

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

November 03, 2008

WORCESTER PUBLIC LIBRARY, 2 SALEM SQUARE, SAXE ROOM

Zoning Board Members Present: Leonard Ciuffredo, Chair
Chair George, Vice-Chair
Lawrence Abramoff
Andrew Freilich
Brian Murphy

Staff Present: Joel Fontane, Division of Planning & Regulatory Services
Judy Stolberg, Division of Planning & Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory Services
John Kelly, Building and Zoning Division

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

1. **425 Salisbury Street (ZB-2008-079) – Administrative Appeal:** Chair Ciuffredo recused himself and Vice Chair George assumed the role as the Chair. Items 1 and 2 were taken contemporaneously. Present at the hearing were Frank Fiorillo, Nicholas Fiorillo and their attorney, Gary S. Brackett. Representing Notre Dame Academy was attorney Robert E. Longden, Esq. The petitioners are seeking two (2) Administrative Appeals with regards to 1) item 1 - the issuance of a building permit for proposed work on Notre Dame Academy approved by the Planning Board (Site Plan Approval granted on June 4, 2008); and 2) item 2 - the response of the Acting Building Commissioner relative to a request for zoning enforcement for the aforementioned work.

Chair George explained that he first wanted the Board to determine whether or not the petitioners are parties of interest and have standing; and then, to establish how the appeals are related to the City of Worcester's Zoning Ordinance and whether a zoning violation occurred.

Nicholas Fiorillo spoke on behalf of his father. Nicholas Fiorillo indicated that he resides at 425B Salisbury Street with his wife, Tracy Krowel, and their two children. The owner of the property is Frank Fiorillo who does not reside at the property.

Mr. Brackett indicated that the petitioners are direct abutters to the Notre Dame Academy at 425 Salisbury Street and, therefore, have standing as a matter of law. He further asserted that the presumption of standing exists as a matter of law, and its rebuttal is up to the other party to establish. Mr. Longden responded that while Frank Fiorillo is the owner of 425B Salisbury Street, Nicholas Fiorillo and Tracy Krowel are not and, therefore, do not have the interest in the property and, consequently, have no legal standing. He continued that in order for petitioners to have standing,

they need to prove particularized and tangible harm as a result of the new addition to the Notre Dame Academy. Mr. Murphy said that since Frank Fiorillo, the owner, is on the petition, the question of ownership is not very important to the discussion. Mr. Murphy also reasoned that while Frank Fiorillo has standing as a matter of property ownership, the petitioner seems to fail on the second test of standing, namely proving that the damage he asserts is reasonable, since enrollment at the Notre Dame Academy is not increasing as a result of the addition.

Chair George proposed that there be three separate motions to determine the standing of the three petitioners. He then asked Mr. Fontane if he knew how many votes are needed to determine the petitioner's standing. Mr. Fontane said that he did not know, but that four affirmative votes are needed to overturn the Acting Building Commissioner's decision. Mr. Brackett said he believed a simple majority of the board is needed to determine lack of standing. Mr. Longden disagreed by saying that the Board should vote on the presence, not lack of, standing, for which a super majority of the board's votes is needed. Chair George said that he believed the Massachusetts General Laws do not have explicit rules on voting instructions with regards to the standing question.

Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 1-3 by Lawrence Abramoff (Andrew Freilich, David George, and Brian Murphy voted no) that Tracy Krowel has the legal right to appeal the Acting Building Commissioner's decision to issue a building permit. The motion failed, therefore Tracy Krowel does not have standing.

Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 1-3 by Lawrence Abramoff (Andrew Freilich, David George, and Brian Murphy voted no) that Nicholas Fiorillo has the legal right to appeal the Acting Building Commissioner's decision to issue a building permit. The motion failed, therefore Nicholas Fiorillo does not have standing.

Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 4-0 by Lawrence Abramoff, Andrew Freilich, David George, and Brian Murphy that Frank Fiorillo has the legal right to appeal the Acting Building Commissioner's decision to issue a building permit.

Mr. Brackett said that, in the interest of time, he would stipulate standing is the same for both Administrative Appeals - appeal of the Acting Building Commissioner's decision to issue a building permit (ZB-2008-079) and appeal of the denial of a request to take zoning enforcement action against the property at 425 Salisbury Street (ZB-2008-080). Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 4-0 by Lawrence Abramoff, Andrew Freilich, David George, and Brian Murphy that standing was the same for both Administrative Appeals.

Mr. Brackett said that the Zoning Ordinance's goal is to maintain the most reasonable use of land, to prevent overcrowding of land, to allow for coexistences of different land uses, and to preserve land values. Mr. Brackett asserted that in order to determine the necessary number of parking spaces for this project, one needs to inventory all the uses on the parcel and then calculate the applicable number of parking spaces. Currently, there are 113 parking spaces present on the site, which he claimed is an insufficient number for all of the current uses at the Notre Dame Academy. He then stated that given the proposed expansion, it is justifiable to determine there will be the addition of one place of assembly and four new classrooms, as opposed to one classroom as was determined by the Acting Building Commissioner. According to Mr. Brackett, that would make the parking count

for the proposed expansion equal to 40 spaces (10 spaces for each of the four new classrooms) plus 0.25 parking spaces per rated occupancy for places of assembly. Mr. Brackett added that he feels the Planning Board made a mistake in first determining that the site plan showed the correct number of parking spaces, and that the Building and Zoning Division did not interpret the Zoning Ordinance correctly. Chair George responded that the Planning Board approval is not proper subject matter for this hearing and that the Board is considering the action of the Building Commissioner.

Mr. Longden responded that the newly added music lab, art studio and the gallery are accessory uses to the educational use and thus are not classrooms. For example, the music room will be used for extracurricular practice and rehearsals, not classes. He also reminded the Board that the Dover Amendment (Massachusetts General Laws' Chapter 40A, Section 3) exempts educational uses from regular zoning regulations, except for reasonable regulations concerning the bulk and height of structures, parking, yard sizes, lot area, setbacks, open space, and building coverage. Chair George concurred that there might be overcrowding on site, but reminded Mr. Brackett that he must demonstrate that the Notre Dame Academy expansion should be proven to cause tangible and particularized injury to the petitioners.

Nicholas Fiorillo presented the evidence of overcrowding through photographs he submitted to the Board of the access road fronting the petitioners' house (referred to as "Unnamed Road" on the plan) which connects Notre Dame Academy to Salisbury Street. The photograph showed cars parked on both sides of the access road. Nicholas Fiorillo said that sometimes it takes people 15-20 minutes to get into Notre Dame Academy, especially in the morning and the afternoon, due to the traffic associated with the school. He also indicated that it could be a problem for fire and ambulances to pass by his house. He also indicated that many students speed in his neighborhood, and that there have been numerous car accidents close to his residence's driveway. Lastly, he stated that there is no stop sign, pedestrian crossing or police detail present in the vicinity of his property. Chair George said that the reason for the hearing is to determine the administrative appeals, and it sounds like many problems Nicholas Fiorillo is describing are not related to the proposed addition to the Notre Dame Academy.

Chair George asked who has the right to use the access road. Nicholas Fiorillo said that according to the deed, the access road cannot be used for commercial or mercantile uses, thus he sees its purpose as temporary only. He further stated that while it has been used by Notre Dame Academy, an educational use, the neighborhood implications are commercial in nature. Chair George responded that since the use of the access road is allowed, the real nature of the dispute at hand is parking. Then he asked the petitioner if he knows the number of people using the road every day. Nicholas Fiorillo responded that he thinks it numbers in the hundreds. Frank Fiorillo said that on several occasions he could not get out of his driveway because it was partially blocked by cars parked alongside the access road. He warned the Board that some day there will be a bad accident as a result of these conditions and that he does not want it to be his family. Chair George summarized that the petitioners presented anecdotal evidence that there are a lot of cars using the access road. Mr. Murphy asked the petitioners whether their complaint is with the flow of traffic or the parking. Nicholas Fiorillo responded that the problem is overcrowding, thus leading to both problems. Chair George then asked the Board members if they think that traffic concerns are particular to the site. Members Mr. Abramoff and Mr. Freilich stated that the traffic issue is not particular to the petitioner's property, but is an issue in all neighborhoods within which schools are located.

Nicholas Fiorillo the Board with the history of his family's interactions with the Notre Dame Academy. Frank Fiorillo indicated that he purchased the property approximately two years ago. Nicholas Fiorillo said that his father was approached by Notre Dame Academy representatives and asked to sell his property to NDA for \$750,000. After getting independent appraisals, the two parties had a disagreement as to what the true market value of 425B Salisbury Street was. Then, Nicholas Fiorillo stated that the Notre Dame Academy told him that the new addition would lower the value of his property.

Mr. Longden countered that this issue is irrelevant to the matter at hand, but since the petitioners have raised it, he would like respond. Mr. Longden said that the Notre Dame Academy was unwilling to purchase the property for the amount asked by the petitioners. Mr. Longden took exception to and denied the allegations that the Notre Dame Academy threatened the petitioners and said that he believes these Administrative Appeals are about getting money from the institution.

Chair George asked the petitioners to stay focused on the Administrative Appeals. Mr. Brackett explained his case and reiterated the point he and Nicholas and Frank Fiorillo made earlier about the overcrowding already present. He then said that the 10 new parking spaces provided for the expansion are inadequate given that, in his opinion, four new classrooms, not one, have been added to the Notre Dame Academy (and that according to the Zoning Ordinance, 10 spaces are required for each classroom) and that for the one place of assembly added as a result of the expansion 0.25 parking spaces per person accommodated in a place of assembly are required. Mr. Longden said that petitioner's statements are not reasonable or credible because Notre Dame Academy will not increase its enrollment as a result of the new addition. He also said that only one additional classroom was added as a result of the expansion. The one new classroom is resulted from a conversion of an office in the existing building. The expansion would include a new art studio and gallery, a music room, and a computer lab, none of which are classrooms.

Mr. Brackett pointed out that while the Zoning Ordinance does not have a definition of "classroom", the American Heritage Dictionary defines "classroom" as "a room or place especially in a school in which classes are conducted." Referencing Notre Dame Academy's marketing brochure (Exhibit A), he stated that as a result of the expansion, four new classrooms were created – a conversion of the office into a classroom in the existing building, and three classrooms in the new addition – two art studios and a music room. He further defined the new art gallery as a place of assembly. Mr. Longden countered by saying that art studios and a music room are not classrooms, since they are places for occasional practices, not continuous classes. He added that the marketing brochure Mr. Brackett used to make his deductions should not be used as a substitute for the definitive site plan submitted to the Planning Board. Mr. Fontane further clarified the issue of the classroom definition. He said that while the Zoning Ordinance lacks classroom definition the City uses several professional guides as sources to find definitions that are in accordance with the purposes and intent of the City's Zoning Ordinance. In this case, a definition from the American Planning Association: A Planner's Dictionary was used and reads as follows:

“Classroom: Educational facilities of the district required to house students for its basic educational program. The classrooms are those facilities the district determines are necessary to best serve its student population. Specialized facilities identified by the district, including but

not limited to gymnasiums, cafeterias, libraries, administrative offices, and child care centers shall not be counted as classrooms.”

Mr. Kelly said that he based his interpretation that only one additional “classroom” was added as a result of the addition and that the other changes would not lead to an increase in enrollment. Therefore, he believes that the Building and Zoning Division’s determination of the 10 new parking spaces is reasonable and meets the intent of the Zoning Ordinance with respect to the off-street parking requirements for a Dover protected educational institution. Mr. Kelly also indicated that the plans submitted with the building permit application were different than the marketing brochure Mr. Brackett presented.

Chair George asked Mr. Kelly why the art studios and the music room would not be considered classrooms and why the art gallery would not be considered a place of assembly. Mr. Kelly responded that he interprets these uses to be accessory since they are subordinate and incidental to an allowed predominant educational use of the Notre Dame Academy (Article 4, Section 8). Mr. Kelly said that since Notre Dame Academy is located in the IN-S (Institutional, Educational) zone, its off-street parking requirements are calculated based on classroom and dormitory uses only. Mr. Kelly later retracted this statement and said that Notre Dame Academy is located in a RS-10 (Residence, Single Family) zone. He also indicated that the Dover Amendment (Massachusetts General Laws Chapter 40A, Section 3) exempts educational uses from regular zoning regulations, except for reasonable regulations concerning parking, and more.

Mr. Freilich raised a question of whether or not the Planning Board failed to adequately address Site Plan review criteria. Chair George responded that the purpose of the hearing is not to review the plan per se, but to determine whether the Planning Board failed to address or inadequately address review criteria, which resulted in a particular, identifiable harm to the petitioners.

Before voting, Mr. Freilich said that his experience of living in the same neighborhood as the petitioners’ was similar. He added that he believed the entire neighborhood experiences traffic and other problems associated with the presence of the Notre Dame Academy, and that this problem is common in many residential areas near educational institutions. Mr. Freilich then asked Notre Dame Academy to take Frank Fiorillo’s complaint seriously and to address it on its own merits. He added that this statement, however, does not change his opinion of the case. Board member Abramoff concurred with Mr. Freilich.

Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 4-0 by Lawrence Abramoff, Andrew Freilich, David George, and Brian Murphy to close the hearing.

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 0-4 by Lawrence Abramoff, Andrew Freilich, David George, and Brian Murphy to overturn the appeal of the issuance of the Building Permit # BP-2008-1192 issued on July 17, 2008. The motion failed therefore the decision of the action Building Commissioner was upheld.

2. **425 Salisbury Street (ZB-2008-080) – Administrative Appeal:** Upon a motion by Brian Murphy and seconded by Andrew Freilich, it was voted 4-0 by David George, Andrew Freilich, Lawrence Abramoff and Brian Murphy to close the hearing.

Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 0-4 by Lawrence Abramoff, Andrew Freilich, David George, and Brian Murphy to overturn the appeal of the Acting Building Commissioner's decision to deny a requested zoning enforcement action by letter dated July 14, 2008. The motion failed, therefore the Acting Building Commissioner's determination stands.

Andrew Freilich left the meeting after the vote. Leonard Ciuffredo assumed the role as the Chair.

3. **1 Liscomb Street (ZB-2008-083) – Variances:** David Sadowski, representative for the petitioner, M.J. Mann, Inc., is requesting a Variance for 505 square feet of relief from the gross dimensional requirement and a Variance for 5 feet of relief from the frontage requirement. Because it was a four-member board, Mr. Sadowski was offered an option to Leave to Withdraw Without Prejudice so as to be heard by a five-member board. Mr. Sadowski decided to proceed. Mr. Sadowski explained the revisions he made to the plan and house renderings in response to comments from the staff, the Board, and neighbors. He confirmed that the proposed house is a two-story, three-bedroom structure with construction planned by the spring of 2009. Mr. George asked Mr. Kelly if the applicant's plans are sufficient for a building permit. Mr. Kelly said that he would accept the current plan as an elevation plan, but will need indoor plans and a plan of electricity connections. Chair Ciuffredo asked how the proposed lot compares in size to its neighbors. Mr. Fontane responded that the lots on Prentice Street are of similar size, while the lots on Liscomb Street are generally larger in size. Mr. Sadowski pointed out that the lot was created in 1918, prior to a Zoning Enabling Act. Chair Ciuffredo asked Mr. Sadowski to explain his hardship. Mr. Sadowski responded that it is the size and configuration of the lot, and that he can not purchase land from his neighbors in order to conform without making their lots non-conforming. Chair Ciuffredo suggested enhancing the look of the front door and then asked Mr. Kelly if he thought the side deck stairs were sufficient in size. Mr. Kelly said that they might encroach onto the side yard setback and suggested moving them to the rear of the building. Mr. George added that when a house's facade and a front entrance do not face the street, it does not fit well with the neighborhood character. Therefore, Mr. George concurred that moving the side deck and the door to the rear of the house would improve the look of the house. Mr. Abramoff also asked that a door on the side of the house be replaced with a window complementing other windows on that side. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-0 by Lawrence Abramoff, Leonard Ciuffredo, David George, and Brian Murphy to close the hearing. Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 4-0 by Chair Ciuffredo, David George, Lawrence Abramoff and Brian Murphy to approve the following:

VARIANCE: 505 square feet of relief from the gross dimensional requirement

VARIANCE: 5 feet of relief from the frontage requirement

The Variances were approved with the following conditions:

- That the door facing Liscomb Street is operable and serve as the main entrance to the house;
- That the left side's entrance is replaced with a window;
- That the house has a second means of egress and a deck in the rear;

- That a minimum 3 inch caliper shade tree be shown and labeled on the final revised plot plan within the front yard setback;
- That the construction be in substantial accordance with the final revised plot plan and elevation plans;
- That a revised set of elevation plans, reflecting conditions above, be submitted to the Division of Planning & Regulatory Services and the Division of Building and Zoning prior to issuance of the Building Permit.

4. **109 Heywood Street (ZB-2008-096) – Special Permit:** Jeffrey Dryden, petitioner, is requesting a Special Permit for the use of a professional office in a residential zoning district (RG-5). Because it was a four-member board, Mr. Dryden was offered an option to postpone the item to the next meeting, when a five-member board would be present. Mr. Dryden decided to proceed. The current residential use is conforming because the lot meets off-street parking requirements and meets the setback requirements for a three-family dwelling. The applicant wishes to occupy 460 SF of space in a vacant storefront for a professional office. There are no exterior alterations proposed for the building. Mr. Dryden explained that he operates a plumbing and heating business and needs this space as his office. The petitioner stated that he owned the property for one year and three months. Chair Ciuffredo asked the petitioner if he was planning to do any work outside and whether he was going to park vehicles on the site. Mr. Dryden responded that no work would be done outside, and that he might park his vehicles on the site. Mr. Abramoff suggested that only one truck should be permitted to be parked on-site overnight. Chair Ciuffredo added that the sign for the business should be small and used only for identification, not advertising, purposes. Mr. George suggested that in order to further minimize the potential negative impact on the neighborhood, no delivery of plumbing-related equipment should happen on the site. Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-0 by Lawrence Abramoff, Leonard Ciuffredo, David George, and Brian Murphy to close the hearing. Upon a motion by Brian Murphy and seconded by Lawrence Abramoff, it was voted 4-0 by Leonard Ciuffredo, David George, Lawrence Abramoff and Brian Murphy to approve the following:

SPECIAL PERMIT: Professional office in an RG-5 zone

The Special Permit was approved with the following conditions:

- That no work related to the business will be conducted outside;
- That no more than one work related truck will be parked on site overnight;
- That the Special Permit is limited to ownership by Mr. Jeffrey Dryden;
- That no exterior signs will be allowed for the business, except for a small one identifying the name of the business (i.e. name of the business on the mailbox).
- That no delivery of plumbing-related equipment or materials will occur on site.

OTHER BUSINESS

Approval of Minutes: Upon a motion by Lawrence Abramoff and seconded by Brian Murphy, it was voted 4-0 by Lawrence Abramoff, Leonard Ciuffredo, David George and Brian Murphy to approve the minutes from the October 20, 2008 meeting.

2009-2010 Proposed Board Meeting Schedule: Upon a motion by Leonard Ciuffredo and seconded by Brian Murphy, it was voted 4-0 by Lawrence Abramoff, Leonard Ciuffredo, David George and Brian Murphy to approve the proposed ZBA meeting schedule for 2009-2010, as follows:

ZONING BOARD OF APPEALS

Filing Deadline	Meeting Date*
Tuesday 3 PM	Monday
13-Jan	9-Feb
27-Jan	23-Feb
10-Feb	9-Mar
24-Feb	23-Mar
10-Mar	6-Apr
31-Mar	27-Apr
14-Apr	11-May
12-May	8-Jun
2-Jun	29-Jun
23-Jun	20-Jul
14-Jul	10-Aug
4-Aug	31-Aug
18-Aug	14-Sep
8-Sep	5-Oct
22-Sep	19-Oct
6-Oct	2-Nov
27-Oct	23-Nov
10-Nov	7-Dec
24-Nov	21-Dec
15-Dec	11-Jan
29-Dec	25-Jan

ADJOURNMENT: Chair Ciuffredo adjourned the meeting at 7:55 P.M.