

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

**October 15, 2012**

**WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

**Zoning Board Members**

**Present:**

Andrew Freilich, Chair  
Lawrence Abramoff, Vice-Chair  
Vadim Michjlow  
Timothy Loew  
Kola A. Akindele

**Staff Present:**

Joel Fontane, Division of Planning & Regulatory Services (DPRS)  
Marlyn Feliciano, Division of Planning & Regulatory Services (DPRS)  
John Kelly, Department of Inspectional Services (DIS)

**Board Site Views**

**CALL TO ORDER**

Chair Freilich called the meeting to order at 5:42 PM.

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

**1. 2 Northboro Street (ZB-2012-053)**

The petitioner, Rodney Haddad, submitted a Request for Continuance to the October 29, 2012 Zoning Board meeting prior to the meeting. Upon a motion by Mr. Abramoff, seconded by Mr. Loew, the Board voted 5-0 to approve the continuance to October 29, 2012.

**List of Exhibits.**

- Exhibit A: Variance & Special Permit Application; received August 14, 2012; prepared by Rodney Haddad.
- Exhibit B: Definitive Site Plan; dated August 13, 2012; prepared by HS&T Group, Inc..
- Exhibit C: Rendering; undated; received August 14, 2012, unknown preparer.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 2 Northboro Street (aka 298 Plantation Street); dated September 12, 2012, revised October 12, 2012.
- Exhibit E: Revised Zoning Determination Form; re: 2 Northboro Street; revised August 29, 2012.
- Exhibit F: Request for Continuation from Kathryn Charron, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated October 11, 2012.

## **2. 85 Lake Ave North and 55 Mohican Road (ZB-2012-054):**

Robert Lyndhart, 62 Commodore Rd, Ms. Vallejo's spouse requested a continuance to the December 17, 2012 Zoning Board meeting. Upon a motion by Mr. Abramoff, seconded by Mr. Loew, the Board voted 5-0 to approve the continuance to December 17, 2012. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to have the applicant provide stamped envelopes to re-notify the abutters 2 weeks prior to the December 17, 2012 meeting.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received August 14, 2012; prepared by Zayda Vallejo.
- Exhibit B: Existing and Proposed Conditions Plan on Land # 85 Lake Avenue North & 55 Mohican Road; dated July 23, 2012; prepared by Robert D. O'Neil Jr.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 85 Lake Avenue North and 55 Mohican Road (MBL 6-003-46-48 & 46-003-0047A) dated September 21, 2012; and revised on October 12, 2012.
- Exhibit D: Request for Continuance Form dated October 5, 2012; signed by Donald J. O'Neil.
- Exhibit H: Proposed Building Location Plan, Revised September 2012, prepared by Robert D. O'Neil Jr.

## **3. 525 (aka 525-545) Lincoln Street (ZB-2012-049):**

The petitioner, Clear Channel Outdoor, submitted a Request for Postponement until the November 19, 2012 Zoning Board meeting prior to the meeting. Upon a motion by Mr. Abramoff, seconded by Mr. Loew, the Board voted 5-0 to approve the postponement to October November 19, 2012 and extend the public hearing deadline to November 23, 2012.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received July 23, 2012; prepared by Clear Channel Outdoor, including the following attachments:
  - i. Lease Agreement between the applicant and the owner; dated November 30, 1999
  - ii. Lincoln Plaza Building Key Plan; dated August 8, 2005
  - iii. Two photographs of the existing billboard sign
  - iv. Digital billboard structural plan; prepared by Yesco Electronics; undated; received July 23, 2012.
- Exhibit B: Digital Display Installation Plan; prepared by Dana F. Perkins, Inc. of Consulting Engineers & Land Surveyors; dated July 5, 2012.
- Exhibit C: Structural Plan; prepared by GRC Engineering, Inc. and Quantum Structure & Design; dated September 21, 2011.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 525 (aka 525-545) Lincoln Street (ZB-2012-049); dated August 24, 2012, revised September 14, 2012 and September 19, 2012.

## **NEW BUSINESS**

### **4. 266 Chandler Street (ZB-2012-055)**

**Relief Requested:** **Special Permit:** To allow the freestanding pole height to be 1.25 times the otherwise permitted height in a BG-4.0 zoning district (Article IV, Section 6, Table 4.3.1, Note 27)

**Petitioner:** Webster Five Cents Savings Bank

**Present Use:** Webster Five Cents Savings Bank and approximately 29 associated off-street parking spaces

**Petition Purpose:** Install a 24 ft tall freestanding pole sign which is 4 feet taller than the otherwise allowable sign area for non-residential uses with one to two tenants. The Zoning Ordinance allows by grant of a Special Permit 1.25 times the otherwise permitted height and area (Table 4.3.1, Note 27) for all nonresidential uses with one to two tenants

**Zone Designation:** BG-4 (Business, General)

Mr. Fontane, Director of DPRS, stated that staff respectfully recommends approval of the project with no conditions as the proposed sign is consistent with the busy commercial corridor and area density. Staff had no changes to the findings of fact. If approved, staff recommends that the structure be constructed in substantial accordance with the approved proposed sign plan and submitted rendering prepared by Kay Gee Sign both dated August 20, 2012.

Mr. Abramoff asked if the proposed sign was the same size as the Walgreen's sign and the City's traffic sign. The applicant stated that it was the same size and that the purpose was to make the new branch visible from Park Avenue. He also informed the Board that no digital projection of any kind was proposed with this sign.

There was no commentary from the public.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to allow the 24 ft tall freestanding pole sign.

### **List of Exhibits.**

**Exhibit A:** Special Permit Application; received August 30, 2012; prepared by Webster Five Cents Savings Bank.

**Exhibit B:** Layout Plan; dated March 8, 2012; prepared by JH Engineering Group.

- Exhibit C: Rendering and Elevations; dated August 20, 2012, revised September 25, 2012; prepared by Kay Gee Sign.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 266 Chandler Street; dated October 12, 2012.

## 5. 63 Lyman Street (ZB-2012-057)

- Relief Requested:** **Special Permit: Extension,** Alteration, or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4)
- Petitioner: Ronald Bouthiller
- Present Use: Remains of a pre-existing nonconforming single-family detached house destroyed in a fire
- Petition Purpose: Rebuild the pre-existing nonconforming structure for a single-family detached house
- Zone Designation: RS-7 (Residence, Single Family)

Ronald Bouthiller stated that he was before the Board because he wanted to make the property a little larger to create a better floor plan.

Mr. Fontane stated that if approved, staff respectfully recommends the following conditions:

1. Prior to issuance of a Building Permit/Occupancy Permit, submit six copies of final revised plan showing:
  - a. Existing and proposed conditions on separate sheets
  - b. Existing parking area for the required two spaces and annotate materials
  - c. Annotations of existing and proposed dimensions
  - d. Table of dimensional requirements (existing and proposed – e.g. frontage, setbacks, parking)
  - e. Percentage of lot covered by structure
2. The project is constructed in substantial accordance with plans on file with the Division of Planning & Regulatory Services.

Mr. Fontane also stated that some of the findings of fact were modified by staff and that the applicant did not need a variance because he was not further encroaching on the setbacks. He also stated that no rendering had been submitted with the application but if submitted tonight it would be sufficient as long as the Board approved. Mr. Bouthiller stated he just received the rendering today and provided a copy to the Board for review.

Mr. Kelly, Commissioner of DIS, asked the applicant how many stories the new structure would have and Mr. Bouthiller stated there would be two stories and that the specific heights were listed on the renderings.

Jim Marois, direct abutter and resident at 61½ Lyman Street, asked how this construction would affect him since the homes are already so close together and Mr. Bouthiller is planning to make his

house bigger. Mr. Freilich stated that the Zoning Ordinance states that “If a privileged nonconforming use or structure is damaged or destroyed by explosion or other natural or non-natural disaster, such use or structure may be rebuilt or restored and used again as previously, provided the rebuilding or restoration is completed within (2) years after the damage occurred. The structure as rebuilt may not be greater in volume or floor space than the original structure.” Mr. Abramoff stated although by law the applicant can rebuild the property as it was, that the change Mr. Bouthiller proposed benefits Mr. Marois because he is actually moving the house one foot further away from 61½ Lyman.

Mr. Marois stated he was also concerned with the demolition and construction because the houses are so close and they have had property issues in the past. He is specifically concerned with the fence, which he states is on his property, but now Mr. Bouthiller says it is on his property. There is a stake on the front yard designating the edge of the property but there is no stake on the back yard. Mr. Freilich advised Mr. Bouthiller to have his engineer re-stake the back yard.

Mr. Fontane asked when the land was last surveyed because the data on the plans and what is listed on the assessing website didn’t match and he suggested that the applicant contact the assessing department and clear up where the lot lines are.

Mr. Kelly stated that prior to the certificate of occupancy the applicant would have to submit an “as built” plan and that should clear up any issues with assessing. Mr. Freilich stated that Mr. Kelly can enforce that no damage be done to the neighbor’s house and that if it does Mr. Bouthiller would be responsible.

Mr. Marois also stated that someone is parking on his property and including the lawn without permission. Mr. Freilich stated that they were neighbors and asked Mr. Bouthiller and Mr. Marois to work it out as soon as the Zoning Board meeting finishes.

Mr. Fontane stated that there should be a monument in the backyard that was not noted on the plans. If it was moved, it needs to be replaced by a surveyor in the correct spot to mark the lot lines. Mr. Kelly stated that the land will be re-surveyed prior to the building of the foundation and it will have to be in place by then.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to close the public hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to approve the special permit subject to the conditions stated in the DPRS memo. Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to approve the findings of fact as presented by the petitioner and modified by DPRS staff.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received September 4, 2012; prepared by Ronald Bouthiller.
- Exhibit B: Building Permit Plan; dated August 8, 2012; prepared by Thomas R. Fancy, Sherman Frydryk.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 63 Lyman Street; dated October 2, 2012.

Exhibit D: Residential Design Rendering, prepared by D. Berthiaume, received October 15, 2012.

**6. 125 and 133 West Boylston Street (ZB-2012-058)**

**Relief Requested:** Special Permit to allow sales and display of motor vehicles in BL-1.0 Zoning District (Table 4.1, Business Use #15 and #16)

**Petitioner:** Ronald B. Ramstrom

**Present Use:** Automotive Service Station (privileged pre-existing nonconforming use)

**Petition Purpose:** Seeking a Special Permit to allow the sale of used motor vehicles and have four vehicles on display on the premises and a Special Permit to allow the expansion of the existing nonconforming use.

**Zone Designation:** BL-1.0 (Business, Limited)

Richard Ramstrom, petitioner, stated he has been at the 125 & 133 West Boylston location for 32 years and no longer sells gas. He is looking for another type of income.

Mr. Fontane stated that if the Special Permits are approved, staff recommends the Board consider the following conditions of approval:

- Six (6) copies of the final revised plan be submitted certified by a professional surveyor or engineer or without the certification from HUB Survey Associates.
- That no more than four cars be on display for sale at one time.
- That the parking lot and display area be restriped to clearly identify all parking spaces.
- That the car display area be set back a minimum of five feet from the property line.
- That landscape screening be installed along the four display spaces consisting of low level shrubs and plantings.

Mr. Fontane stated that the plans submitted were stamped by an engineer and then modified. For that reason, one of the conditions notes to make a notation on the final revised plans that the modifications were done by Mr. Ramstrom or to remove the engineer's stamp. Mr. Fontane also stated that some of the findings of fact were modified by staff.

Mr. Kelly asked if there was any exterior lighting proposed and if the applicant had the necessary parking spaces needed for the service bays. Mr. Ramstrom responded that there is enough lighting on the property so he had no plans to add any more. He also stated that he did have the parking spaces needed for the bays.

Mr. Michajlow asked if this would be an accessory to the existing service business and Mr. Fontane asked if there would only be 4 cars for sale on the lot at any one time. Mr. Ramstrom stated this

would only be a small portion of his business and he would only have four vehicles for sale at any one time. He will not store vehicles on his service bay parking spaces that will be put for sale.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to approve the special permit subject to the conditions stated in the DPRS memo and approve the finding of fact as presented by the applicant and modified by staff.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received September 6, 2012; prepared by Richard B. Ramstrom.
- Exhibit B: Plan of Land; dated June 3, 1998, prepared by HUB Survey Associates Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 125 & 133 West Boylston Street; dated October 12, 2012.

### **7. 1438 Grafton Street (ZB-2012-060)**

**Relief Requested:** Non-Residential Use allowed only by Special Permit (Article IV, Section 2, Table 4.1) and Modification of Parking/Loading Requirements (Article IV, Section 7).

**Special Permit:** To allow a bank with a drive-through (Table 4.1, Business Use # 4) in the BL-1.0 (Business, Limited) zoning district.

**Special Permit:** Modification of parking layout with respect to the drive-through and escape lane length. A 180-ft drive-through and escape lane is required, 100-ft and 105-ft in length is proposed.

**Petitioner:** Webster Five Cents Savings Bank

**Present Use:** A dental office and a vacant tenant space

**Petition Purpose:** To allow Webster Five Cents Savings Bank in the vacant tenant space ~1,200 SF with two drive-through lanes and an escape lane and 61 associated off-street parking spaces. The petitioner is also seeking relief from the minimum length requirements for the drive-through and escape lane.

**Zone Designation:** BL-1.0 (Business, Limited)

Attorney John Shea, representing Webster Five Cents Savings Bank, introduced Joe Radabanix, Senior Vice President for Webster Five Cents Savings Bank, and Rob Oliver, engineer for the project. The applicant is proposing to open a branch bank office in the vacant tenant space within the existing building at 1406, 1408, and 1438 Grafton Street. Presently on the premises is a dental office. The bank is proposed with two drive-through lanes containing an ATM and two teller stations in each lane and an escape lane. The drive-through lanes are 100 feet and 105 feet, respectively.

Atty. Shea stated that there had been some confusion with their plans and he showed the Board where they started their drive-through lane calculations and how they derived the 100' and 105'

lanes. Atty. Shea also stated that those two lanes would accommodate 9 cars and that was more than sufficient since their busiest branch only sees 4 cars at a time in a drive-through lane. They also have a two transaction maximum per vehicle in order to keep the line moving.

Atty. Shea stated that a new paved parking area is proposed on the south side/in the rear of the site that will provide 22 off-street parking spaces for a total of 61 spaces are proposed, including 4 handicap spaces. He stated that he received staff's memo and was amenable to the conditions listed, including the addition of 4 interior trees.

Mr. Fontane stated that the conditions proposed for this project were conditions previously made for Commerce Bank on Lincoln Street. Mr. Kelly stated that it has worked for that branch and that he hasn't received any complaints. Atty. Shea asked if the transaction data can be gathered every hour, rather than every 15 minutes as requested on the memo.

Mr. Freilich asked Mr. Fontane if the length of a drive-through should be amended in the Ordinance. Mr. Fontane stated that it is on the list of pending amendments.

Mr. Freilich stated that there should be pedestrian walkways clearly marked to ensure pedestrian safety.

No commentary from the public.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to close the public hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to approve the special permit requested subject to the conditions listed below:

- That the plans be revised to show the proposed landscaping and landscaping table with species and number and size. Trees in the landscape buffer along Grafton and Bonair Road shall be spaced 20-25 feet on center and shrubbery densely planted in the buffer. Four interior trees are required.
- That the curb cut on Grafton Street be entrance only and that the southerly Bonair curb cut be exit only.
- That the drive-through service be operated to minimize vehicle queue length to less than or equal to on-site capacity.
- That the drive through canopy include a sign for each lane indicating whether a drive through lane is open or closed, and that said signs be actively utilized by closing driving through lanes as needed to ensure that queue length does not exceed on-site capacity.
- That data be collected for this location on a daily basis, in 60 minute intervals, regarding the number of transactions and the number of vehicles; and that said data be made available upon request by the Building Commissioner to aid in the determination of whether queue length exceeds on-site capacity and to determine peak hours of operation.
- Should the Building Commissioner determine that queue length exceeds on-site capacity or that the drive-through use causes a disruption to traffic flow and safety, a police detail shall be hired during peak hours of operation or drive-through service shall be closed.
- That six (6) copies of the final revised plans be submitted to the DPRS.



## **List of Exhibits.**

- Exhibit A: Special Permit Application; received September 11, 2012; prepared by Webster Five Savings Bank.
- Exhibit B: Site Plan of Land in Worcester, Massachusetts, 1406/1406/1408 Grafton Street, sheets 1 – 4; dated September 2012; prepared by David E. Ross Associates.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1406, 1408, & 1438 Grafton Street dated October 12, 2012.
- Exhibit D: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals; re: 1438 Grafton Street Special Permit – ZB-2012-060 dated October 15, 2012.

## **OTHER COMMUNICATIONS**

**8.** Complaint from Deborah Vincequere re: 5 Almont Street (ZB-2007-105) dated October 1, 2012.

Mr. Fontane stated that a complaint letter regarding 5 Almont Street, which was before the Board a few years prior, was received and all communication addressed to the Board must be provided to the Board. No action is required at this time. It is not a public hearing; it is a communication item.

Mr. Freilich stated that he read the letter submitted by Ms. Vincequere and looked at the photographs, which depict damage to the vinyl siding. He stated that he didn't know the cause of the damage since he wasn't a solar engineer but stated he would be distraught if that were his home. He stated that he would contact the insurance company to determine what can be done and he would find legal counsel if it was the neighbor's fault.

Mr. Abramoff stated that the information supplied by the state and by Mr. Sansoucy, who inspected Ms. Vincequere's home, believed that it was the windows and not the truck that caused this damage. Mr. Abramoff stated he would also contact the insurance company to find out what they could do.

Mr. Kelly stated that he did not believe it was from the truck and that the three-decker next door had a lot of windows. He read the following excerpt from the advisory "The BBRS (Board of Building Regulations & Standards) is working to better understand this issue but in the interim is issuing this ADVISORY for informational purposes only. Note that information contained in this ADVISORY (see below) is not enforceable by Building Officials as it is not part of the current code." He stated that as a building official he cannot enforce this nor make the neighbor put on some screens and that no changes to the code have been made to date.

Mr. Fontane stated that when the original petition came in front of the Board in 2009 no decision was made regarding any windows. Mr. Kelly stated none of them are solar experts so it is difficult to know if the reflection off of the truck has anything to do with this.

**List of Exhibits.**

- Exhibit A: Complaint Letter and photos submitted by Deborah Vincequere, dated October 1, 2012.
- Exhibit B: Vinyl Siding Distortion Advisory from the Department of Public Safety, dated August 10, 2010.

**DECISIONS FROM PRIOR MEETINGS**

There were no decisions from prior meetings to be signed.

**ADJOURNMENT**

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to adjourn the meeting. Chair Freilich adjourned the meeting at 6:55 p.m.