

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

**January 31, 2011
WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM**

Zoning Board Members Present:

Lawrence Abramoff, Chair
Andrew Freilich
William Bilotta
Vadim Michajlow
Timothy Loew

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Ruth Gentile, 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. 242 & 242A Stafford Street (ZB-2010-050) - Special Permit for Expansion or Change of a pre-existing non-conforming use/structure.** Atty. Peter Keenan and Robert O'Neil, representatives, and Michael McIntyre, petitioner, presented the plan to operate a truck and auto collision repair and refinishing shop, with an associated office use in an RS-7 zoning district. Mr. Keenan stated that there was a Purchase and Sale Agreement in place with UB Properties and Mr. McIntyre. He stated that the site has been in an RS-7 zone since 1988. He stated that he would address three key points; 1) that the expansion is under Article XV!, Section 4, 2) that the proposed use is less detrimental than the existing use, and 3) that the proposed use is of a similar nature. He stated that the proposed use is for truck collision repair and the former use was a truck site excavation terminal and warehouse. He said that Mr. Kelly had determined that the existing use is a manufacturing use on the use table and that the proposed use would be a different manufacturing use on the use table.

Mr. O'Neil presented the physical site plan. He stated that the site is currently 2.42 acres and that the area on 242 Stafford Street is 1.6 acres. He said there will be office space and a structure with garage bays. He further said that the site is bounded by an athletic field to the north, manufacturing property to the east, a two-story metal building to the west and residential properties to the south. He said that there is a vertical separation of 20 feet below the street and that the building is 23 feet and only 3 feet of the building can be seen from the street. He said that the site is buffered by Arbor Vitae in the area of Cuba Road and that the site has a sufficient infrastructure for both the existing and new building. He also said that

the site is impervious and that the runoff will not be affected by the new structure. There is sufficient parking and proposed snow storage. He said that there will be no impact on the flood zone and that there is one entry driveway.

Mr. Keenan stated that the building for the existing use was built in 1985 and that it was for a site development and excavation business that had 16 trucks and other excavation equipment entering and exiting the site on a daily basis. He said the equipment and trucks were maintained on site. The operation of the existing use was day and night and that fuel oil delivery trucks were worked on for mechanical, engine work and body work. He further stated that the liquid asphalt business that was previously on the site had 30 trucks entering and exiting all day and that business operated all day and night and that mechanical and body work was performed on site. He stated that Mr. McIntyre operates a truck collision and repair business and that he only repairs body parts. He said that there is no maintenance or mechanical work done on site and that there are 15 employees that will move into this location. He said that his current business is in Sutton in a 7,000 SF area with two bays and all work is done inside. At this site the current building is 8,500 SF and the new building will be 4,000SF and is suited for his needs and he intends to expand his work force. He said the hours of operation are 8:00 AM to 4:30 PM, Monday through Friday and 8:00 AM to 12:00 PM on Saturday. He said that this business is unique and that most of his business comes from seven customers. He said that there are two employees that bring trucks to and from the business and that some work can also be done at the customer's site. He said that the benefit to the neighborhood is that there will not be trucks entering and exiting all day. Also, there will be no idling trucks and no power washing. He said that strict EPA standards are followed for painting which is only about 10% of the business. The painting is done in a spray booth with exhaust filters and that low volatile organic compound paint is used. He said that the EPA standard is 3.5 pounds and that this business uses 1.95 pounds. He said that Mr. McIntyre's business is currently located across the street from the Blackstone River, next to a meat packing plant and that he is environmentally conscious and believes that this use is less detrimental than the existing use.

Mr. Keenan stated that Article XVI, Section 4, C, 2 provides for a different use of a similar nature to be allowed. He said that a non-conforming use of a similar nature is defined as a change to any other use that would lawfully be permitted in the same zoning district in which the first use would fully be permitted. He said that he believes this non-conforming use meets that definition of the zoning ordinance. He further stated that the letter from John Kelly and the memo from Joel Fontane also say that the proposed use is of a similar nature to the existing use on the site. He said that site is dimensionally conforming and the use is less detrimental to the neighborhood. Mr. Keenan presented letters of support from businesses that Mr. McIntyre serves and petitions signed by the neighbors in support of the use. He further stated that they do not plan on purchasing the lot at 242A Stafford Street.

Mr. Freilich was concerned with the location of parking spaces, the size of the trucks and how they enter the garage bays. Mr. McIntyre stated that the trucks are ten-wheelers and that they fit inside the structures.

Mr. Loew was concerned with the affect on the abutting playing fields and how the chemicals will harm the water bodies, including Kettle Brook. Mr. McIntyre stated that the

EPS allows three drums of hazardous waste to be stored on the property. He said that he only keeps one 55 gallon drum and that is for paint and no oil is stored.

Mr. Bilotta stated that he was concerned with the Blackstone River and that this use is in an RS-7 zone and opined that the zone was changed for a reason. Mr. Fontane confirmed that there was a zone change that was ordained in 1988. Mr. Keenan said that the property can be used for the use that was existing at the time of the zone change. He reiterated that the former used was for an excavation business with 35 employees and that the only reason Mr. McIntyre is moving from his current location is to expand and that he is environmentally aware and operates his business with respect to air and water quality concerns.

Mr. Abramoff stated that there are two alternative uses that would be allowed at this site, a warehouse and storage of equipment. He was concerned with traffic volume, drainage, and paint storage and if there had been any EPA citations. Mr. McIntyre stated that there are 4-6 trucks a week brought to the site, that the entire site is impervious, that only one 55 gallon drum for hazardous waste is located on the site and that paint is purchased for each job with 4 to 5 gallons being the average volume. He further said that he has not received any reprimands from the EPA.

Mr. Michajlow stated that this was a good presentation and asked if there were any problems with the abutting food business at this current site. Mr. McIntyre confirmed that there were no problems.

Mr. Fontane confirmed that the Zoning Board of Appeals had approved a special permit petition to allow for the construction of an additional structure to house equipment and an office for an existing use described as "construction equipment and warehouse storage". Mr. Keenan stated that the 242 Stafford Street building was built in 1985 and occupied on 1986 and that a new building was built at 242A Stafford Street and never used.

Mr. Kelly referred to his letter of 9/24/10 that stated the warehouse was a privileged non-conforming use; however it was unclear whether the painting and refinishing portion of the business was the same. Mr. Keenan reiterated that his point was that this use, by definition, is a similar use and that the only concern is whether this use is more detrimental than the existing use.

Mr. Freilich requested a clarification of the painting being 10% of the business. Mr. McIntyre stated that many of the parts are delivered pre-painted and that replacement panels are pre-painted.

Upon a motion by William Bilotta and seconded by Timothy Loew, it was voted 5-0 to close the public hearing. Upon a motion by Andrew Freilich and seconded by Vadim Michajlow, it was voted 5-0 by Lawrence Abramoff, Andrew Freilich, Vadim Michajlow, William Bilotta and Timothy Loew to approve the requested Special Permits for expansion or change of a pre-existing non-conforming structure with the following conditions:

- That the hours of operation be limited to 8:00 am – 4:30 pm Monday- Friday; Saturday 8:00 am – 12:00 pm; closed on Sunday.
- That no pressure washing of trucks is permitted on site

- That all truck painting shall be conducted within an enclosed galvanized steel spray booth
- That the use shall be limited to the use of collision repair of trucks, as described in the applicant's memorandum and shall not include "drive up" automobile service/repair
- That the proposed use be constructed in accordance with the final approved Amendment to Definitive Site Plan approved by the Planning Board

Exhibits:

- Exhibit A: 242 -242A Stafford Street Application; received October 26, 2010; prepared by Atty. Peter Keenan on behalf of Michael McIntyre, applicant and owner of record, UB Properties, LLC.
- Exhibit B: 242-242A Stafford Street Plan; dated November 19, 2010 prepared by James F. Malley, Jr. PE.
- Exhibit C: Letter from Lara Bold, AICP, Chief Planner to Atty Peter Keenan; re: 242-242 A Stafford Street; dated November 23, 2010.
- Exhibit D: Letter / Affidavit – Thomas Mann from Atty. Peter Keenan to Lara Bold, Chief Planner, re: 242 -242A Stafford Street, dated December 9, 2010.
- Exhibit E Letter / Affidavit – Michael McIntyre from Atty. Peter Keenan to Lara Bold, Chief Planner, re: 242-242 A Stafford Street, dated December 17, 2010.
- Exhibit F E-mail requesting a continuance by Atty. Peter Keenan, Jr., dated December 20, 2010
- Exhibit G Letter of opposition to the Zoning Board of Appeals Chair from State Representative John J. Binienda, dated December 13, 2010; received December 21, 2010.
- Exhibit H Zone Change – Stafford Street Area – Ordained February 2, 1988.
- Exhibit I Special Permit decisions from Zoning Board of Appeals – April 26, 2005, September 26, 2005, and November 17, 2008.
- Exhibit J - E-mail requesting a continuance by Atty. Peter Keenan, Jr., dated January 10, 2011.
- Exhibit L 1-5 Letters of support from businesses served by Alternative Truck and Auto, received at Zoning Board of Appeals meeting, January 31, 2011
- Exhibit L6 – Petition in support signed by abutters, received at ZBA meeting of January 31, 2011.

Other Business:

Approval of Meeting Schedule:

Upon a motion by Vadim Michajlow and seconded by Timothy Loew, it was voted 5-0 to approve the 2011 to 2012 Meeting Schedule.

Approval of Minutes:

Upon a motion by Timothy Loew and seconded by William Bilotta, it was voted 5-0 to approve the minutes of December 20, 2010 as amended.

Upon a motion by Timothy Loew and seconded by William Bilotta, it was voted 5-0 to approve the minutes of January 10, 2011.

Presentation of Plaque:

Former chair, David George, was presented a plaque by board members for his years of service and thanked him for his contribution to the city as a long time volunteer.

Mr. George stated that he considered it an honor to have been on the Board and appreciated the recognition for his service.

Decisions: The Board signed decisions.

Adjournment

Chair Abramoff adjourned the meeting at 6:35 pm.