

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

June 27, 2011

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN CHAMBER

Zoning Board Members Present: Lawrence Abramoff, Chair
Andrew Freilich, Vice-Chair
William Bilotta
Vadim Michajlow
Kola Akindele
Timothy Loew, Alternate Member

Staff Members Present: Joel Fontane, Division of Planning & Regulatory Services
Edgar Luna, 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**

UNFINISHED BUSINESS:

- 1. 63 Downing Street (ZB-2011-013) & 63-69 Downing Street (ZB-2011-013A):** The two petitions were taken contemporaneously. Leonard Vairo, petitioner, presented both petitions. He stated that regarding the 63 Downing Street (ZB-2011-013) petition, he was seeking the following relief: (a) Special Permit to allow a Lodging House use in an RG-5 zone, (b) Special Permit to waive the requirement for 1 off-street parking space, and (c), Variance for the relief of 5 feet from the 10-ft side yard setback dimensional requirement.

He also stated that regarding the 63-69 Downing Street (ZB-20122-013A) petition, he was seeking the following relief: (a) Special Permit to allow a Lodging House use in an RG-5 zone (Article IV, Section 2, Table 4.1, #8), (b) Special Permit to waive the requirement for 1 off-street parking space (Article IV, Section 7, A.2), (c) Special Permit to waive the 0.9 ft landscape buffer requirement in the parking lot area for the 69 Downing Street parcel, and (d), Variance for the relief of 3.6 feet from the rear yard setback requirement for the 63 Downing Street parcel (Article IV, Section 2, Table 4.2).

Mr. Vairo stated that his objective was to convert the buildings on site into a twelve (12) bedroom lodging house with five (5) off-street accessory parking spaces. Mr. Vairo also indicated that he submitted ten (10) letters to DPRS from Clark University students,

parents of Students, as well as tenants demonstrating, in his opinion, that the proposed project was needed, supported, and would enhance the neighborhood. Mr. Fontane confirmed that such documents had been submitted and added to the file as exhibits along with other documents related to the proposed project.

Mr. Vairo acknowledged that he received important comments from neighborhood residents and indicated that their input was appreciated and considered. He indicated that while evaluating their feedback, he identified two specific areas of concern that were continuously mentioned: (a) the spread of substandard lodging houses in the City, and the negative impact their poor management had on the neighborhoods, and (b), the fear of transitional housing, and the concern of post-ownership, should he considered selling the property after its approval as a lodging house.

He stated that in regards to the spread of substandard lodging houses, he was personally opposed to it and shared the concern of neighborhood residents; however, he stressed that the proposed project was a significant departure from the average lodging houses in regards to room size, amenities, building safely, and on-site management. He stated that, in his opinion, the proposed project would set a new standard for lodging houses which the City then could use to compare and/or evaluate future lodging houses. However, he stressed that, in his opinion, raising the standards for lodging housing would not prevent future approvals; instead, it would provide the City an opportunity to require similar services and amenities by using the proposed project as a model.

In regards to the concern regarding transitional housing and post-ownership, he stated that he had submitted a letter stating that should he consider selling the property in the future due to an unforeseen circumstance, he would allow Clark University to have the right of first refusal on the sale of the property. He clarified that such consideration would be given to Clark University only after members of his family and/or members of his partner's family were to decline purchasing it.

Mr. Vairo also indicated that the main objective of the project was not to maximize his income but rather to provide good lodging house services in the area. He indicated that, in his opinion, he had been vetted as a good and responsible landlord by previous and present tenants, as well as neighborhood residents. In addition, he stated that the proposed project required Planning Board approval, and indicated that such Board would further analyze the details of the project. In addition, he indicated that given the fact that he was investing considerable resources in the area, he was interested in the success of the neighborhood.

Councilor Haller expressed concern regarding the proposed project itself, the parking arrangements proposed, and the removal of green space to create additional parking. She also indicated that, in her opinion, the petitioner was asking for too much relief in order to establish a lodging house. She indicated that it would be best for the neighborhood if the residential dwellings on site retain their current uses. M. Haller stated that the neighborhood was already saturated with lodging houses for Clark University that were changing the nature and character of the neighborhood.

Ms. Haller also indicated that Jack Foley, President of Clark University, had sent her a letter stating that there was no need for additional lodging houses in the area due to the fact that housing on-campus was still available. Moreover, she expressed concern with the applicant already advertising the proposed project prior to being approved, and requested that the proposed project be denied.

Mr. Vairo stated that prior to submittal, he consulted with City officials from the Worcester Fire Department, Department of Inspectional Services, and Department of Public Works and Parks, to make sure that the proposed project met their guidelines and requirements.

Chair Abramoff asked Mr. Fontane if the proposed sites were currently categorized as three-family dwellings, and Mr. Fontane responded affirmatively and indicated that as such, they would allow for 9 unrelated people. He also indicated that through the Special Permit for a lodging house, the petitioner was seeking approval for 3 more beds/tenants. Mr. Abramoff also asked if the site had 3 parking spaces currently and Mr. Fontane responded affirmatively but indicated that such spaces did not conform to current parking requirements,

Mr. Loew asked Mr. Vairo to describe his plans for snow removal, and he responded that the site plan showed areas designated for snow accumulation, and pointed out that since the proposed project would have a Building Manager on site, such Manager would address any additional snow accumulation needs during the winter months.

Mr. Freilich asked Mr. Vairo if the proposed residential project would be restricted to graduate students from Clark University. Mr. Vairo stated that all qualified applicants would be considered for admission; however, he stressed that his preferred market would be international graduate students attending Clark University and young professionals.

Mr. Freilich stated that based on the application description and photographs submitted, it appeared that the petitioner had made substantial investments in the proposed project. Mr. Vairo confirmed that he had invested significant monetary resources on the project and indicated that his objective was to provide secure and comfortable surroundings for his tenants.

Mr. Freilich stated that the rules and regulations proposed for the lodging house appeared to be similar to the rules and regulations approved for the lodging house at 5 Claremont Street, which was approved by the Zoning Board of Appeals in 2008. Mr. Fontane stated that DPRS staff provides applicants with copies of past approvals in an effort to assist them with their submittals; therefore, it was not surprising that the proposed rules and regulations were similar to the regulations approved for the 5 Claremont Street Lodging House. However, Mr. Fontane stated that although the present petition had incorporated the rules and regulations from 5 Claremont as standard, he indicated that some of them were site-specific and based on the differences of the number of beds proposed.

Mr. Freilich asked Mr. Vairo to explain why he had stated in the application that he would offer Clark University the first chance of refusal, and whether or not Clark University had accepted the offer. He stated that this question was pertinent due fact that the President of Clark University had indicated that the proposed use was not needed and housing on campus was still available. Mr. Vairo stated that Clark University had not expressed interest in the proposal; however, he stated that he was compelled to include it in the petition to demonstrate his confidence that the proposed project will be managed well and responsibly, and it will become an asset to the neighborhood.

Mr. Freilich asked Mr. Vairo if he was planning move forward with the project, as currently permitted for nine (9) people, if the relief requested was not granted by the Zoning Board of Appeals, and he responded affirmatively; however he stressed that he would not install the additional parking.

David Bogoian, a neighborhood resident, expressed concern with the project indicating that the proposed use would change the character and nature of the neighborhood. Mr. Bilotta asked Mr. Bogoian to inform the Board the number of years he had lived in the neighborhood, and he responded that he had lived there since 1962. Mr. Bogoian also expressed concern that the site plan indicated that the petitioner was proposing to utilize crushed stone as paving material on the parking areas. He stated that such material was inappropriate for parking as it would be impossible to remove snow from it.

William Sweeney, a neighborhood resident, expressed opposition to the proposed lodging house because, in his opinion, the petitioner was not providing sufficient parking, and the trash and garbage generated by the proposed use would have a negative effect on the neighborhood.

William Breault, who identified himself as a neighborhood advocate, expressed opposition to the proposed project indicating that, 20 years ago, the City of Worcester considered imposing a moratorium on lodging houses due to their significant proliferation. He also stated that he considered lodging houses to be rooming houses and added that, in his opinion, once a rooming house, always a rooming house.

Mr. Freilich asked Mr. Bogoian if he was familiar with the lodging house located at 5 Claremont Street and he responded affirmatively. He then asked him if he had any problems with the site and he responded that he did not have any problems with it because the site had sufficient parking for the use on site. Mr. Akindele asked Mr. Vairo how much he would be charging monthly per room, and he responded that the rent would be \$500.00 per month.

Mr. Freilich asked Mr. Kelly if he was aware of any complaints filed in the City of Worcester regarding the approved lodging house at 5 Claremont Street, and Mr. Kelly responded that he was not aware of any complaints filed. Mr. Freilich asked if there were additional lodging houses located in the Clark University area, and Mr. Fontane responded that a total of 140 lodging houses were licensed in the City of Worcester and stated that such number included dormitory facilities at colleges and universities. He also stated that according to City records, Clark University owned and operated 22 dormitory facilities which included a total of 989 beds. In addition, Mr. Fontane indicated that there were other privately-owned lodging houses in the area.

Mr. Freilich asked Mr. Vairo if he owned additional properties in the Clark University area and he responded that he owned 3 additional properties in the area. Mr. Freilich also asked Mr. Fontane if DPRS had compiled a Police Log Report for the area as requested. Mr. Fontane responded that, to his recollection, the Board had discussed the topic at a previous meeting but had not specifically asked to be provided with one.

Mr. Fontane stated that for clarification, the petitioner is seeking to convert the existing three-family residential dwelling at 63 Downing Street into a twelve (12) bed lodging house, with four (4) bedrooms per floor. He also stated that the proposed use required six (6) off-street parking spaces, one (1) parking space for every 2 beds; however, due to the lot configuration and area limitations, the petitioner would only be able to provide five (5) parking spaces. Therefore, the petitioner was seeking Special Permit approval for the relief of one (1) off-street parking space. In addition, he indicated that currently, the site has three (3) non-conforming parking spaces.

Mr. Fontane indicated that the new parking configuration included one (1) parking space at the 63 Downing Street parcel, which would not infringe on the 10-foot exterior side

yard setback required and would provide sufficient space for a vehicle turn-around. In addition, four (4) parking spaces will be provided at the 69 Downing Street parcel, alongside the existing six (6) parking spaces for the 3-family residential dwelling use on 69 Downing Street parcel. Mr. Fontane indicated that the configuration of the new four (4) parking spaces would allow cars to turn around when exiting the site. He clarified that the proposed reconfiguration of the parking area eliminated the need for the requested Variance of 5 feet of relief from the 10-foot side yard setback dimensional requirement.

Mr. Fontane indicated that as a result of including both lots in the amended petition, what was formerly considered a side yard setback for 63 Downing Street, was now a rear yard setback for the entire 63-69 parcel, which triggered the need to request a Variance for 3.4 feet of relief from the 15-foot rear yard setback dimensional requirement.

He also indicated that the proposed project was non-conforming with respect to a 5-foot landscaped buffer along the newly proposed parking area for the Lodging House use on the 69 Downing Street parcel, which triggered the need for a Special Permit for 0.9 feet of relief from the 5-ft landscaped buffer dimensional requirement. Mr. Fontane indicated that DPRS staff had reviewed the petition and concluded that the Special Permit's Findings of Fact were acceptable; therefore, staff was recommending approval.

Mr. Freilich expressed concern that the City had adopted rules and regulations to monitor and regulate rooming houses more strictly; however, no regulations have been enacted to regulate three-decker residential dwellings, and stated that the City should consider addressing this need.

Mr. Freilich asked Mr. Kelly to inform the Board if there were any regulations that could be placed on site, should the petition be denied and the building was to remain as a three-family, and Mr. Kelly responded that the building would be regulated as a three-family residential building only.

Mr. Abramoff asked Mr. Vairo if he was aware of the Conditions of Approval recommended by staff, and he responded that he was aware of such conditions, and indicated that he would accept and abide by them. Mr. Freilich asked the petitioner if he was planning to add more grass in the parking area like a grassed parking space, and he responded that he would make an effort to do so; however, he stressed that the area was limited and the parking spaces would take most of the land.

Mr. Akindele stated that, in his opinion, the tenants of the building would benefit from placing the telephone number of the Department of Inspectional Services (DIS) in a visible location in the building, in case tenants needed to report repairs that had not been addressed by the building manager. Mr. Freilich expressed concern that placing DIS telephone number on a visible location would give the impression to tenants that they could call DIS prior to the building manager. Instead, Mr. Freilich stated that it would be more effective to add such information to the tenant's lease, stressing that it was the tenant's responsibility to contact the building manager first, and if their complaints are not addressed within a reasonable period of time, they would report it to DIS.

Mr. Fontane stated that lodging houses are inspected yearly, and indicated that when they are not in compliance with the Lodging House Rules and regulations, from the License Commission, and/or, from the Conditions of Approval stipulated by the Zoning Board of Appeals, the owner is notified to go back to the License Commission, Zoning Boards of Appeals, or both, to address violations and/or noncompliance.

Mr. Fontane also stated that at the Board's last hearing on this matter, the Board requested a legal opinion regarding the relationship between the granting of Special Permits by the ZBA and the License Commission's authority to grant lodging house licenses, and about tying the Board's special permit approval to a particular property owner. Mr. Fontane stated that DPRS staff contacted the City's Law Department as instructed by the Board, and received a response from Attorney Jennifer Beaton who stated in part that "Zoning Laws regulate the use of land", and that the "Special Permit process is the medium of regulation that recognizes uses that are not so offensive so as to be entirely prohibited but at the same time may not be desirable in every location."

Mr. Fontane also indicated that in terms of conditions of approval, the petitioner should be required to submit a set of final revised plans showing the permanent location of the proposed garbage containers. Mr. Fontane also reminded the Board that due to the parking reconfiguration, the requested Variance for the relief of 5 feet from the 10-ft side yard setback dimensional requirement was no longer needed. Mr. Vairo stated that since the requested Variance was no longer needed, he requested that the Board grant him leave to withdraw without prejudice regarding the Variance for the relief of 5 feet from the 10-ft side yard setback dimensional requirement

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to grant the petitioner leave to withdraw without prejudice regarding the requested Variance for the relief of 5 feet from the 10-ft side yard setback dimensional requirement.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta the Board voted 4-1 (Mr. Bilotta voted no) to approve the following relief regarding the 63 Downing Street (ZB-2011-013) petition and 63-69 Downing Street (ZB-20122-013A) petitions: (a) Special Permit to allow a Lodging House use in an RG-5 zone, (b) Special Permit to waive the requirement for 1 off-street parking space, (c) Special Permit to waive the 0.9 ft landscape buffer requirement in the parking lot area for the 69 Downing Street parcel, and (d), Variance for the relief of 3.6 feet from the rear yard setback requirement for the 63 Downing Street parcel with the following conditions:

- 1) **The Lodging House shall be limited to twelve (12) beds only.**
- 2) **Private garbage and recycling services shall be provided for both parcels: 63 and 69 Downing Street. Pick up will take place between 10:00 am and 3:00 pm only.**
- 3) **That both parcels: 63 and 69 Downing Street shall be held in common ownership.**
- 4) **That no additional paving, beyond what is proposed in the site plan submitted, shall be added to the site.**
- 5) **That the fence located to the west of the house be relocated along the property line of the parcel.**
- 6) **The owner is required to include in the lease the Building Management office telephone number to report emergency repairs.**
- 7) **That the property owner include in all tenant leases the following House Rules:**
 - a. *Visitors are not permitted to use off-street parking.*

- b. *Residents are prohibited from having overnight guests more than two (2) nights a week.*
 - c. *Residents are not permitted to have any gatherings on premise of more than three (3) people unless permission is granted in writing by owner.*
 - d. *Residents are responsible for all guest behavior and any problems created by guest will result in potential termination of host's residency.*
 - e. *No behavior creating loud noise after 10:00P.M. (i.e. music, television, etc.). In no circumstance is any noise disturbance prior to 10:00 P.M. permitted if it impairs another resident's right to quiet use and enjoyment.*
 - f. *Management reserves the right to add to these rules and guidelines provided they are compliant with this ZBA decision.*
 - g. *House Rules shall be posted in the hallways on all floors for reference.*
 - h. *At the time of the annual inspection by the Code Enforcement Division and Fire Department, land owner must demonstrate that the conditions of the Special Permit are being met.*
 - i. *The minimum period for leases is six months.*
 - j. *No alcoholic beverages are to be consumed on the premises. Premises are defined as within the building and within the property boundaries clearly indicated by fencing.*
 - k. *No smoking of any kind on the premises.*
 - l. *Security cameras shall be located in common areas for residents' protection and peace of mind. Any tampering or damage is to be reported immediately.*
 - m. *Contact information of the property owner or manager shall be posted on the exterior of the building visible from the street.*
- 8) **That the site be constructed and operated in accordance with the Definitive Site Plan approved by the Planning Board on July 27, 2011.**
- 9) **The owner shall offer the Trustees of Clark University first right of refusal for purchase, upon any future sale of 63 Downing Street.**
- 10) **Submit six (6) copies of final revised plans incorporating notes above and showing:**
- **A table of dimensional requirements (including exterior side yard setback for corner lots) and proposed setbacks as well as relief requested;**
 - **Snow storage areas with a note that excess snow will be removed off-site;**
 - **Drip-line size buffer protection around the beech tree during construction;**
 - **Location of dumpster, if any.**
 - **The height and materials of existing and/or proposed fencing.**

List of Exhibits:

- Exhibit A: Special Permit and Variance Application; received March 22, 2011; amended 5/18/2011, prepared by VF Properties, LLC.
- Exhibit B: Special Permit and Variance Application Plan for 63 Downing Street; dated March 16, 2011; prepared by B&R Survey, Inc.
- Exhibit C: Special Permit and Variance Application Plan for 63 & 69 Downing Street; dated 5/12/2011; prepared by B&R Survey, Inc.
- Exhibit D: Floor Plans; dated February 16, 2011; prepared by Wadsworth & Associates, Architects.
- Exhibit E: Proposed House Rules for 63 Downing Street by VF Properties; submitted April 22, 2011, revised June 6, 2011 and June 23, 2011.
- Exhibit F: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 63 Downing Street; dated April 23, 2011.
- Exhibit G: Opposition Letter from Clark University to the Zoning Board of Appeals; re: 63 Downing Street; dated April 25, 2011; received April 25, 2011 (at the meeting).
- Exhibit H: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals; re: 63-69 Downing Street – SPECIAL PERMIT; dated 6/1/2011.
- Exhibit I: Legal Opinion by the City of Worcester Law Department to Division of Planning & Regulatory Services; re: Lodging House Special Permits and Lodging House Licensing; dated June 3, 2011.
- Exhibit J: Opposition Letter from David Bogoian to the Zoning Board of Appeals; re: 63 Downing Street; dated May 31, 2011; received June 3, 2011 (e-mail).
- Exhibit K: Opposition Letter from Kathleen Holden to the Zoning Board of Appeals; re: 63/69 Downing Street; dated and received June 6, 2011 (e-mail).
- Exhibit L: Letter from David Bogoian to the Zoning Board of Appeals: re: Response to Staff Memo from Luba Zhaurova 63-69 Downing Street, dated June 14, 2011; received June 14, 2011.
- Exhibit M: Email from Barbara Haller to the Zoning Board of Appeals c/o Joel Fontane, dated and received April 28, 2011.
- Exhibit N: Letter from Leonard Vairo to the Zoning Board of Appeals, dated June 27, 2011 (in error); received June 23, 2011.

NEW BUSINESS:

2. **278 Greenwood Street (ZB-2011-019):** Joe Boynton, representative for the petitioner, and Martha Sarmiento, petitioner, presented the petition. Mr. Boynton stated that the petitioner was seeking approval for the following relief: (a) Special Permit to convert a legally pre-existing, two-family dwelling to a three-family detached dwelling. He also stated that the proposed project would not include any exterior changes to the residential dwelling, and indicated that the parcel was large enough to provide the six (6) off-street parking spaces required. Mr. Boynton also indicated that in 2006, Ms. Sarmiento submitted the same petition to the Zoning Board of Appeals, and indicated that the Board

granted her the relief requested. He also indicated that the applicant was proposing to add a new egress to the third floor as required by code.

Mr. Bilotta asked if the site was currently categorized as a legally preexisting two-family dwelling, and Mr. Boynton responded affirmatively; however, he also indicated that the third-floor space was currently being used for storage. Mr. Bilotta requested clarification regarding what had been approved in 2006, and Mr. Boynton indicated that the Board had approved a third dwelling on the third floor, which was exactly the same relief requested in the present petition. Mr. Boynton stated that, in fact, the applicant had submitted the exact same plans as the 2006 petition.

Mr. Fontane confirmed that the proposed project was the same petition submitted and approved by the Board in 2006. He also added that the Plot Plan submitted in the current application was the same Plot Plan submitted in 2006. Ms. Sarmiento stated that the project was not implemented in 2000 due to unexpected illness and subsequent expenses.

Mr. Kelly stated that after reviewing the application, it was his opinion that the existing use at 278 Greenwood Street, which is located in a RS-7 (Residence, Single Family) zoning district, is categorized as legally pre-existing two-family detached dwelling, and indicated that the petitioner was seeking to convert the structure to a three-family dwelling structure. He indicated that the proposed use is only allowed by right in RL-7 (Residence, Limited), RG-5 (Residence, General) and Business Zoning Districts, but not in RS-7 (Residence, Single Family) Zoning Districts. He also indicated that, since the existing use is a non-conforming use, the proposed third dwelling is an extension of the pre-existing, non-conforming use; and in his capacity as Building Commissioner, he determined that the proposed use is of similar nature, and therefore, could be granted by the issuance of a Special Permit.

Upon a motion by Mr. Freilich and seconded by Mr. Akindele, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Freilich and seconded by Mr. Akindele the Board voted 4-1 (Mr. Bilotta voted no) to approve the Special Permit to convert a legally pre-existing, two-family dwelling to a three-family detached dwelling with the following conditions:

- 1) That the three-family dwelling be constructed as depicted in the submitted floor plan / plot plan.**
- 2) That each side of the driveway remain as green space and not be further paved.**

List of Exhibits:

- Exhibit A: Special Permit Application- 278 Greenwood St; received May 13, 2011; prepared by Martha Sarmiento & Robert Mann.
- Exhibit B: 278 Greenwood St. Plot Plan; dated June 26, 2006; prepared by Robert O'Neil.
- Exhibit C: Floor plan – 278 Greenwood St, undated.

Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 278 Greenwood St – Special Permit; dated June 23, 2011.

- 3. 15 East Mountain Street (ZB-2011-020):** Atty. Wayne Leblanc, representative for the petitioners, and Christopher P. Russell, petitioner, presented the petition. Also present at the meeting was Paula Proko, representative for Proko Realty, Inc., owner of the building. Mr. Leblanc stated that the petitioners were seeking approval for the following relief: (a) Special Permit for a non-residential use (Kennel), and (b), Special Permit for Modification of Parking/Loading – relief of 10% of the parking requirement (the petitioners are seeking relief of 3 off-street parking spaces of the 30 spaces required).

Mr. Leblanc stated that the petitioners would be renting a section of the retail/commercial space located at 15 East Mountain Street for the proposed use, and indicated the lease would be signed upon approval. Atty. Leblanc also indicated that the purpose of the petition was to operate a kennel and pet day-care on site. He also indicated that some of the services that would be provided by the proposed use included kenneling, training sessions for pet owners, exercising and grooming dogs, as well as a small retail section where customers could buy dog-food and dog-collars and related items.

Atty. Leblanc indicated that the proposed use would be located in a 40 feet by 40 feet area (1,600 SF). In addition, he indicated the twenty-seven (27) off-street parking spaces would be provided on site for the proposed use. He added that the proposed use required a total of thirty (30) parking spaces; therefore, the petitioner was seeking relief of 3 parking spaces. He indicated that the building would remain unchanged, except for a door that would be installed in the rear wall of the building to facilitate access and egress to a fenced area which will be used to exercise dogs.

Atty. Leblanc further stated that the property was purchased from the City of Worcester and indicated that the registered deed included a clause which stated that a portion of the street could be used for future expansion of the road; however, he stressed that the City had never used such clause, since at least 1966.

Mr. Abramoff asked Mr. Leblanc to describe how the space would be used for the proposed use. Mr. Russell indicated that the primary function of the business was to provide dog day-care services. However, he stressed that as the business expanded, and in order to remain competitive, he was planning to provide kenneling services as well.

Mr. Abramoff asked Mr. Russell to describe the difference between kenneling services and dog day care services. Mr. Russell responded that kenneling services consisted of taking care of a dog for at least 24 hours, or a few days, while dog day care services consisted of taking care of a dog during the day while their owners are at work. He added that the basic scenario would be that pet owners would drop their dogs in the morning before going to work, and would pick them up in the late afternoon after work (approximately 8:00 am to 5:00 pm).

Mr. Bilotta asked Mr. Russell how many dogs were expected to be kenneled per week, and he responded that the expected average was five (5) to ten (10) dogs per week; however, he emphasized that it was difficult to be accurate due to the fact that this was their first business. Mr. Bilotta asked if the kenneled dogs would be kept in an individual cage or free in a room. Mr. Russell responded that the dogs would be kept in an open, clean and ventilated room.

Mr. Michajlow asked Mr. Russell to describe the proposed process to dispose of trash and waste generated by the proposed use. Mr. Russell stated that the waste generated by the dogs would be double bagged and picked up weekly by private service waste removal company. He stressed that as the number of dogs increased, the waste removal trips would be increased accordingly. Mr. Russell also stated that the dogs would not be fed while in his care, and indicated that the owners would be expected to feed their dogs before dropping them off, and at home after they had been picked up.

Mr. Freilich asked if the three (3) businesses located on site would have separate ventilation and air conditioning units and Mr. Russell responded affirmatively. Mr. Freilich also asked if Mr. Russell was planning to utilize veterinarian services available in the community and he responded affirmatively. Mr. Freilich asked how long the space had been vacant and Ms. Proko stated that it had been vacant for six (6) months.

Mr. Abramoff expressed concern that the application stated that the site had a Parking License for twenty-seven (27) parking spaces, yet the plan submitted showed twenty-eight parking spaces. Mr. Fontane stated that the site had twenty-seven (27) parking spaces, and indicated that the rear of the building could be used to park another vehicle; however, he stressed that the number of parking spaces available on site were sufficient for the proposed use. He also indicated that that area located in the rear of the building predated parking plan approvals in the City of Worcester.

Mr. Abramoff asked if parking plans are approved by the Planning Board and Mr. Fontane responded affirmatively, stating that it was a by-right approval based on the proposed plan, and adherence to the parking plan regulations. Mr. Abramoff expressed concern that the City may take some of the spaces located adjacent to the road. Mr. Leblanc responded that the parking spaces on site had been on site since at least 1966 and stressed that the parking configuration did not change in those forty-five (45) years. He also stated that if the owner was required to apply for parking plan approval, the pre-existent nature of the parking lot and site conditions would prevent the owner from complying with current parking plan regulations; therefore, the applicant would be compelled to return to the Zoning Board of Appeals and request approvals for significant relief.

Mr. Fontane indicated that the twenty-seven (27) parking spaces on site were grandfathered; therefore, if the owner was required to submit a parking plan application, the twenty-seven (27) parking spaces would remain as they are. He also stated that the only aspect that could be modified would be the area located in the rear of the building; however, he indicated that such endeavor would require significant in-fill and installation of retaining walls due to the steepness of the land, which has a significant drop in grade in the rear portion of the parcel. In addition, he stressed that any new parking spaces created in the rear of the building could be used for parking for any of the other uses on site. Mr. Fontane further stressed that he did not see the need for buffer areas in the current parking plan configuration.

Mr. Freilich asked Mr. Russell to describe how many vehicle trips would be expected on a daily basis for the proposed use. Mr. Russell stated that the number of vehicle trips would be determined by the number of dogs served. He also added that in many cases, each client has 2 dogs; therefore, the number of trips would be minimal.

Mr. Michajlow stated that, in his opinion, the vehicle traffic generated by the proposed use would be minimal due to the fact that pet owners would not be staying long. Mr.

Russell confirmed that the pick-up and drop-off processes would only take a few minutes. In addition, he stated that payment for services would be conducted on line and not on site; thereby minimizing even further the time needed for parking. He further added that he was planning to provide pick up and delivery services in the near future.

Mr. Leblanc stated that based on a similar use recently approved by the Zoning Board of Appeals, the site's capacity, and the petitioner's plan, the applicant was requesting to be allowed a maximum capacity of one-hundred-and-seventy-five (175) dogs for the total day time operation. Mr. Freilich expressed concern with the maximum capacity requested and asked Ms. Proko if the owner would agree to create additional parking in the rear of the building should the number of dogs serviced created a parking problem. Ms. Proko stated that the owner would agree to do so under the circumstances described by Mr. Freilich. Mr. Freilich asked Ms. Proko if she would be amenable to making it a part of the conditions of approval and she responded affirmatively.

Mr. Fontane stated that in order to address the parking concerns expressed by some Board members, the Board could consider making it contingent on the plan that no off site vehicle queuing would occur, and add it to the conditions of approval.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Freilich and seconded by Mr. Lowe, the Board voted 5-0 to approve the following requested Special Permits: (a) Special Permit for a non-residential use (Kennel), and (b), Special Permit for Modification of Parking /Loading – relief of 10% of the parking requirement (the petitioners are seeking relief of 3 off-street parking spaces of the 30 spaces required), with the following conditions:

- 1) **That no off site vehicle queuing occurs.**
- 2) **That the animal run meets the requirements of the Zoning Ordinance.**
- 3) **That all signage on the property (including existing) comply with the City's current sign ordinance.**

List of Exhibits:

Exhibit A: Special Permit Application; received May 24, 2011 prepared by Sherri and Christopher Russell.

Exhibit B: Site Plan; dated May 23, 2011; prepared by Jarvis Land Survey.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals re: 15 East Mountain Street, dated June 23, 2011.

4. **222 June Street (ZB-2011-021):** Robert Longden, Jay Finley, and Robert Michaud, representatives for the petitioner, and Carl Foley petitioner, presented the petition. Mr. Longden indicated that Mr. Foley was seeking Special Permit approval for the construction of multi-family, low-rise dwellings with 32 market-rate apartments and 64 accessory parking spaces at 222 June Street parcel. He also stated that the proposed 32 market-rate apartments would be located in eight (8) detached multi-family buildings and indicated that the required 64 off-street parking spaces would also be located on site.

Mr. Longden indicated that the proposed project was part of the existing and larger Botany Bay Development which contains 163 dwelling units. He also indicated that the

access to the proposed development will be provided on Botany Bay Road. Mr. Longden also indicated that the original proposal submitted by the applicant included 40 dwelling units and accessory parking for the proposed units; however, following discussions with City regulatory staff and neighborhood representatives, and their expressed concerns with the character of the neighborhood, and to preserve the single-family nature of the neighborhood on June Street, the applicant revised the plan to reduce the number of dwellings proposed.

Mr. Longden stated that the revised plan separated the portion of land fronting June Street and created five (5) single-family dwelling lots through the Approval Not Required process (ANR), which was approved by the Planning Board on May 4, 2011. He stressed that this was done in an effort to be consistent with the city streetscape along June Street. He also indicated that the proposed multi-family, low-rise residential units would be consistent with the Botany Bay Condominiums located adjacent to this proposed site. Mr. Longden stressed that Botany Bay Condominiums were constructed in 1985, and indicated that 99% of the condominiums were purchased and are inhabited by senior citizens.

He also indicated that in 2004, the Planning Board approved a Definitive Site Plan for the construction of 24 dwelling units for retired religious; however, the plan was never built. Mr. Longden indicated that when the applicant purchased the land for the construction of the Botany Bay Condominiums in 1980, the area was zoned RS-7; however the Zoning Ordinance at the time allowed multi-family, low-rise dwellings by the issuance of a Special Permit. However, over time, the Zoning Ordinance was amended and multi-family, low-rise dwellings were no longer allowed, except in RL-7 and RG-5 zoning districts.

Therefore, he stated that in order to build the proposed project, it was necessary for the applicant seek a zone change from RS-7 to RL-7, which he did, and on February 24, 2010, the Planning Board voted unanimously to recommend approval, and indicated that City council endorsed such recommendation on January 4, 2011.

Mr. Longden stated that the area where the single-family residential lots are located will remain RS-7; therefore, the construction of single-family dwellings will be allowed by right. In addition, he indicated that the five (5) single-family residential lots would also function as a buffer zone for the proposed project and added that it will blend harmoniously with the residential area along June Street.

Mr. Longden further added that the proposed multi-family low-rise residential development would be consistent with the appearance of the Botany Bay Condominium Complex. He also indicated that, in his opinion, the proposed project represented a logical extension as well as conclusion to the Botany Bay Condominium Complex. Mr. Longden added that the new residential units will be market-rate and available for rent.

Mr. Longden also indicated that the current yearly tax revenue from the land was \$17,000.00; however, if the project were to be approved and constructed as planned, the total yearly tax revenue would be approximately \$33,000.00. He added that the applicant would accept all the DPRS staff recommendations, except for the construction of the stockade fence, which he indicated was not necessary due to the fact that the owner had agreed to preserve and retain the existing landscaping as a buffer.

In conclusion, Mr. Longden stated that a traffic study had been completed and submitted, and indicated that it demonstrated that the project, including the proposed access/egress

plan, would generate minimal vehicular traffic and therefore would not create any material problems for the area or neighborhood.

Upon a motion by Mr. Freilich and seconded by Mr. Bilotta, the Board voted 5-0 to close the hearing. Upon a motion by Mr. Freilich and seconded by Mr. Bilotta the Board voted 5-0 to approve the requested Special Permit for the construction of multi-family, low-rise dwellings in an RL-7 zoning district with 32 market-rate apartments and 64 accessory parking spaces with the following conditions:

- 1) **That the structures be built in accordance with the final Definitive Site Plan and More than One Building on a Lot plan approved by the Planning Board.**
- 2) **That a 30' no disturb buffer along the northeastern property line be shown on a revised set of plans and that no vegetation be removed from that area.**
- 3) **Install two (2) Fire Hydrants. One (1) on the northerly side facing the northerly parking lot and one (1) in the southerly side facing the southerly parking lot.**
- 4) **That landscaping be limited to 2 feet height in sideline on Botany Bay.**
- 5) **Prior to the submission of the Definitive Site Plan, the applicant should revise the plans to include:**
 - **Erosion/sedimentation control plans.**
 - **A zoning summary table showing required and proposed dimensions.**
 - **A parking table including required/proposed number of parking spaces and percentage of compact.**
 - **Annotations for area of open space and impervious area.**
 - **Labeling for the width of access aisles – staff notes that they are conforming 24'.**

List of Exhibits:

- Exhibit A: Special Permit Application; received May 24, 2011 prepared by Atty. Robert Longden on behalf of 222 June Street, LLC.
- Exhibit B: Site Plan; dated 5/9/2011; revised 6/16/2011; prepared by Finlay Engineering including landscaping by Rico Associates.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Planning Board re: 222 June St. & Botany Bay Zone Change dated Feb. 2, 2010; revised Feb. 25, 2010.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals, re: 222 June St. dated June 22, 2011.
- Exhibit E: Letter of support from Robert & Ann Marie Bogigian to Lawrence Abramoff, Worcester Zoning Board re: 222 June St. dated June 10, 2011, received June 16, 2011.

Exhibit F: Letter of opposition from Robert Ford and “concerned residents of Botany Bay Condominiums” to Lawrence Abramoff, Worcester Zoning Board re: 222 June St. dated June 20, 2011, received June 21, 2011.

OTHER BUSINESS

5. Signing Decisions.

Adjournment: Chair Abramoff adjourned the meeting at 9:00 pm.