

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

**March 4, 2013**

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

**Zoning Board Members Present:** Andrew Freilich, Chair  
Lawrence Abramoff, Vice-Chair  
Vadim Michajlow  
William Bilotta  
Timothy Loew

**Zoning Board Members Absent:** None

**Staff Present:** Joel Fontane, Division of Planning & Regulatory Services  
Marlyn Feliciano, Division of Planning & Regulatory Services  
John Kelly, Department of Inspectional Services

**Board Site Views**

**CALL TO ORDER**

Chair Freilich called the meeting to order at 5:31 PM.

**APPROVAL OF THE MINUTES**

The minutes for the executive sessions on May 14, 2012 and June 26, 2012 were approved with no edits. The regular meeting minutes for February 11, 2013 were also approved with no edits. The minutes for March 26, 2012 were not approved because the Board received the wrong set of minutes in their packet and did not have a chance to review them.

**REQUESTS FOR CONTINUANCES, POSTPONEMENTS, WITHDRAWALS**

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

**Amendment to the Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing, Nonconforming Use— Allow a Use of a Similar Nature (Article XVI, Section 4)

**Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4)

**Variances:** Relief of 10 feet from the front yard setback dimensional requirement of 20 feet

**Variances:** Relief of 15 feet from the exterior side yard setback dimensional requirement of 15 feet

**Petitioner:** Rodney Haddad

Present Use:	A dry-cleaning business
Zone Designation:	RL-7 (Residential, Limited)
Petition Purpose:	To convert the existing dry-cleaning business use (Manufacturing Use #12, Table 4.1) to a food service use (Business Use #7, Table 4.1) with 20 seats on the 1 <sup>st</sup> floor and to construct a new second story to be used for food-service use related storage, with associated 10 off-street parking spaces

Hussein Haghizadeh, HS&T Group, stated that he submitted a request for a continuation to the April 8, 2013 meeting and extending the constructive grant deadline to May 25, 2013.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to approve the continuation and extend the constructive grant deadline.

### **List of Exhibits.**

- Exhibit A: Variance & Special Permit Application prepared by Rodney Haddad; received August 14, 2012
- 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, October 26, 2012, November 15, 2012.
- Exhibit E: Revised Zoning Determination Form; re: 2 Northboro Street; revised August 29, 2012.
- Exhibit F: Request for Continuation to October 29, 2012 from Kathryn Charron, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated October 11, 2012, received October 12, 2012.
- Exhibit G: Request for Continuation to November 19, 2012 from Kathryn Charron, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated October 23, 2012, received October 23, 2012.
- Exhibit H: Request for Continuation to December 17, 2012 from Kathryn Charron, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated November 7, 2012, received November 7, 2012.
- Exhibit I: Request for Continuation to March 4, 2013 from Kathryn Charron, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated December 10, 2012, received December 10, 2012.
- Exhibit J: Supplemental: Variance Application prepared by Rodney Haddad; received January 23, 2013.
- Exhibit K: Supplemental: Floor Plans prepared by Westerman Store & Equipment and J.R. Associates; dated December 28, 2012; received January 23, 2013.

- Exhibit L: Request for Continuation to March 25, 2013 from Lesley Wilson, HS&T Group, representative for Rodney Haddad, applicant to the Zoning Board of Appeals; dated and received February 25, 2013.
- Exhibit M: Email from Rodney C. Haddad – applicant to Abigail McCabe – Division of Planning & Regulatory Services re: Rod Haddad 2 Northboro St 298 Plantation St; received February 27, 2013.

## **UNFINISHED BUSINESS**

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

**Special Permit:** To allow a single-family attached dwelling use (Residential Use #12, Table 4.1) in the RL-7 zoning district

Petitioner: Zayda Vallejo

Present Use: Single-family residential dwelling

Zone Designation: RL-7 (Residential, Limited)

Petition Purpose: Demolish the existing single family dwelling and to construct a single-family attached dwelling with 4 units on the two lots

Robert O'Neil introduced John Rheault, architect, and stated that this item had been continued since September in order to provide the applicant, Zayda Vallejo, sufficient time to provide the requested information.

Mr. O'Neil stated that there is an existing single family detached dwelling on 85 Lake Avenue and the owner plans to demolish it and build four single family attached dwellings. In September, the Board recommended that a plan be prepared that would break up the façade of the building and the roof lines. Each building would have separate utilities and will be on its own lot. Mr. O'Neil stated that the building was oriented to front on Lake Avenue and not on Mohican Road due to the following issues: the traveled road on Mohican Road is not within the existing right-of-way, the utilities on Lake Avenue were more accommodating than the utilities on Mohican Road, and the owner wanted to maintain the view of the lake.

Mr. O'Neil stated that they have provided additional plantings and reduced the curb cuts to have two common driveways.

Mr. Fontane stated that as currently designed, the four units overload the lot. He stated that the present design will have the front be entirely made of pavement. Mr. Fontane also stated that there are several home owners on Mohican Road that have no other way of entering than going through the traveled way. Mr. Fontane asked what the height of the building was since it looked to be over what is allowed by 4.7'. Also, he mentioned that there is a discrepancy between the floor plans and the plans provided; they each showed the utility area in a different spot.

Mr. Fontane stated that the staggering of the buildings makes the structure look attractive. He also stated that if the applicant had one less unit the structure would look better and fit in more with the neighborhood. Four units might be too dense for the lot and for the area.

Mr. Kelly stated that the applicant would need to apply for a variance for the height of the building or reduce the pitch of the roof. Mr. O'Neil stated that the height was in excess of the 35 feet and the architect can adjust the roof pitch to reduce the height of the building. The utility area was compliant in either placement.

Mr. O'Neil stated that he believed in order to access the site from Mohican Road, an 81G process for opening up a way or improving a way is needed. Also, there is an increase in elevation at the back of the property which he believes is a 4-5 foot ledge outcrop which would impede orienting the house towards Mohican. Mr. O'Neil stated that Ms. Vallejo wants to have the view of the lake and there needs to be four units instead of three in order to make this project financially feasible. He also stated that they provided sufficient back up space in the two driveways to allow the cars to turn around before exiting onto Lake Ave North.

Mr. Bilotta stated he was concerned that four units would be one too many. The space provided in the driveway will not be sufficient after snow piles up and then the residents will be backing up onto a busy street.

Mr. Abramoff stated that he liked the design but would like a few more trees to soften the denseness of the lot. Mr. O'Neil stated he was amenable to additional landscaping.

Mr. Fontane recommended that the applicant move the building up and have the parking at the rear. Mr. Freilich asked if they would need cross-easements and Mr. Fontane stated that they would need four but that they already planned to have cross easements with the driveway as proposed in the front.

Mr. Kelly stated that if they improve Mohican Road to put the parking in the rear he would not require an 81G process since the road already exists and there are many other homes on that road already.

Mr. O'Neil stated that he would need to re-design the garage and the decks.

Mr. Loew stated that he would prefer parking to be in the rear.

Mr. Abramoff stated he was concerned with parking in the back since kids wouldn't have any where to play.

Mr. Fontane stated that there would be 58 feet, which is enough space for the driveway and a grass back yard. It would also provide a safe place for kids to play and ride their bikes. Mr. Abramoff stated he would like to see that design. Mr. Bilotta also stated he wanted to see the buildings moved up.

Mr. O'Neil requested a continuance to the April 29, 2013 meeting.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 5-0 to continue the item to April 29, 2013.

## **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, and March 1, 2013.
- Exhibit D: Request for Continuance Form dated October 5, 2012; signed by Donald J. O'Neil.
- Exhibit E: Proposed Building Location Plan, Revised September 2012, prepared by Robert D. O'Neil Jr.
- Exhibit F: Postponement Form dated December 12, 2012.
- Exhibit G: Proposed Building Location Plan # 85 Lake Avenue North Worcester, MA for Zayda Vallejo; prepared by Robert D. O'Neil, Jr.; dated July 23, 2012; revised on February 11, 2013 and revised on February 12, 2013.
- Exhibit H: Elevation and Floor Plans for Robert & Zayda Vallejo Lake Avenue, Worcester, MA; prepared by J.R. Associates Design Services; Sheets A-1, A-2, A-3, A-4.

## **NEW BUSINESS**

### **3. 193 (aka 195) Lake Avenue (ZB-2013-003)**

**Amendment to Special Permit:** Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Use (Article XVI, Section 4). To expand the existing nonconforming use for retail food sales (Businesses Use # 24, Table 4.1)

- Special Permit:** To modify the number of required parking spaces up to a maximum of 10% (Article IV, Section 7, (A) (2)).
- Variance:** Relief of nine (9) parking spaces
- Petitioner: Michael T. Madulka
- Present Use: Office building and seasonal ice cream shop
- Zone Designation: RL-7 (Residential, Limited)
- Petition Purpose: Amend the 2009 Special Permit by removing the Board's conditions of approval that there be no seating and no additional food permitted. The petitioner seeks to allow food sales and 10 outdoor picnic tables (4 seats/picnic table) in the rear of the site, with associated 19 off-street parking spaces. The parking relief requested is for the 20 outdoor seats beyond the 20 that are otherwise permitted by-right.

Mr. Fontane apologized to the Board because the DPRS plan review memo was not finalized until today and it was provided to the Board at the meeting in their supplemental packets.

Mike Madulka, the petitioner, stated he has an ice cream shop on the lake and seating has become a problem. People are sitting everywhere (on deck, on flower pots, ice cream crates, etc). That is the reason why he is now applying for seating. He stated that his competition has picnic tables and they also sell other foods such as hot dogs and hamburgers. Mr. Madulka stated that last year he pulled a hawker's license from the state and he has a hot dog trailer to sell hot dogs and similar items. He is applying to be allowed to serve food from his ice cream establishment because it is inconvenient to have his employees' get a hawker's license and a CORI check every year, since that entails them going to Boston since it is a state license.

Mr. Madulka stated he is open seasonally from March 1 to November 1 and from 10 am to 10 pm. Mr. Madulka stated that every year his business creates 13 to 17 part time jobs for the City.

Mr. Freilich asked how many people visit his establishment on a typical day. Mr. Madulka stated that approximately 75-200 people visit his establishment daily.

Mr. Freilich asked Mr. Fontane if flower pots with a wide ledge were considered seating. Mr. Fontane stated that they were not.

Mr. Fontane stated that the hours of operations and the seasonal use were conditions of approval from the ZBA in 2009. The applicant seeks a change of use from the Retail Food Sales use the Board approved in 2009 to a Food Service use (Business Use #7, Table 4.1) by removing / modifying the following two conditions of the Board's previous approval.

1. Remove Board Condition #3: "That the retail use is ice cream sales only." The applicant seeks to remove this condition to allow the sale of food items such as hamburgers, hot dogs, sausages, etc., for consumption on site.
2. Modify Board Condition #4: "That no seating will be provided inside or outside." The applicant seeks to install ten (10) picnic tables outdoors at the rear of the property (4 seats per picnic table = 40 seats total).

Mr. Fontane stated that these conditions were placed to conform with the Retail Food Sales use so it would not trigger the need for additional parking. He stated that the change the applicant is now seeking would be considered a similar use. The change, according to the Zoning Ordinance, is not substantially more detrimental than the existing non-conforming use if it meets the following requirements:

- 1) The extension, alteration or change complies with the current requirements of the Zoning Ordinance. The change of use from Retail Food Sales to Food Service is required for this use to serve food and have seating. The proposed use is best described as a Food Service use as defined by the Ordinance.
- 2) The use, as extended, altered, or changed will not be substantially more detrimental to the neighborhood than the existing nonconforming use. The food service use with the provision of 20 seats for outdoor dining, which is allowed by-right for food service uses is appropriate and

will not be substantially more detrimental to the neighborhood than the existing ice cream sales as the fast food nature of the food service provided will result in a short duration for each customer's stay.

3) In residential districts, the use as extended, altered or changed shall meet the off-street parking requirements of this ordinance.

Twenty (20) seats are allowed by-right with the Zoning Ordinance's provisions for outdoor seating without triggering the need for additional off-street parking. An additional two (2) seats could be allowed through the grant of a Special Permit. When considering this change the Board should note that the Zoning Ordinance provides that where an "[...] expansion does not affect an off-street parking area, said expansion shall not exceed an additional occupancy of twenty (20) persons; and provided further that the proposed outdoor dining / café use is contiguous to the main existing use."

The provision for retail food service use, with 20 seats meets requirements of the Ordinance provided the Board makes a determination that the use is of a similar nature to the existing nonconforming use. Based on the table in the DPRS plan review memo dated March 4, 2013, the addition of 40 seats, as proposed, will require relief of a total of eight (8) parking spaces. The applicant has applied for a Special Permit for relief of one (1) parking space and Variance for the remaining (9) parking spaces.

Mr. Fontane also stated that the Zoning Ordinance allows food service establishments to provide outdoor seating for twenty (20) by-right without requiring additional parking. Lake Avenue is a very wide street with considerable on-street parking available on either side. Homeowners in the area have off-street parking available. The applicant's plans show eight (8) on street parking spaces along the frontage of 193 Lake Ave. The combination of on-street parking available and off-street parking on site will sufficiently serve this use with 20 seats and will not significantly interrupt traffic flow or safety due to the business' seasonal nature and relatively small size.

Mr. Fontane stated that the hours of operation 10 a.m. to 10 p.m. and location of proposed seating (at the rear) will ensure that this use does not disturb residents in the area and that enough trash receptacles should be located at strategic locations throughout the site.

Mr. Fontane stated that on Friday, March 1, 2013, a letter in opposition was delivered to the DPRS office. The letter was drafted by Attorney Hennigan, who was representing two abutters.

Mr. Freilich asked the applicant what he will be adding to the menu. Mr. Madulka responded that it will be hot dogs, hamburgers, chips, sausage, cotton candy, anything that can be prepared on the griddle.

Mr. Michajlow stated that he did not believe it made sense to have two different parking requirements for what is essentially the same use.

Mr. Madulka stated that he maintains Lake Ave free of snow in the winter because that is where people prefer to park rather than in his parking lot. He stated that the Marine Corps League office allows him to dump the snow on their parking lot and they allow their patrons to park on their lot as well.

Attorney Hennigan stated he was representing Albert Johnson, owner of 188 Lake Avenue, and Anthony Russell, who is the trustee of 175 and 165 Lake Avenue. Mr. Hennigan stated that the letter he submitted on behalf of his clients outlined the basis of his opposition. He stated that the new use being proposed is substantially more detrimental to the neighborhood because this is now a restaurant and not a retail food sales use. Mr. Hennigan stated that the mere fact that people are seating everywhere should not be the basis to approve seating when the ZBA expressly conditioned against it and the owner is already selling other food items should not be the basis to allow him to continue doing it. Mr. Hennigan stated that is not what was intended, which is why there were specific conditions against it. He also stated that he requested that the matter be continued or denied.

Jon Zwirblia, Commandant at the Worcester Marine Corps League (MCL), which is located across the street from Madulka's Ice Cream. Mr. Zwirblia stated Mr. Johnson and Mr. Russell were against the ice cream shop since the beginning and have no parking signs in front of their homes so he does not see how this affects them. Mr. Zwirblia stated that this has been great for the neighborhood and he has seen an increase in membership since the ice cream shop opened. He stated that Mr. Madulka's customers are allowed to park on the MCL's lot across the way and use the crosswalk. Mr. Zwirblia stated that this has been great for the community and is in favor of the change requested.

Shawn Fitzpatrick, direct abutter and resident of 199 Lake Avenue, stated that this has been an improvement to the neighborhood. He stated he appreciates the family atmosphere and is in favor of the petition. Mr. Fitzpatrick stated that Mr. Madulka keeps the area clean and free of litter and his driveway has never been blocked.

Mr. Johnson stated that the crosswalk is not safe and he has seen people get killed there. He stated that he has seen people parking in front of the house next to his and cross the street without any caution. Mr. Johnson stated that Mr. Madulka has a yoga class and every time they meet there are 20 – 30 cars. Mr. Johnson stated that people park in front of his house regardless of the tow zone sign.

Annunzia Ricciardi-Grilla, 40 Sherbrook Ave, stated that she was in support of the petition. She stated that she takes care of elderly people but she cannot use the parking lot because many of her clients have walkers and can't maneuver through the lot because the ground is not even. She usually parks in front and gets them to the deck but they do not have a place to sit and it is not safe for them to sit on a planter. Ms. Ricciardi-Grilla stated that this is the only place in Worcester that has an ice cream place next to the water and it is a great family destination.

James Salem, 21 Montgomery Ave, stated that he visits Madulka's Ice Cream often but he has COPD (chronic obstructive pulmonary disease) and needs a place to sit and to park.

Mr. Bilotta stated that this business has been an improvement to the neighborhood and he has lived in the neighborhood for 57 years. He stated that he was in favor of the petition for more seating.

Mr. Loew stated that he has spent a lot of time on Lake Ave as well and believes that this business has been a great addition to the neighborhood. He stated that he has witnessed the staff telling people to move their vehicles when they park in the tow zone.

Mr. Michajlow stated that he has never visited this establishment but he stated that regardless of the ice cream establishment you usually don't buy the ice cream and just leave. You get the ice cream and hang around, finish your ice cream, and then leave. Mr. Michajlow stated that he has not heard how this petition is substantially more detrimental to the neighborhood.

Mr. Freilich stated that he did not think that the proposed changes would drastically change the number of people visiting his establishment or the amount of time the customers spend there but Mr. Freilich asked Mr. Madulka what could be done to keep the neighbors happy and to still allow the changes requested. Mr. Freilich stated that he is concerned about people crossing the street and maybe a petition to council to put in a warning light would be the best idea.

Mr. Madulka stated that there is nothing he could do for those neighbors that are opposed that would make them happy. He has tried to be neighborly in the past but he stated that Mr. Johnson has been against the business since the beginning.

Mr. Kelly stated that now that he has had a chance to review the petition request, the DPRS plan review memo, and the letter of opposition, and he stated that he agreed with DPRS staff that the change requested is a use of a similar nature.

Mr. Abramoff asked the applicant if he was amenable to the conditions that the Planning staff had recommended in the plan review memo: that trash shall be removed from site daily, that at least two trash receptacles shall be located outdoors, that the hours of operation shall be the same as with the previous approval (10am to 10pm), that that use be seasonal (March 1st to November 1st) and that the maximum number of seats shall be limited to a specific number of seats. Mr. Madulka stated that he was amenable to those conditions.

Mr. Freilich asked Mr. Hennigan what, if anything, could be done to satisfy his clients, keeping in mind that the business is not going away.

Mr. Hennigan stated that his clients are adamant that the requested is not of a similar use and he stated that in 2009 the ZBA insisted on disallowing seating and other foods. He still does not see what has changed to necessitate a change in use.

Mr. Fontane stated that the Table of Uses in the Zoning Ordinance has three uses: the retail use (ex. the former bait shop), retail food sales (ex. ice cream stand), and food service (ex. a restaurant). The zoning district is residential; therefore, the business is a pre-existing non-conforming use. Mr. Fontane read the following from the DPRS memo: "According to the Zoning Ordinance definition section, a use of a similar nature is defined as "a change in a privileged nonconforming use to a nonconforming use of a similar nature is 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." Food service use (Business Use #7) is permitted in a BL-1 zoning district which is the same zoning district where the existing use Retail Sales (Business Use #24) is fully permitted. Therefore, the proposed use is a use of a similar nature and can be considered by the Board through a Special Permit for the expansion or change of a pre-existing non-conforming use.

Mr. Freilich asked Mr. Hennigan if his clients wouldn't prefer to have 30-40 people seating on the deck, taking up more density, instead of 100 people standing there because there is no limit to how many people can be there with the existing Special Permit.

Mr. Hennigan stated that the original decision stated that the use should be retail food sales only and that should serve as proof that the ZBA never intended for this to become a full service, sit down restaurant for 40 people.

Mr. Fontane stated that the application in 2009 was for retail food sales and in order to keep it as such the Board conditioned it and limited it to solely ice cream. The previous ZBA did not want this to become a full fledged restaurant without the ability to review the matter and carefully consider it.

Mr. Hennigan stated that the change in use determines the need for additional parking and he believes that is the real detriment to this project.

Mr. Freilich stated that the addition of the 40 seats does not mean that 40 additional people will be coming into the establishment, only that 40 of his current customers can sit down.

Mr. Abramoff stated that he does not have an issue supporting this petition because he does not believe it will become a full service restaurant. It would just be a more amenable place to get an ice cream and a hotdog. He believes it is an amenity for the neighborhood and provides a sense of community.

Mr. Loew stated that he believed they should discuss the number of seats that they can limit Mr. Madulka to and it does not have to be 40.

Mr. Bilotta stated that he is in favor of this project. He stated that when he hears the word restaurant he pictures being greeted by a hostess, being seated, given menus, etc. but what is being discussed here is a picnic table out on a deck. A customer will be there 10-15 minutes tops to consume their ice cream and hot dog.

Mr. Freilich asked Mr. Hennigan and his client what, if anything, can be done to reach a middle ground. Mr. Johnson stated that he believed that there is no water in the small building and was concerned about sanitation. Mr. Kelly stated that there must be a sink in the building because he would not have obtained his food permit otherwise.

To clarify the petitioner's request before the Board voted, Mr. Fontane stated that the Board could approve the Special Permit Amendment for the change of use for the expansion, alteration, or change of the non-conforming use and that would allow the applicant 20 outdoor seats by-right per the Zoning Ordinance. The Board could approve the two Special Permits; for the change of use and the Special Permit for one (1) parking space relief that the applicant applied for and that would allow the applicant a total of 22 seats. Mr. Fontane stated that the applicant could have applied for relief for up to two parking spaces under the Special Permit but only one was requested in the application and only one was advertised therefore only one space was before the Board. And lastly, the Variance for the eight (8) spaces makes up the remaining seats, since there are two parking spaces already existing for this use and this would allow for parking relief for a total of 40 seats.

Mr. Freilich asked the applicant if he needed all 40 seats and what kind of furniture he was proposing. Mr. Madulka stated that he believed he needed all 40 because he did not want to come back to the ZBA to ask for any more. He plans to use picnic tables and benches; it needs to be temporary seating because it needs to be stored away during the winter.

Mr. Freilich stated he did not want to limit the menu but he wants to make sure that this doesn't turn into fine dining. Mr. Abramoff suggested that they could add a condition stating that no table service is allowed.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 5-0 to close the hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 5-0 to approve the Special Permit Amendment for the expansion, alteration or change of a privileged pre-existing nonconforming use to remove conditions # 3 & # 4 of the 2009 Special Permit to allow food other than ice cream and allow outdoor seating, the Special Permit for one (1) parking spaces, and the Variance for eight (8) parking spaces at 193 (aka 195 Lake Ave) subject to the following conditions:

- Trash shall be removed from site daily
- At least two trash receptacles shall be located outdoors
- The hours of operation shall be the same as with the previous approval (10am to 10pm)
- That use be seasonal (March 1st to November 1st).
- That the maximum number of seats shall be limited to 40 seats total.
- That hot dogs, hamburgers, sausages, cotton candy and items of a similar nature are allowed for sale with no table service.
- No friolators allowed (friendly amendment by Mr. Freilich)
- All seating should be temporary in nature and not permanently affixed to the deck in any way (friendly amendment by Mr. Loew)
- Decorative flower planters and the like shall not be used as seating (friendly amendment by Mr. Freilich)

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to accept the findings of fact as submitted by the applicant and modified by staff.

### **List of Exhibits.**

- Exhibit A: Special Permit Amendment Application; received January 25, 2013; prepared by Michael Madulka.
- Exhibit B: Site Plan; dated February 2, 2009; received on January 25, 2013; prepared by J.E. Melick – Design.
- Exhibit C: Variance Application; received January 25, 2013; prepared by Michael Madulka.

- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 193 (aka 195) Lake Avenue; dated March 1, 2013.
- Exhibit E: Letter from Robert J. Hennigan, Jr., Attorney at the Law Office of Robert J. Hennigan, Jr. to Andrew Freilich, Chair Zoning Board of Appeals; re: Petitioner: Michael T. Madulka, Property: 193 (195) Lake Avenue, Worcester, Massachusetts, Issue: Amendment to Special Permit/Application; dated March 1, 2013.

## **RECESS**

A five minute recess was called at 7:27 p.m. by Chair Freilich. The meeting was called back to order at 7:35 p.m.

### **4. 93 School Street (ZB-2013-004)**

**Special Permit:** To allow a motor vehicle display lot in the BG-6.0 Zoning District (Table 4.1, Business Use # 16)

Petitioner: 51 Union Realty, LLC

Present Use: Vacant undeveloped lot

Zone Designation: BG-6.0 (Business, General)

Petition Purpose: Construct a 28 car parking display lot with an associated trailer and 2 non-display parking spaces

Hussein Haghizadeh, HS&T Group, stated that the subject lot is paved and vacant. Mr. Palladino, the owner, would like to use the lot to sell used cars. Mr. Haghizadeh stated that upon receiving the comments from DPRS, they incorporated all the requested conditions in the new plans. He re-positioned the trailer, reduced the number of display spaces from 28 to 18 and the two non-display spots for employees or customers was also repositioned. Mr. Haghizadeh stated that they eliminated an aisle of cars and now a customer could easily enter through one curb cut and exit through the other without any impediment with the revised plans. They are providing landscaping all around the property and they are not proposing any work on the existing retaining wall.

Mr. Fontane stated that if approved, the Board should vote on the conditions of approvals and when the engineer submits the six copies to the office, staff can review to make sure it meets all the conditions.

Mr. Abramoff asked Mr. Haghizadeh to submit the plan he was displaying as Exhibit D.

Mr. Fontane stated that they still want to know where the signs will be placed.

Upon a motion by Mr. Abramoff and second by Mr. Bilotta, 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 petition subject to the conditions as stated in the DPRS memo (noted below):

- That landscaping be installed before the use commences;
- Rotate trailer and two associated parking spaces 90° counterclockwise, placing the trailer against the northerly lot line (parallel to Market St);
- Reduce number of cars displayed from 28 to 18 spaces;
- Submit six (6) copies of final revised plans submitted to the Division of Planning & Regulatory Services addressing the following:
  - Correct scale used in the title block to read, 1"=20';
  - Label height of retaining wall;
  - If signs are proposed, indicate the proposed location(s) on the site plan.

### **List of Exhibits.**

- Exhibit A: Special Permit Application; received February 5, 2013; prepared by 51 Union Realty, LLC.
- Exhibit B: Parking Plan; dated January 25, 2013; prepared by HS&T Group, Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 93 School Street – Special Permit Application; dated March 1, 2013.
- Exhibit D: Revised Site Plan prepared by HS&T Group dated January 25, 2013 and received March 4, 2013.

### **OTHER BUSINESS**

#### **5. Board Application Updates & Amendments**

- Special Permit Application Amendment for Digital Sign Conversions – Update application requirements to include traffic and collision data
- Electronic copy of applications (PDF)

Mr. Fontane stated that the Board should vote to advertise the amendment to the rules and regulations.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to formally consider these amendments to the rules and regulations and to the applications at a public hearing at the April 8, 2013 meeting.

#### **6. Communication Items:**

- Loan Agreement from Alexander G. Rheaume to Worcester Zoning Board of Appeals; re: Loan Arrangement Between Wells Fargo Bank; dated February 6, 2013; received February 19, 2013.

Mr. Fontane stated that this was just an informational item and that there was no action needed from the Board. The Board had no comment on this item.

## **DECISIONS FROM PRIOR MEETINGS**

The decision for 595 Mill Street was signed at this meeting.

Mr. Fontane stated that the Board will not be holding their March 25, 2013 meeting since that is the first day of Passover. Mr. Fontane apologized to the Board and stated that unfortunately they had used an incomplete source when preparing the schedule and didn't account for some holidays. All items agreed to be postponed to the April 8, 2013 meeting.

## **ADJOURNMENT**

The Board voted 5-0 to adjourn the meeting at 7:49 p.m.