

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

March 26, 2012

WORCESTER CITY HALL, 455 MAIN STREET, LEVI LINCOLN ROOM

Zoning Board Members Present:

Andrew Freilich, Chair
Lawrence Abramoff, Vice-Chair
William Bilotta
Vadim Michajlow
Kola A. Akindele, Associate Member
Timothy Loew, Associate Member

Staff Present:

Joel Fontane, Division of Planning & Regulatory Services
Luba Zhaurova, Division of Planning & Regulatory Services
John Kelly, Department of Inspectional Services

Board Site Views

Call to Order – 5:30 pm

Requests for Continuances, Extensions of Time, Postponements, Withdrawals

REGULAR MEETING (5:30 PM)

CALL TO ORDER

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

1.10 Claremont Street (ZB-2011-058) - Special Permit to allow a Lodging House in a RG-5 zoning district: This petition and 10 Claremont Street (ZB-2012-006) were heard contemporaneously. Son Van Nguyen, petitioner, and Robert O’Neil, project engineer, were present. Mr. O’Neil stated that he believed the proposed use would be harmonious with the neighborhood. Mr. O’Neil showed revised plans with no proposed snow storage, and revised landscaping and fencing. Mr. Fontane stated that staff has not received these plans yet and, therefore, cannot comment on them. Chair Freilich asked to verify that vehicles shown on the plans are to scale. Mr. O’Neil stated yes.

Chair Freilich expressed concern with the appropriateness of the proposed use for this site.

Mr. Abramoff asked what would be the alternative for the petitioner if the petition was denied. Mr. Nguyen stated that it probably would be a conversion of a single-family to a multi-family dwelling.

Mr. Fontane stated that the hearing was first opened on January 9, 2012 where only four members were present - Andrew Freilich, William Bilotta, Vadim Michajlow, and Timothy Loew; and that therefore only these 4 members can take a vote.

Russell Haims of Hampton Properties, LLC, the abutter, expressed opposition to the project because he did not believe the petitioner would operate the site in accordance with the plan and submitted House Rules. He concern with the petitioner's track record in terms of compliance. He stated that after withdrawing his petition in May of 2011, Mr. Nguyen occupied the building with 8 peoples, until Inspectional Services requested that excess people are removed. Mr. Haims expressed concern with current trash disposal and showed pictures of trash bags partially obstructing a sidewalk (Exhibit J).

Mr. O'Neil stated that the existing driveway width is 12-ft, and is proposed to be expanded to 16-ft. He stated that the 4 parking spaces will be striped.

Mr. Fontane recommended that existing landscaping buffer along the existing driveway length is kept and that no landscaping and a 6-ft stockade fence are provided along the rear corner of the property, 15-20 feet in each direction, in order to provide an improved vehicular turning radius and alternative space for trash receptacle storage.

Mr. O'Neil submitted revised plans dated February 10, 2012.

Mr. Nguyen stated that he contracted with a trash removal company and that snow will be removed off-site. He stated that he is invested in the property and wants to proceed. He stated that currently trash receptacles are placed next to a 1st proposed parking space on a side of the building. He stated that per staff's recommendation, he could store it in the basement. Mr. Michajlow was concerned with trash receptacles being so close to a parked car.

Gregory Jararas, an abutter, expressed concern with snow not being removed off site, but being pushed onto Silver Street.

Chair Freilich stated that he felt the site might be too small for the proposed use and that he believe the petitioner did not demonstrate good property management in the last 2 years of him owning the property. Mr. Abramoff stated that a by-right use for this zoning district in a 3-family dwelling which would require 6 off-street parking spaces which could be allowed to back out on a street. He stated that he believed the City and the Board had stricter controls over the project as a Lodging House.

Chair Freilich asked what the penalty for zoning violation is. Mr. Kelly stated that it is a combination of fines and court action. Mr. Kelly added that License Commission would review annually the property prior to re-issuance of a Lodging House license.

Chair Freilich suggested that the petitioner comes back in front of the Board in a year for a review. Mr. Michajlow concurred. Mr. Loew stated that the proposed use appears to be less intense than a by-right alternative. Mr. Bilotta stated that he believed City needs controls to regulate such uses and that in his opinion the petitioner made an effort to meet requirements of the Board.

Mr. Fontane stated in terms of density, in comparison to the other 2 Lodging Houses the Board approved in the last couple of years, the proposed project falls in middle both in terms of beds per gross square footage, and beds per site's area.

The Board discussed other types of controls within its powers. Mr. Fontane stated that Department of Inspectional Services would follow-up on a complaint, if there if one, between the required annual reviews already required for Lodging Houses. Mr. Haims stated that it would become a burden on and an obligation of the neighborhood to complain about violations.

Upon a motion by Mr. Bilotta and seconded by Mr. Loew, the Board voted 4-0 (Andrew Freilich, William Bilotta, Vadim Michajlow, and Timothy Loew) to close the Public Hearing.

Upon a motion by Mr. Michajlow and seconded by Mr. Bilotta, the Board voted 4-0 (Andrew Freilich, William Bilotta, Vadim Michajlow, and Timothy Loew) approve the requested Special Permit to allow a Lodging House in a RG-5 zoning district and a Special Permit for Modification of Landscaping Requirements for Parking/Loading (Article IV, Section 7) – requesting a partial waiver of 5-ft landscaped buffer with the following conditions of approval:

1. The Special Permit is valid for one year from date of final action;
2. That six (6) copies of final revised plans are submitted to the Division of Planning & Regulatory Services incorporating all conditions of approval, as applicable;
3. That the site and the Lodging House use are operated in substantial accordance with the final approved Definitive Site Plan and floor plans on file with the Division of Planning & Regulatory Services;
4. That the Lodging House be limited to 8 beds and 8 residents;
5. That the dedicated storage room on the 3rd floor is not to be used as a bedroom;
6. That no landscaping and a 6-ft stockade fence are provided along the rear corner of the property, 15-20 feet in each direction, in order to provide an improved vehicular turning radius and alternative space for trash receptacle storage;
7. That the existing landscaped buffer along the western property line remains and is enhanced with shrubs and other plantings;
8. That if garbage storage does not perform, it should be stored inside the building;
9. That landscaping is maintained on a bi-annual basis;
10. That no additional parking shall occur on the front lawn or in the front yard setback;
11. That the 4 parking spaces are clearly striped on the pavement;
12. That any snow that is interfering with parking flow on site is removed from the site;
13. That the lease for all tenants includes 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 the 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 amend or 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 Department of Inspectional Services 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 allowed to be consumed on the premises. Premises to be defined as within the building and within the property boundaries clearly indicated by fencing.
- k. No smoking is allowed of any kind on premises.
- l. Security cameras are located in common areas for resident's protection and peace of mind. Any tampering or damage is to be repaired by building manager immediately.
- m. Contact information of the property owner or manager shall be posted on the exterior of the building visible from the street (a 12 SF sign per primary public entrance is allowed in this zoning district).

List of Exhibits:

- Exhibit A: Special Permit Application; received October 18, 2011, revised January 17, 2012; prepared by Son Van Nguyen.
- Exhibit B: Special Permit Plan; dated March 4, 2011, revised December 1, 2011, January 6, 2012, January 24, 2012, & February 10, 2012; prepared by Robert D. O'Neil Jr., R.P.L.S.
- Exhibit C: Event Log for 10 Claremont Street for the time period of 1/1/2011-11/10/2011; Department of Inspectional Services; received 11/10/2011.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals, re: 10 Claremont Street – Special Permit; dated November 17, 2011, revised January 5, 2012 & February 9, 2012 & February 13, 2012 & March 5, 2012.
- Exhibit E: Letter of Opposition from Nancy A. Hewitt on November 21, 2011.
- Exhibit F: Floor plans for 10 Claremont Street; prepared by Acropolis Design Consultants; dated 12/15/2011; revised 3rd floor plan received January 9, 2012.
- Exhibit G: 10 Claremont Street House Rules, received January 4, 2012.
- Exhibit H: A photo-package submitted by Gregory Jararas at the 1/9/2012 ZBA meeting.
- Exhibit I: Special Permit Plan – Existing Conditions; prepared by Robert D. O'Neil Jr., R.P.L.S.; received February 13, 2012.
- Exhibit J: Photo exhibit submitted by Russell Haims on February 13, 2012.

2. **10 Claremont Street (ZB-2012-006) - Special Permit for Modification of Landscaping Requirements for Parking/Loading (Article IV, Section 7):** This petition and 10 Claremont Street (ZB-2011-058) were heard contemporaneously.

List of Exhibits:

- Exhibit A: Special Permit Application; received January 17, 2012.
- Exhibit B: Special Permit Plan; dated January 24, 2012, revised February 10, 2012; prepared by Robert D. O’Neil Jr., R.P.L.S.
- Exhibit C: Special Permit Plan – Existing Conditions; prepared by Robert D. O’Neil Jr., R.P.L.S.; received February 13, 2012.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals, re: 10 Claremont Street – Special Permit; dated February 13, 2012, revised March 5, 2012.

3. **2 Elman Road (ZB-2012-004) - Variance:** Relief of 9.2 feet from the 20 rear yard setback dimensional requirement.

Mr. Bilotta recused himself.

Francis M. Keating, petitioner, stated that she is seeking to construct a 320 SF addition to the existing single-family dwelling for additional living space for her large family. The proposed addition would encroach into the required rear setback (20’) for buildings located in an RS-7 district. Ms. Keating submitted letters of support from her neighbors (Exhibit D). Chair Freilcick stated that he was comofrtbael approving the petition knowing that neighbors have no objection. Ms. Keating stated that per staff’s comments (Exhibit C), she will submit revised plans showing dimensions of proposed deck, stairs and setbacks.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to approve the requested Variance for relief of 9.2 feet from the 20 rear yard setback dimensional requirement with the following condition of approval: That six copies of final revised plans be submitted to the Division of Planning & Regulatory Services prior to issuance of the Building Permit showing dimensions of proposed deck, stairs and setbacks.

List of Exhibits.

- Exhibit A: Variance Application; received 01/10/2012; prepared by Frances Keating.
- Exhibit B: Variance Plan; dated 01/06/2012, prepared by R.W. Hart Associates Inc.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 2 Elman Road; dated 02/06/2012, revised 03/02/2012 and 3/23/2012.

Exhibit D: Three (3) letters of support from Mrs. James A. Pickett, Parker & Sheryl Roaf, and Kristine Lattimer; submitted by Francis M. Keating; received 3/26/2012.

Chair Freilich stated that the four Personal Wireless Service Facilities petitions will be heard at the end of the meeting.

4. 50 Gardner Street (ZB-2012-010) - Special Permit to provide open lot storage for more than 1 unregistered automobile in excess of 7 days (General Use #13, Table 4.1):

Mr. Freilich designated Mr. Akindele as an Associate Member voting for this petition.

Kwadwo Obisui, petitioner, stated that he is seeking a Special Permit to use the lot for storage of approximately 34 vehicles and as a loading dock for container vehicles. Also present was Matthew Dworman, the owner. Mr. Bilotta asked if inspection of vehicles prior to sale was going to take place at Mr. Obisui's lot. Mr. Obisui said no.

Mr. Kelly stated that that the Board's packet included information about Enforcement Orders for 92 Grand Street and 38 Gardner Street, which are owned by the same owner as 50 Gardner Street, and for zoning purposes, are treated as one lot as they abut each other and held in common ownership. Mr. Kelly stated that on a recent site visit, he observed a new fence being installed.

Mr. Fontane stated that there was a significant neighborhood investment made in the area and that the proposed use is an active and viable use. He stated that by-right alternatives in the MG-2.0 zoning district, the more intense manufacturing zone, include continuation and expansion of the property for light manufacturing uses, warehousing and office uses; and that motor vehicle sales, motor vehicle repair and auto body repair are by-right uses that are not proposed at this time.

Mr. Michajlow asked how often the tow trucks will be entering the site. Mr. Obisui said 1-2 times a day and that he owns 2 tractor-heads.

Mr. Bilotta asked if the petitioner is planning on repairing or changing the oil of the vehicles on site. Mr. Obisui said no.

Steven Teasdale of Main South Community Development Corporation expressed opposition for the project. He stated that the business has already been operating for several months without permits; that the site is "unsightly" and looks like "junk yard". He stated that the applicant showed disrespect for the neighborhood and that the lot was meant to be a parking lot and that now people will be forced to park on a street. He stated that currently cars are loaded on a street. Mr. Teasdale submitted 8 letters of opposition to the project (Exhibit F).

William Breault expressed opposition to the project and stated that he believed there was no sufficient room on site for the proposed use, that cars are being loaded on a street, that the site used to be used as a parking lot, and that the petitioner disrespected the neighborhood.

Van ? asked that the City 'better regulate the area', and that she believed the proposed use does not fit with the rest of the neighborhood, with proximity to Boys & Girls Club.

Matthew Dworman, the owner of the property, stated that the property has been vacant for some time due to harsh economic times.

Mr. Obisui stated that abutters are mostly concerned with other properties than his, namely 38 Gardner Street and nearby parcels. He stated that 50 Gardner Street parcel was not used for 7 years and that he is proposing to clean up the area. He stated that he was not told he needs a Special Permit when he was issued a business license.

Mr. Abramoff asked if staff's suggested conditions of approval are acceptable. Mr. Obisui said yes. Mr. Abramoff stated that he would also add as a condition of approval that the lot is kept secured, that the litter on the street adjacent to the property is cleaned up daily, and that adequate on-site parking is maintained with no on-street loading of vehicles.

Mr. Dworman stated that the existing building is about 165,000 SF and is about 50% occupied right now. He stated that fencing, tree trunk removal and steel structure removal have already been addressed.

Mr. Akindele asked what is the average period of time that a vehicle spends on a lot. Mr. Obisui stated 1-2 weeks. Mr. Akindele asked what the penalty is for loading cars on a street. Mr. Kelly stated that these would be treated as a violation to a Condition of Approval.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 4-1 (with Chair Freilich, Mr. Abramoff, Mr. Michajlow, and Mr. Akindele voting yes, and Mr. Bilotta voting no) to approve the requested Special Permit to provide open lot storage for more than 1 unregistered automobile in excess of 7 days (General Use #13, Table 4.1) provided that the site is constructed and maintained it is in accordance with plot plan submitted on file with the City of Worcester and in compliance with all governmental codes, and with the following conditions of approval:

I) The Special Permit is valid for one year from date of final action;

II) Submit a Certificate of Compliance with Revenue Collection signed by property owner prior to April 1, 2012;

III) Revised Plan. Submit six (6) copies of final revised plans to the Division of Planning & Regulatory Services prior to issuance of the Building Permit/Occupancy Permit with the following modifications including a note on the plans stating conditions of approval:

- 1) **Landscaping / Buffer Improvements.** By June 1, 2012 provide landscaping in accordance with the submitted plan with the following additional modifications (See Exhibit D):
 - a) Provide one additional tree and additional low level plantings, such as daylily, phlox, or ornamental grasses, along Gardner Street in the area of the 8 display vehicle spaces;
 - b) Provide additional plantings, including one ornamental tree with additional low level plantings around the tree, in the buffer along Gardner Street in front of proposed office trailer;

- c) Provide a mix of trees and shrubs along the adjacent 38 Gardner Street property along the length of Hollis Street which is held in common ownership with 50 Gardner Street;
- d) In area currently marked as snow storage closest to Gardner Street, create an additional landscape island with one tree and low level plantings and relocate snow storage to the side of the parking lot away from Gardner Street;
- e) Install wisteria, jasmine or other perennial climbing vine along existing fencing in area of transformer for additional screening of this corner.

2) Plan Annotation Updates:

The plan has the following issues that should be corrected/clarified on a revised plan:

- a) In the Zoning Table – there is no minimum area or frontage requirement in MG-2.0 zoning districts. The rear yard setback provided is not 104’. That appears to be the setback of the proposed office trailer; however the existing building on site appears to extend to the rear yard setback and is a pre-existing dimensional nonconformity. There are no required # of parking spaces for display.
- b) Existing front, side, rear yard setbacks and height should be derived from the existing building on site;
- c) Correct the spelling of the word vehicles in the parking summary;
- d) Parking summary does not include existing parking and required parking for existing uses on site;
- e) Area shows motor vehicle sales as 8 spaces; however motor vehicle sales is not limited in MG-2.0 and removing the label will provide flexibility on site;
- f) Note: Areas marked as buffer along the ramp and existing building are not required landscaping buffer areas; they can be provided if the applicant wishes; however, staff recommends that the applicant and property owner focus their landscaping investments as suggested by staff for maximum screening and aesthetic improvement.

3) Use Related Restrictions.

- a) No dismantling of motor vehicles is to be conducted on site;
- b) No storage of motor vehicle parts is to be conducted in the parking area. (Note: indoor storage of vehicle parts/salvage materials would require additional permits from the Fire Department);
- c) Total vehicles on the lot are limited to a maximum of 38 vehicles as shown on the approved plan and limited to the proposed configuration as shown on submitted plan (applicant can use the motor vehicle display spaces if needed);
- d) Towing operations may occur 24 hours a day; however vehicles sales, loading of vehicles for export and other associated operations are to take place during stated business hours of 8am - 8pm;
- e) All loading/unloading of vehicles is to take place on site, not on public streets;

- f) Provide to the Department of Inspectional Service a copy of the export license for all entities who purchase vehicles from this operation for export to foreign countries.

4) Repairs/ Maintenance.

- a) Repair existing fencing at 38 and 50 Gardner St by September 1, 2012;
- b) Remove existing tree trunks entwined in fencing along Gardner St by May 1, 2012;
- c) Relocate proposed dumpsters closer to building and screen with fencing (stockade, simulated stockade or chain link with slats) by June 1, 2012;
- d) Remove debris and trash from site by May 1, 2012;
- e) Remove steel frame structure abutting Gardner St. by June 1, 2012;
- f) Remove litter on Gardner Street adjacent to 50 Gardner Street on a daily basis.

The Board also approved the requested application requirement waiver from the Zoning Board of Appeals' Rules and Regulations – Plot Plan Requirement because the plan does not show buildings and existing uses on site including parking areas owned by Nancy Dworman, Trustee / 68 Gardner St. LLC.

The Board approved applicant's findings of fact, as amended by staff.

List of Exhibits.

- Exhibit A: 50 Gardner St – Special Permit Application; received January 31, 2012; prepared by Kwadwo Obisui.
- Exhibit B: 50 Gardner Street Special Permit Parking Plan; dated 1/31/12; prepared by Viacad LLC.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 50 Gardner Street; dated March 1, 2012, updated March 22, 2012.
- Exhibit D: Marked Up Plan and Map by DPRS staff illustrating recommended proposed changes.
- Exhibit E: Enforcement Orders for 92 Grand Street and 38 Gardner Street.
- Exhibit F: Eight (8) letters of opposition from Jennifer L. Plante, Mirna Y. Williams, Mhia I. Perello, Agelica de la Rosa, Eddy R. Williams, Juan A. Perello, Mabel Alvarcido, an Luisanna Rodriguez; submitted by Steven Teasdale on March 26, 2012.

The Board members agreed to take a 5 minute recess at 7:57 pm.

5. 1098 West Boylston Street (ZB-2012-011) - Special Permit to allow a multi-family low rise dwelling (Residential Use #11, Table 4.1) in an RL-7 zoning district and Variance for relief of 59.30-ft from the 90-ft frontage dimensional requirement. Present for the hearing were Ricky L. Sampson, Attorney Donald O'Neil, and Robert O'Neil, project's engineer. Attorney O'Neil stated that petitioner is seeking to construct a six (6) unit multi-family dwelling with 12 off-street parking spaces and associated site improvements. Mr. O'Neil stated that there will be no additional surface runoff as a result of this project due to proposed infiltration areas.

Mr. Fontane stated that per Zoning Ordinance definition, multi-family dwellings should have 1 shared means of ingress/egress, and not 2, as shown on the rendering, which should be amended. Attorney O'Neil was amenable to the change.

Mr. Bilotta asked is the wetland delineation as done by a wetland scientists. Attorney O'Neil stated that a wetland scientist will be hired to do the delineation when the petitioner applies for Conservation Commission review, for which there are several triggers.

Mr. O'Neil stated that the project will require a new curbcut.

Mr. Abramoff asked how long the current owner owned the property. Mr. Sampson stated since May, 2011. Mr. Abramoff confirmed that the area in the rear of the building will not be developed, as per plans. Mr. Abramoff asked what lighting is proposed. Attorney O'Neil stated that there will be 1 light on the building, to be shown on plans submitted to the Planning Board for review.

Susan Healey, an abutter, expressed opposition to the project. She expressed disappointment with the fact that Mr. Sampson did not approach her to tell her about this project prior to receiving abutter notification. Ms. Healey stated that she currently parks her car in front of the petitioner's property. She was concerned with cutting down of trees, increase in traffic, parked cars flashing their lights into her bedroom, and increase in flooding levels in her backyard and basement. She referred to another project in the neighborhood that as built several years ago after which her property started flooding.

Mr. O'Neil stated that the runoff water is designed to be recharged on-site.

Roger Hacker, an abutter, mentioned several court cases that he believed were relevant to this petition. Mr. Fontane stated that what is most relevant to the Board is how the Special Permit and Variance tests are met. Mr. Hacker stated that he believed the frontage was not sufficient for the proposed use and would not fit in with the existing neighborhood consisting of one and two-family dwellings. He called the plan and the rendering "cookie-cutter" and "not site specific". He also expressed concern with the existing litter problem in the area.

Tom Hunt, an abutter, and others expressed opposition to a 6-family multi-family dwelling and submitted pictures showing flooding...

Attorney O'Neil stated that given that the proposed building would be relatively close to West Boylston Street, the distance between the building and existing houses on Darrow Street is over 250-ft, thus providing "adequate setback".

Don Tripero stated that he was told that he could not build on this lot because of the lack of frontage and because the area was "too wet". He stated that he was not sure if was for or against the project.

Mr. Abramoff expressed concern with lack of frontage. Mr. Bilotta expressed concern with the proposed use as compared to the surrounding uses. Chair Freilich stated that he could not approve the petition as is and suggested the petitioner requests a continuance in order to meet with abutters and discuss their concerns.

Attorney O'Neil requested a hearing continuance to April 23, 2012.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to continue the hearing to April 23, 2012.

List of Exhibits.

- Exhibit A: Special Permit & Variance Application; received 2/1/2012; prepared by Ricky L. and Kelly A. Sampson.
- Exhibit B: Special Permit & Variance Plan; dated 1/23/2012, prepared by Robert D. O'Neil, Jr.
- Exhibit C: Rendering and Floor Plans of the proposed dwelling at 1098 West Boylston Street; prepared by Residential Design Inc.; dated 10/17/2011
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 1098 West Boylston Street (ZB-2012-011); dated March 23, 2012.
- Exhibit E: Letter from Susan Healey to Zoning Board of Appeals; re: 1098 West Boylston Street; dated February 26, 2012.
- Exhibit F: Letter from Ryan B. Hacker to Zoning Board of Appeals; re: Testimony Submittal re: 1098 W. Boylston St; dated February 27, 2012.
- Exhibit G: Letter from John & Kristina Brand to Zoning Board of Appeals; re: 1098 West Boylston Street; dated February 27, 2012.
- Exhibit H: Photographs submitted by Thomas Hunt on March 26, 2012.

6. 995 Main Street (ZB-2012-014) - Special Permit to allow a drive-thru facility (Business Use #6, Table 4.1) and Special Permit for Extension, Alteration or Change of a Privileged Pre-Existing Nonconforming Use (Article XVI, Section 4): John Kucich with Bohler Engineering and Jim Gerusso of McDonald Corporation were present at the hearing. Mr. Kucich stated that the petitioner is seeking to do improvements to the façade of the building, and to construct a side-by-side drive-through facility which would improve circulation on site, and would reduce parking by 11 spaces to a total of 60. Mr. Abramoff expressed concern with McDonald packaging littering the neighborhood. Mr. Gerusso stated that he will make an effort on instructing employees picking up trash more frequently.

Upon a motion by Mr. Abramoff and seconded by Mr. Bilotta, the Board voted 5-0 to close the public hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to approve the requested Special Permit to allow a drive-thru facility (Business Use #6, Table 4.1) and Special Permit for Extension, Alteration or Change of a

Privileged Pre-Existing Nonconforming Use (Article XVI, Section 4) with the following conditions of approval:

- 1.) That six (6) copies of final revised plans are submitted to the Division of Planning & Regulatory Services showing the extension of the concrete island to physically prohibit vehicles entering the site from westernmost entrance from entering the secondary drive through lane;
- 2.) That the owner performs daily trash pick up of all McDonald's logo litter within a 750-ft radius from the center of the property;
- 3.) That the site be constructed in accordance with the final revised site plan approved by the Planning Board;

and provided the project is constructed and operated in compliance with all governmental codes.

List of Exhibits.

- Exhibit A: 995 Main Street -Special Permit Application; received 2/21/2012; prepared by Bohler Engineering.
- Exhibit B: 995 Main Street – Def. Site Plan; dated February 20, 2012,; prepared by Bohler Engineering.
- Exhibit C: Rendering- McDonalds, undated, unsigned, submitted at February 16, 2012 IRT meeting.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 995 Main Street ; dated March 23, 2012.
- Exhibit E: Memorandum from the City of Worcester Department of Public Works & Parks to the Zoning Board of Appeals; dated march 26, 2012.
- Exhibit F: Letter from Steven Diorio to Zoning Board of Appeals; dated March 13, 2012, submitted by email to DPRS.

7.50 Lafayette Street (ZB-2012-015) - Special Permit: Extension, Alteration, or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4): Hung Nguyen, petitioner, stated that he is seeking to construct a 382 SF addition on the second floor above the front entrance and remove a shed in the property's rear to provide an additional parking space on a fire-damaged three-story building with 4 dwelling units and vacant commercial space. Mr. Fontane stated that a by-right alternative for the property would be to rebuild the nonconforming structure within two (2) years after the damage occurred with the same volume and floor space. He stated that if Board to approve the petition, he recommends that six copies of final revised plan are submitted prior to issuance of a Building Permit/Occupancy Permit with the following changes:

- o Show tandem parking layout for four (4) off-street parking spaces that provides adequate access per staff's recommendation in a memo dated March 12, 2012;

- Show trees and shrubs in a 5-ft side yard setbacks buffering property line from the parking area;
- Label distances from adjacent buildings and dimensions of utility extension on each floor.

Mr. Nguyen stated that there used to be a restaurant on the 1st floor of the building prior to the fire, and that currently he is planning to have a senior center. He stated that he will provide sprinklers per Building Code.

Mr. Loew asked how the petitioner will handle trash. Mr. Nguyen stated that he already hired a trash removing company and that trash will be picked up once a week.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the board voted 5-0 to approve the requested Special Permit for Extension, Alteration, or Change of a Privileged Pre-Existing Nonconforming Structure (Article XVI, Section 4) with the following conditions of approval – that six (6) copies of final revised plan are submitted to Division of Planning & Regulatory Services prior to issuance of a Building Permit/Occupancy Permit providing the following additional information:

- Show tandem parking layout for four (4) off-street parking spaces that provides adequate access per staff's recommendation in a memo dated March 12, 2012;
- Show trees and shrubs in a 5-ft side yard setbacks buffering property line from the parking area;
- Label distances from adjacent buildings and dimensions of utility extension on each floor.

List of Exhibits.

- Exhibit A: Special Permit Application; received February 21, 2012; prepared by Hung Nguyen.
- Exhibit B: Site Plan; dated February 8, 2012; prepared by Terra Nova Survey Consultants.
- Exhibit C: Rendering; dated January 27, 2012; prepared by T Design.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 50 Lafayette Street; dated March 12, 2012.
- Exhibit E: Project Review Sheet Comments from City of Worcester Department Fire Department to the City of Worcester Division of Planning & Regulatory Services; re: 50 Lafayette Street; dated February 28, 2012.
- Exhibit F: Memorandum from the City of Worcester Department of Public Works & Parks to the Worcester Planning Board re: 50 Lafayette Street; dated March 13, 2012.

8.193 Lake Avenue (ZB-2012-017) - Amendment to Special Permit for Extension, Alteration or change of a privileged Pre-existing, Nonconforming Use (Business Use #24, Table 4.1) in a RL-7 zoning district to change from a retail use to a use of a similar nature: Ms. Zhaurova stated that Attorney Finkelstein provided her with a letter from Michael T. Madulka, petitioner, requesting that the item be withdrawn.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to approve the petitioner's request to Leave to Withdraw Without Prejudice the requested Amendment to Special Permit..

List of Exhibits.

- Exhibit A: 193 Lake Ave. Special Permit Application; received; prepared by Jonathan Finkelstein.
- Exhibit B: 193 Lake Ave. - Plot Plan; dated 2/29/2009, revised 2012; prepared by J.W. Melick Design, received February 22, 2012.
- Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 193 Lake Avenue; dated February 22, 2012.
- Exhibit D: Activity in Use Limitation Opinion – 193 Lake Avenue, Worcester Registry of Deeds Book 21104, Page 324, dated 10/2/1998, submitted with building permit application in 2009 for 193 Lake Ave. emailed to DPRS staff on March 23, 2012.
- Exhibit E: General Revised Ordinance Amendments to Chapter 13, Section 37q, Schedule IX: re: No Parking / Tow Signs for 165, 175, and 188 Lake Ave, 2009.
- Exhibit F: Letter from Mike Madulka to the Zoning Board of Appeals requesting Leave To Withdraw Without Prejudice; dated March 26, 2012; received March 26, 2012.

9.11 Orlando Avenue (ZB-2012-016) – Variance for relief of 1.8-ft from the 20-ft front yard setback dimensional requirement: Present for the hearing were Stephen Petro, petitioner, and Attorney Joe Boynton. Mr. Boynton stated that the petitioner is seeking a Variance for relief of 1.8-ft from the 20-ft front yard setback dimensional requirement in order to construct a 607 SF two story addition to the existing dwelling on the northwest side of the house. He stated that Commissioner John Kelly has determined that encroachment of the new proposed entrance by 0.5-ft into the front yard setback does not count toward setback requirement violation. Mr. Fontane stated that if approved, he recommends that the structure be constructed in substantial accordance with the Variance plan and renderings submitted with the Division of Planning & Regulatory Services and that minimum two ALB-resistant shade trees are planted on both sides of the proposed driveway to off-set the increase in impervious surface. Mr. Petro stated that he started the construction, but not the garage portion of it.

Mr. Abramoff stated that he believed the requested Variance to be de minimis and that he was in favor of the petition.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Akindele, the Board voted 5-0 to approve the requested Variance for relief of 1.8-ft from the 20-ft front yard setback dimensional requirement with a condition that the structure be constructed in substantial accordance with the Variance plan and renderings submitted with the Division of Planning & Regulatory Services and that minimum two ALB -resistant shade trees are planted on both sides of the proposed driveway to off-set the increase in impervious surface.

List of Exhibits.

- Exhibit A: Variance Application; received 2/22/2012; prepared by Heather MacKenzie-Petro and Stephen Petro.
- Exhibit B: Variance Plan; dated 2/13/2012, prepared by Robert D. O'Neil, Jr.
- Exhibit C: Renderings and a Plot Plan of 11 Orlando Street; dated 2/4/2012; prepared by Curran Consulting.
- Exhibit D: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 11 Orlando Avenue – ZB-2012-016; dated 3/23/2012.

The Board members agreed to take a 5 minute recess at 7:57 pm.

10. 161 West Mountain Street (ZB-2012-008) - Amendment to a Special Permit: To allow a Personal Wireless Service Facility in the RS-7 Zoning District: Attorney Michael Dolan of Brown Rudnick LLP, representative for New Cingular Wireless, PCS, LLC by AT&T Mobility Corporation, petitioner, stated that the petitioner was seeking to amend the previously granted Special Permit by adding three (3) additional antennas (for a total of 9) with associated equipment behind a screen wall on the roof.

Mr. Bilotta requested that all PWSF equipment, including brackets, match the paint of the as closely as practicable to the existing materials within the area of the installation.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to close the Public Hearing.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 (with Mr. Loew voting as an alternate member) to approve the requested Amendment to a Special Permit: To allow a Personal Wireless Service Facility in the RS-7 Zoning District, with the following conditions of approval:

- The proposed PWSF is constructed in compliance with the submitted application and plans on file with Division of Planning & Regulatory Services.
- **Cost of decommissioning:** That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be

submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;

- **Paint color matching:** That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;
- **Post-installation measurement of sound and RFP:** That post-installation measurements of the total noise and total Radio Frequency Radiation emitted by all PWSF on the building/site are taken by a certified noise and RF engineer; that results of these measurements demonstrate compliance with the Noise and Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy;
- That the project is completed in compliance with all governmental codes and the City of Worcester Zoning Ordinance.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to approve the requested application requirement waivers.

List of Exhibits.

- Exhibit A: Special Permit Application – 161 West Mountain St.; received 1/31/2012; Prepared by New Cingular Wireless PCS, LLC by its manager, AT&T Mobility Corporation, including:
- Exhibit 2 – Report of Radio Frequency Engineer
 - Exhibit 3 – Radio Frequency Coverage Plot Map
 - Exhibit 4 – Photo Simulations
 - Exhibit 10 – Equipment Specifications
 - Exhibit 11 – Noise Letter
 - Exhibit 14 – Waiver Requests
 - Exhibit 15 – Maximum Permissible Exposure Study
- Exhibit B: Special Permit Plan; dated 12/28/2011; prepared by Vertical Resources GRP and SAI Communications, received 1/31/2012.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re:161 West Mountain St ; dated March 26, 2012.

11. 67 Millbrook Street (ZB-2012-009) - Amendment to a Special Permit: To allow a Personal Wireless Service Facility in the MG-2.0 Zoning District and Amendment to a Special Permit: Expansion of a dimensional non-conformity with respect to height (more than 10-ft above the roofline): Gregory E. Mercier, Esq. of Duval, Klasnick & Pastel, LLC, representative for Verizon Wireless, petitioner, presented the project. Chair Freilich requested that the petitioner explore different screening alternatives of the existing and proposed PWSF on the roof “to preserve the look of the building” and stated that he was not comfortable approving the petition as presented. Mr. Mercier requested a continuance to the next meeting in order to have sufficient time to provide the requested information to the Board.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 (with Mr. Akindele voting as an Associate Member) to continue the hearing to April 23, 2012.

12. 255 Park Avenue (ZB-2012-012) - Amendment to Special Permit: To allow a Personal Wireless Service Facility in the RG-5 and BG-3.0 Zoning Districts and Special Permit: Expansion of a dimensional non-conformity with respect to height (facilities will be located more than 10-ft above the roofline): Mark Cook, representative for Sprint Nextel Corp., presented the petition. He stated that petitioner is seeking to replace six (6) existing antennas, add twelve (12) Remote Radio Head units, replace an existing GPS unit, install a fiber distribution box and replace an existing cabinet with two (2) cabinets within the existing shelter.

Chair Freilich stated that for future similar petitions on this site he would be asking for a parapet or other screening of PWSF on the roof, but given that the proposed PWSF is not exceeding the previous height, he is amenable to approving it.

Chair Freilich requested that staff ask City Council in an immediate future to address proliferation of PWSFs and set thresholds for how many PWSFs it is appropriate to have per site.

Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to close the Public Hearing. Upon a motion by Mr. Abramoff and seconded by Mr. Loew, the Board voted 5-0 to approve the requested Amendment to Special Permit: To allow a Personal Wireless Service Facility in the RG-5 and BG-3.0 Zoning Districts and Special Permit: Expansion of a dimensional non-conformity with respect to height (facilities will be located more than 10-ft above the roofline) with the following conditions of approval:

- That six (6) copies of final revised plan are submitted prior to issuance of a Building Permit showing the plan drawn to scale;
- That only authorized personnel are allowed onto the roof and that signs are posted restricting roof access to the public;
- That the structure is constructed in substantial accordance with the final approved plans submitted and the photo simulation package on file with the City of Worcester;

- **Cost of decommissioning:** That an affidavit, signed by a qualified professional, be submitted that provides an accurate and complete estimate of the costs of decommissioning and removal of the proposed PWSF, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Paint color matching:** That an affidavit, signed by the applicant, be submitted that states that the applicant agrees to match the paint of the proposed equipment as closely as practicable to the existing materials within the area of the installation, and that said affidavit be submitted to the Division of Building and Zoning and the Division of Planning & Regulatory Services prior to the issuance of a building permit;
- **Surety Bond:** That prior to the issuance of a building permit, a surety bond, equal to the cost of decommissioning and removal of the proposed PWSF, be obtained. Said bond shall be for a term of at least two years, and be adjusted for inflation every two years. The provisions of said bond shall be to the satisfaction of the Director of Planning & Regulatory Services;
- **Post-installation measurement of RFP:** That post-installation measurements of the total Radio Frequency Radiation emitted by all PWSF on the building and top floor of the building below the antennae and at all public access points are taken by a certified RF engineer; that results of these measurements demonstrate compliance with the Radio Frequency Radiation standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy;
- **Post-installation measurement of sound.** That post-installation measurements of the noise emitted by all PWSF on the building are taken by a certified acoustical engineer; that results of these measurements demonstrate compliance with the noise standards of the Zoning Ordinance and Federal Communication Commission Guidelines; and that these results are submitted to the Division of Planning & Regulatory Services and Department of Inspectional Services prior to the issuance of the Certificate of Use & Occupancy.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 (with Mr. Loew voting as an Associate Member) to approve the requested application requirement waivers for the following:

1. City-wide map
2. Siting Filing Requirements
3. Landscape plan
4. Balloon or crane test

List of Exhibits.

- Exhibit A: Special Permit Application – 255 Park Avenue; received February 2, 2012; prepared by Sprint Nextel Corp.
- Exhibit B: Special Permit Plan; dated February 2, 2012; prepared by Salient Architects, LLC.

Exhibit C: Memorandum from the City of Worcester Division of Planning & Regulatory Services to the Zoning Board of Appeals; re: 255 Park Avenue; dated March 9, 2012.

13. 49 (aka 51) Union Street (ZB-2012-013) - Amendment to Special Permit: To allow a Personal Wireless Service Facility in a BG-6.0 Zoning District: Mark Cook, representative for Sprint Nextel Corp., petitioner, stated that petitioner is seeking to replace three (3) existing antennas, add nine (9) Remote Radio Head (RRH) units and three (3) combiners, replace an existing GPS unit, replace two (2) existing equipment cabinets, install a fiber cabinet and perform work inside the building within its existing equipment space. Chair Freilich stated that he would like to see existing and proposed PWSFs screened on the roof to improve the aesthetics of this historic building. He stated that he would like to see simulations of the proposed screening alternatives.

Upon a motion by Mr. Abramoff and seconded by Mr. Michajlow, the Board voted 5-0 to continue the hearing to April 23, 2012 to allow the applicant time to provide the Board with screening alternatives and simulations.

OTHER BUSINESS

14. CPTC Materials: Mr. Loew asked staff to share relevant materials he got from the recently attended The Citizen Planner Training Collaborative Annual Conference. Mr. Fontane stated that staff will make copies and will distribute to all members at the next meeting.

15. Board Allowance: Chair Freilich requested that staff requests a City to provide allowance to Board members to cover their vehicle expenses for required site visits. Mr. Fontane stated that he will draft a letter from the Board requesting City Manager to do the same.

16. Board Meeting Schedule 2012-2013: Upon a motion by Mr. Bilotta and seconded by Mr. Abramoff, the Board voted 5-0 to approve the meeting schedule 2012-2013.

ADJOURNMENT

The Board adjourned the meeting at 10PM.