 for general information for all antennas.

Michael Key, consultant for National Grid, stated that they are also proposing a 10' mast extension on top of the existing tower and there will be a maximum of 5 antennas. The height is lower on this one than the Wigwam Ave one because the existing structure is lower.

Mr. Fontane stated that the conditions would be the same as the others and the waivers would also be the same.

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Loew and seconded by Mr. Michajlow, the Board voted 5-0 (Bilotta recused himself, both alternates voted) to approve the petition with the conditions as noted in the DPRS memo and approving the waivers as modified by staff.

Mr. Key brought to the boards' attention that 5 antennas were not specified in the legal notice.

Upon a motion by Mr. Wanat and seconded by Mr. Loew, the Board voted 5-0 (Bilotta recused himself, both alternates voted) to reconsider the matter and continue it to June 17, 2013 because the incorrect number of antennas was advertised. The item will be re-advertised and re-notified.

List of Exhibits.

Exhibit A: Special Permit Application; received April 16, 2013; prepared by Massachusetts Electric Company d/b/a national Grid that includes:

1. Location Map
2. Site Plan
3. Elevations
4. Existing conditions photographs
5. Equipment Brochure

Exhibit B: Waiver Request; prepared by Anderson & Kreiger LLP; dated May 17, 2013.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 10 Gloucester Road and 245 Vernon Street (aka 233 Vernon Street) (ZB-2013-020); dated May 17, 2013.

12. 4 Naples Road (aka 6 Naples Road) (ZB-2013-022)

Special Permit: To allow a Personal Wireless Service Facility in the RS-7 (Residence, Single-Family) zoning district

Petitioner: Massachusetts Electric Company d/b/a National Grid

Present Use: Existing Greendale Electric Substation

Zone Designation: BL-1.0 (Business, Limited)

Petition Purpose: Install, operate, and maintain 1 WiMAX antenna and 1 microwave antenna on at the site of the existing transmission substation; Install 1 WiMAX antenna and 1 microwave antenna with a 10' extension onto the existing 75' transmission structure, install co-axial cables from antennas to the a ground mounted concrete pad, and a radio/transceiver unit

Please refer to Item #10 for general information for all antennas and public comment.

Michael Key stated that there multiple antennas not just the one called out in the agenda. Mr. Abramoff asked him to clarify how many were there. Mr. Key stated that the plans state that the Bloomingdale (Wigwam Ave) will only have 1 WiMAX antenna, on Vernon Street there are two sector antennas (WiMAX) and two link antennas (microwave), on the Greendale substation (Naples Rd) there will be three sector antennas and one link antenna.

Mr. Abramoff stated that the Board can only approve what was advertised and only one of each was advertised for the Naples Road location. Therefore, it will have to be continued and will require re-advertising and re-notification.

Ms. Mason stated that she would prefer that the items be continued to June 17, 2013.

Upon a motion by Mr. Loew and seconded by Mr. Wanat, the Board voted 5-0 (Bilotta recused himself, both alternates voted) to continue the item to June 17, 2013.

Claire Donaghan, Quincy resident, stated that when the RF studies are done that both the average frequency and the pulses over time are published.

List of Exhibits.

Exhibit A: Special Permit Application; received April 16, 2013; prepared by Massachusetts Electric Company d/b/a national Grid that includes:

1. Location Map
2. Site Plan
3. Elevations
4. Existing conditions photographs
5. Equipment Brochure

Exhibit B: Waiver Request; prepared by Anderson & Kreiger LLP; dated May 17, 2013.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 4 Naples Road (aka 6 Naples Road) (ZB-2013-022); dated May 17, 2013.

Mr. Bilotta returned to the meeting.

13. 394 Belmont Street (ZB-2013-023)

Special Permit: To allow a food service use with the consumption/sale of alcoholic beverages (Business Use # 8, Table 4.1)

Petitioner: Johnny Fugata Inc.

Present Use: Free-standing restaurant / food service use (Business Use #7, Table 4.1)

Zone Designation: BL-1.0 (Business, Limited)

Petition Purpose: Continue food service use and is seeks a Special Permit to allow the sale of alcoholic beverages

Mr. Haddon recused himself from this mater. Tim Loew was identified to vote on the matter.

Michael Bernier, representing Johnny Fugata, Inc., stated that his purpose was to obtain a special permit to be able to obtain an all alcohol liquor license and serve alcoholic beverages with dinner. The restaurant has 48 seats and has a parking lot of 14 spaces. They have no plans for outdoor seating and will have no bar.

Mr. Abramoff asked why the applicant didn't have the 24 parking spaces required for the 48 seats.

Mr. Kelly stated that this is a pre-existing non-conforming use. Mr. Fontane asked if the applicant wanted the hours of operation to serve as the limits to the alcohol license, if not restaurants in Worcester that serve alcohol must close by 2 a.m.

Mr. Abramoff asked the hours of operation. Mr. Bernier stated that it would be Sunday – Thursday 11:30 am to 9:00 pm and Friday and Saturday 11:30 am to 10:00 pm. Mr. Abramoff asked if the applicant would be willing to accept those as conditions of approval because they are next to a residential neighborhood. Mr. Bernier stated he was amenable.

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

Upon a motion by Mr. Michajlow and seconded by Mr. Loew, the Board voted 5-0 to approve the findings of fact as modified by staff and the petition with the following conditions of approval:

- Sunday – Thursday 11:30 am to 9:00 pm and Friday and Saturday 11:30 am to 10:00 pm
- Occupancy limited to 48 seats
- No bar set up allowed
- No outdoor seating allowed

List of Exhibits.

- Exhibit A: Special Permit Application; received April 17, 2013; prepared by Johnny Fugata, Inc.
- Exhibit B: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 395 Belmont Street; dated; May 16, 2013.

Mr. Haddon returned to the meeting. The Board retook 61 Lafayette street (please read above).

OTHER BUSINESS

14. Election of Officers

Mr. Abramoff stated that alternate members could not serve as vice chair or chair or vote on the vice chair position or the chair position. Also, no one can nominate themselves.

Mr. Bilotta nominated Mr. Abramoff as chair and the motion was seconded by Mr. Michajlow, the Board voted 4-0 to approve.

Mr. Abramoff nominated Mr. Michajlow as vice-chair and the motion as seconded by Mr. Bilotta, the Board voted 4-0 to approve.

15. Review and approval of the 2014 Board Meeting Schedule

Mr. Abramoff asked if November 10, 2014 could be moved to November 17, 2014. Mr. Fontane stated that staff would have to review to see if it is possible since there are so many meeting scheduled.

Mr. Abramoff asked to continue this to the next meeting to allow more time for review.

DECISIONS FROM PRIOR MEETINGS

The decisions for 70 Elm Street, 116 Belmont St, 2 Northboro Street, and 85 Lake Ave North were signed.

ADJOURNMENT

Upon a motion by Mr. Bilotta and seconded by Mr. Loew the Board voted 6-0 to adjourn the meeting at 8:40 p.m.