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MINUTES OF THE PROCEEDINGS OF THE

ZONING BOARD OF APPEALS OF THE CITY OF WORCESTER

2011 AUG 12 A 8: 28

July 18, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present:

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

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Luba Zhaurova, 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.

REQUESTS FOR CONTINUANCES, EXTENSIONS OF TIME, POSTPONEMENTS, WITHDRAWALS

1. **994 Grafton Street (ZB-2011-023):** Special Permit to allow a kennel in a BL-1.0 zoning district (Article IV, Section 2, Table 4.1, Use #12 Kennel): Robert Gibson, petitioner, requested a postponement of the item to August 8, 2011 in order to have sufficient time to provide the Board with information regarding business practices given limited state regulations of the proposed use, per recommendations of the staff's memo. Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to postpone the hearing to August 8, 2011.
2. **20 Massachusetts Avenue (ZB-2011-024):** Special Permit to convert a single-family detached dwelling into a sorority house affiliated with Worcester Polytechnic Institute (Article IV, Section 2, Table 4.1, Use #5 Fraternity/Sorority/Cooperative residence): Attn. Rodman, representative of the petitioner, requested a postponement to August 8, 2011 due to the fact that the neighbors, at the informal June 7th meeting, requested a postponement of the item. Attn. Finkelstein requested that the Board postpone the item to August 20, 2011 in order to allow WPI President to attend, who is not able to attend on August 8th. Mr. Freilich

asked if the petitioner had objections to opening the hearing to allow the present abutters speak. Mr. Rodman stated that the petitioner and the engineer are not present due to the anticipated postponement and he is not comfortable to proceed with presenting the project. Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to postpone the hearing to August 8, 2011.

UNFINISHED BUSINESS

3. **29 Sarah Drive (ZB-2011-016):** Variance for relief of 12.02 ft from an exterior side yard setback requirement: Richard Novick, petitioner, presented supplemental information he submitted to the Board as requested at the previous hearing, including revised findings of fact and alternative building design and/or location if granted less relief (Exhibits D & E). Mr. Kelly stated that the structure meets the requirements of the Massachusetts State Building Code. Mr. Bilotta asked if Mr. Novick knew of the neighboring property when constructing the structure. Mr. Novick stated that he knew of the future development but did not know that a new road would be constructed next to his property. Mr. Bilotta asked whether this situation could be avoided if the petitioner would have applied for the Building Permit. Mr. Kelly stated yes, as the reviewing building inspector would have identified the encroachment into the setbacks as an issue. Mr. Fontane stated that if the Forsythia Trail road was not approved, the applicant would still require relief from the side yard setback, though less than is currently petitioned. Mr. Freilich asked if there was a Cease and Desist Order. Mr. Novick stated yes.

Chair Abramoff stated that he is “reluctantly in support” of the petition and suggested as a condition of approval a fence on the petitioner’s property adjacent to the future Forsythia Trail road. Mr. Freilich suggested instead a densely vegetated landscaped buffer to shield the property from the development. Mr. Novick stated that there are already 5 blue spruce trees in that area, but the Board and staff stated that three trees were located off the petitioner’s property.

Mr. Bilotta asked if the carport construction has been completed and if a fascia will be put on. Mr. Novick stated that the construction has been completed and that he was not planning on putting on fascia.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Loew, the Board voted 4-1 with Mr. Bilotta voting no (and Mr. Akindele abstaining) to approve the requested Variance for relief of 12.02 ft from an exterior side yard setback requirement with the following conditions of approval:

- That arborvitae trees are planted along the entire length of the property line adjacent to the Forsythia Trail for about 117 feet, 3-feet on center and minimum 4-feet in height, at the time of the planting, in order to buffer and delineate the property;
- That these trees be maintained on a 6-month basis;
- That beams on the newly constructed carport that are not yet painted - be painted;
- That a soffit and a fascia be completed on the exposed rafters of the carport;

- That the petitioner submits to the Division of Planning & Regulatory Services 6 copies of final revised plans showing provision of a minimum 2 off-street parking spaces on the parcel and the above-mentioned conditions of approval;
- That the structure be constructed in substantial accordance with the plans submitted on file with the City.

Exhibits:

- Exhibit A: Variance Application; received 4/26/2011; prepared by Richard Novick.
- Exhibit B: Variance Plan; dated 4/16/2011; prepared by Robert D. O'Neil Jr, Professional Land Surveyor.
- Exhibit C: Photographs of property submitted by the petitioner at the Zoning Board of Appeals hearing on June 6, 2011.
- Exhibit D: Revised Findings of Fact prepared by Richard Novick dated July 7, 2011, and received July 14, 2011.
- Exhibit E: Set of color photographs showing construction details of the shed and carport structures submitted by Richard Novick on July 14, 2011.
- Exhibit F: Variance Plan; dated 4/16/2011; prepared by Robert D. O'Neil Jr, Professional Land Surveyor – marked up at the meeting on July 18, 2011 with regards to condition of approval.

NEW BUSINESS

- 4. 108 June Street (ZB-2011-025):** Special Permit for Expansion or Change of a pre-existing, non-conforming use and structure (Article IV, Section 2, table 4.1, Use # 16); Variance for relief of 20 feet of relief from the 70 feet frontage requirement and relief of 4.1 feet of relief from the 8 feet side setback requirement: Mahmood Azizi, civil engineer and representative for Salvatore Arcuri, petitioner, submitted a plan approved by the Planning Board in 2005 (Exhibit E) and stated that the petitioner is seeking to convert the third floor of a mixed use building into a residential apartment.

Stephen Quist of 106 June Street stated his support for the project and said that Mr. Arcuri was a good neighbor who met the requirements of the 2005 approval.

Mr. Fontane stated that staff suggests the following conditions of approval: 1) That the proposed tree species are not susceptible to the Asian Long-Horned Beetle infestation and that at least three different tree species are planted in the 5-ft landscaped buffer; and 2) that the parking space to the north of the building along Carlisle Street is relocated in order to provide a 5-ft landscaped buffer in accordance with the Zoning Ordinance. Mr. Azizi was amenable to these conditions of approval and suggested shifting the 2 parking spaces directly adjacent to the building slightly to the south to accommodate the 5-ft landscaped buffer.

Chair Abramoff asked if the stockade fence will be replaced. Mr. Azizi stated yes and that it will be replaced shortly.

Mr. Azizi stated that he will field-verify the front yard setback in response to staff's comment.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 (with Mr. Loew abstaining) to approve the requested Special Permit for Expansion or Change of a pre-existing, non-conforming use and structure (Article IV, Section 2, table 4.1, Use # 16) and Variance for relief of 20 feet from the 70 feet frontage requirement with the following conditions of approval:

- That a 5-ft wide landscaped buffer is installed next to the parking area adjacent to Carlisle Street in accordance with the Zoning Ordinance;
- That the proposed tree species are not susceptible to the Asian Long-Horned Beetle infestation and that at least three different tree species are planted in the 5-ft landscaped buffer;
- That the landscaping is maintained bi-annually;
- That the stockade fence is repaired and/or replaced;
- That six (6) copies of final revised plan are provided to the Division of Planning & Regulatory Services with the conditions of approval prior to release of the Building Permit;
- That the structure be constructed in substantial accordance with the final approved plan.

Mr. Azizi has requested a Leave to Withdraw Without Prejudice the Variance for relief of 4.1 feet of relief from the 8 feet side setback requirement, per staff's memo and confirmed by Mr. Kelly. Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to approve the petitioner's request to Leave to Withdraw Without Prejudice the Variance for relief of 4.1 feet of relief from the 8 feet side setback requirement.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to accept the petitioner's findings of fact, as amended by staff's memo (Exhibit C).

- Exhibit A: Variance and Special Permit Application; received June 16, 2011; prepared by Aim Corporation aka Salvatore Arcuri.
- Exhibit B: Variance and Special Permit Plan; dated 4/7/11; prepared by The Professional Group, LLC.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals re: 108 June Street (ZB-2011-025); dated July 15, 2011.
- Exhibit D: Variance and Special Permit Plan; dated 4/7/11; prepared by The Professional Group, LLC; with proposed changed highlighted in red ink.
- Exhibit E: Parking Plan for 108 June Street; dated 1/11/2005.

5. 1 Malden Terrace (ZB-2011-026): Amendment to Special Permit for Extension, Alteration or Change of a Privileged Pre-existing Nonconforming Use (Article XVI, Section 4): Carmine A. Zamarro, the petitioner, and Karina Quinn of Lenard Engineering, were

presenting the project. The petitioner was proposing to relocate a proposed driveway further away from the intersection of Malden Terrace and Malden Street per Article XVI, Section 4 of the Zoning Ordinance.

Chair Abramoff asked if the Special Permit granted in 2006 expired. Mr. Kelly indicated that it was not expired.

Lawrence Lindquist of 3 Malden Terrace spoke in opposition of the project. Mr. Fontane clarified that the proposed driveway is only 39-ft long and will be only serving the proposed house and not the one in the rear.

James Thibault Jr. and James Thibault Sr. of 6 Malden Terrace and Nicholas Marchese of 4 Malden Terrace spoke in opposition of the proposed moving of the driveway because it would take some on-street parking spaces away from Malden Terrace. Mr. Thibault Jr. suggested that a driveway off of Malden Street now serving 2 lots be also used to serve the 3rd lot.

Ms. Quinn stated that the width of the curb cut is not changing, but is proposed to be moved further north. She cited such traffic management design guidelines as those of Mass Department of Transportation that recommend lot access as far away from intersections as possible.

Mr. Fontane stated that the proposed driveway location is more favorable than the one previously approved. He stated that even better option from the planning perspective is the shared use of the driveway for all 3 lots. Ms. Quinn stated that Malden Street is a residential collector street, and that from an engineering perspective, it is more beneficial to provide access to the 3rd lot from Malden Terrace, as proposed. Mr. Camarro did not want “to entertain the possibility of re-using the common driveway entrance” and stated that this option would “adversely affect the use of the property”. Mr. Fontane noted that the existing driveway serving the 2 lots is already located substantially on the 3rd lot’s land – the subject of this consideration.

Mr. Freilich suggested to continue to item to provide the petitioner time to discuss the issues with the neighbors. Mr. Camarro asked for the Board to proceed to vote on the item.

Mr. Thibault Jr. provided a picture of the petitioner’s property (Exhibit D).

Upon a motion by Mr. Bilotta and seconded by Mr. Freilich, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Bilotta and seconded by Mr. Freilich, the Board voted 4-1 (with Mr. Bilotta voting no and Mr. Kola abstaining) to approve the requested Amendment to Special Permit for Extension, Alteration or Change of a Privileged Pre-existing Nonconforming Use (Article XVI, Section 4) with the following conditions of approval:

- That the landscaping is maintained bi-annually;
- That the structure be constructed in substantial accordance with the final approved Amendment to Definitive Site Plan.

Exhibit A: Amendment to Special Permit Application; received June 20, 2011; prepared by Carmine A. Zamarro.

- Exhibit B: Amendment to Special Permit Plan; dated May 30, 2006; last revised June 10, 2011; prepared by Lenard Engineering, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 3 Malden Street, 0 Malden Street, and 1 West Boylston St (ZB-2011-026); dated July 15, 2011.
- Exhibit D: Picture provided by James Thibault Jr. of the petitioned property; dated 7/18/2011.

OTHER BUSINESS

6. **Approval of Minutes:** Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 5-0 to approve the minutes of March 14, 2011 as amended.
7. **Decisions:** The Board signed decisions.

Adjournment: Chair Abramoff adjourned the meeting at 7:50 pm.